The seal of Clark County, Nevada, is a circular emblem. It features a blue outer ring with the words "CLARK COUNTY" at the top and "NEVADA" at the bottom in yellow capital letters. The center of the seal is orange and depicts a stylized landscape with a yellow sun or moon, a blue mountain range, and several black stick figures holding hands in a circle.

# *Clark County Air Pollution Control Hearing Board*

*Clark County Building Services  
Presentation Room*

*April 8, 2025 at 10:00 a.m.*



**Clark County Air Pollution Control Hearing Board**  
**Clark County Building Department**  
**Presentation Room**  
**4701 West Russell Road**  
**Las Vegas, NV 89118**

**April 8, 2025 – 10:00 A.M.**

**Agenda**

**Note:**

- Items on the agenda may be taken out of order.
- The Air Pollution Control Hearing Board may combine two (2) or more agenda items for consideration.
- The Air Pollution Control Hearing Board may remove an item from the agenda or delay discussion relating to an item at any time.
- No action may be taken on any matter not listed on the posted agenda.
- Please turn off or mute all cell phones and other electronic devices.
- Please take all private conversations outside the room.
- With a forty-eight (48) hour advance request, a sign language interpreter or other reasonable efforts to assist and accommodate persons with physical disabilities, may be made available by calling (702) 455-0354, TDD at (702) 385-7486, or Relay Nevada toll-free at (800) 326-6868, TD/TDD
- Supporting material provided to the Board members for this meeting may be requested from Sherrie Rogge, Administrative Secretary, at [sherrie.rogge@clarkcountynv.gov](mailto:sherrie.rogge@clarkcountynv.gov) or (702) 455-0354.
- Supporting material is also available at the Clark County Department of Environment & Sustainability, 4701 West Russell Road, 2<sup>nd</sup> Floor, Las Vegas NV 89118.
- Supporting material is/will be available on the Department's website at:  
[https://www.clarkcountynv.gov/government/departments/environment\\_and\\_sustainability/compliance/enforcement\\_notices.php](https://www.clarkcountynv.gov/government/departments/environment_and_sustainability/compliance/enforcement_notices.php)

**Hearing Board Members**

Daniel Sanders, Chair  
Ryan L. Dennett, Esq., Vice-Chair  
Daniel Bartlett  
Donald Bordelove  
Troy Hildreth  
Amy Lahav

**Hearing Board Counsel**

Nichole Kazimirovicz

**Air Quality Staff**

Marci Henson, Director  
Shibi Paul, Compliance & Enforcement Manager  
Anna Sutowska, Air Quality Supervisor

**Department Counsel**

Timothy J. Allen

**Administrative Secretary**

Sherrie Rogge, Phone: 702-455-0354; Email [sherrie.rogge@clarkcountynv.gov](mailto:sherrie.rogge@clarkcountynv.gov)  
Business Address: Clark County Department of Environment & Sustainability,  
4701 W. Russell Road, 2<sup>nd</sup> Floor, Las Vegas NV 89118



1. **CALL TO ORDER**

2. **PUBLIC COMMENT**

This is a period devoted to comments by the general public about items on this agenda. No discussion, action, or vote may be taken on this agenda item. You will be afforded the opportunity to speak on individual Public Hearing Items at the time they are presented. If you wish to speak to the Board about items within its jurisdiction but not appearing on this agenda, you must wait until the "Comments by the General Public" period listed at the end of this agenda. Comments will be limited to three (3) minutes. Please step up to the speaker's podium, if applicable, clearly state your name and address and please **spell** your last name for the record. If any member of the Board wishes to extend the length of a presentation, this will be done by the Chairperson or the Board by majority vote.

3. **APPROVAL OF MINUTES**

Approval of January 28, 2025 meeting minutes.  
(For possible action)

4. **ACCEPT HEARING BOARD ORDERS**

Review competing hearing board orders from hearings conducted on January 28, 2025, in the matter of Notices of Violation: #9907 issued to Assured Development, Inc. and Joseph Yakubik; #9946, #9979, and #10008 issued to Atlas Holdings International LLC and Joseph Yakubik, and decide which proposed orders, or parts thereof, to accept.  
(For possible action)

5. **APPEAL OF HEARING OFFICER DECISION**

**A. ETON TRANSPORTATION CORP. (DCOP #57148)**

**NOV #9994** – On November 5, 2024, the Hearing Officer found ETON Transportation Corp. in violation of Sections 94.13(a) and (b) for failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, as identified by Air Quality Specialist Canduella Rowsell, Senior Air Quality Specialists Katrinka Byers and Andrew Kirk, and Air Quality Supervisor David Dean during a routine inspection on January 8, 2024, and follow-up inspections on January 9 and 17, 2024 at the Stratford-1 construction project, located at 2596 Stratford Avenue, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$3,500.00. Respondent appealed.

Conduct Hearing and Render Decision  
(For possible action)

**B. ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, AND MOE TRUMAN, INDIVIDUALLY (DCOP #57148)**

**NOV #10078** – On November 5, 2024, the Hearing Officer found ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON, and Moe Truman, individually, in violation of Sections 94.13(a) and (b) for failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, and Section 4.1(d)(1) for refusing entry or access to the Control Officer who requests entry for purposes of inspection, as identified by Air Quality Specialists Canduella Rowsell and Noel Crandall, and Senior Air Quality Specialist Andrew Kirk during a routine inspection on July 17, 2024, and follow-up inspections on July 25 and 31, 2024, and August 7 and 14, 2024, at the Stratford-1

construction project, located at 2596 Stratford Avenue, in Clark County Nevada. The Hearing Officer assessed a penalty amount of \$17,250.00. Respondents appealed.

Conduct Hearing and Render Decision  
(For possible action)

6. **IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY THE BOARD AT A FUTURE MEETING**

7. **PUBLIC COMMENT**

A period devoted to comments by the general public about matters relevant to the Board's jurisdiction will be held. No vote may be taken on a matter not listed on the posted agenda. Comments will be limited to three (3) minutes. Please step up to the speaker's podium, if applicable, clearly state your name and address and please **spell** your last name for the record. If any member of the Board wishes to extend the length of a presentation, this will be done by the Chairperson or the Board by majority vote.

8. **ADJOURNMENT**

The Presentation Room is accessible to individuals with disabilities. Within forty-eight (48) hour advanced request, a sign language interpreter may be made available by contacting (702) 455-0354 or TDD (702) 385-7486 or Nevada Relay toll-free (800) 326-6868, TT/TDD. Assistive listening devices are available upon request.

This meeting has been properly noticed and posted online at: [https://clarkcountynv.gov/government/departments/environment\\_and\\_sustainability/compliance/enforcement/notices.php](https://clarkcountynv.gov/government/departments/environment_and_sustainability/compliance/enforcement/notices.php) and Nevada Public Notice at <https://notice.nv.gov/> and in the following location:

Clark County Operations Center, West, 4701 W. Russell Road, Las Vegas, Nevada (Principal Office)



## **Minutes**

### **Regular Meeting of the Clark County Air Pollution Control Hearing Board**

**January 28, 2025**

**Clark County Building Services  
Presentation Room  
4701 West Russell Road  
Las Vegas, NV**

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#### **1. CALL TO ORDER**

Chair Sanders called the meeting of the Air Pollution Control Hearing Board to order at the hour of 9:11 a.m. A quorum was present, and Affidavits of Posting of the agenda were provided as required by the Nevada Open Meeting Law. The Affidavits will be incorporated into the official record.

**PRESENT:** Daniel Sanders, Chair  
Ryan L. Dennett, Vice-Chair  
Daniel Bartlett  
Troy Hildreth  
Amy Lahav

**ABSENT:** Donald Bordelove

**HEARING BOARD  
COUNSEL:** Nichole Kazimirovicz, Deputy District Attorney

**DAQ STAFF:** Marci Henson, Director  
Shibi Paul, Compliance and Enforcement Manager  
Anna Sutowska, Air Quality Supervisor  
Sherrie Rogge, Administrative Secretary

**DEPARTMENT  
COUNSEL:** Catherine Jorgenson, Deputy District Attorney

**2. PUBLIC COMMENT**

Chair Sanders asked if there were any persons present in the audience wishing to be heard. There being no one, Chair Sanders closed the public comments.

**3. APPROVAL OF MINUTES OF THE DECEMBER 4, 2024, MEETING (For possible action)**

Chair Sanders called for comments, changes, or corrections to the December 4, 2024, minutes. Being none, he called for a motion.

FINAL ACTION: It was moved by Board Member Dennett, seconded by Board Member Lahav, that the subject minutes be approved.

Motion carried by the following vote:

Voting Aye: Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav  
Voting Nay: None  
Abstaining: None  
Absent: Donald Bordelove

**4. APPEAL OF HEARING OFFICER DECISIONS**

Mr. Joseph Yakubik, representative for appellants was not in attendance when the items were called. The Board agreed to take a 15-minute recess to allow time for Mr. Yakubik to arrive for the meeting.

RECESS: 9:15 a.m.  
RECONVENE: 9:30 a.m.

Chair Sanders called the meeting back to order.

Mr. Yakubik arrived at 9:30 a.m., stating he had been informed by Administrative Secretary Sherrie Rogge that the meeting started at 10:00 a.m.

Mr. Yakubik, representing appellants, was sworn in by Chair Sanders.

Chair Sanders stated that before starting with the appeals, he would like to discuss with the Board the email that was received that morning in addition to the letter from Mr. Yakubik dated January 22, 2025, requesting NOVs #9907, #9946, #9979, #9981, and #10008 be either dismissed or continued.

Vice-Chair Dennett inquired of Mr. Yakubik if he had any briefings or pleadings on the motions contained in his letter or are these oral motions he will be making.

Vice-Chair Dennett stated for the record that a zoom meeting was held on January 23, 2025, between himself, Mr. Yakubik and Ms. Jorgenson. Mr. Dennett informed the Board of what was discussed.

Catherine Jorgenson, Deputy District Attorney, State Bar No. 006700, 500 South Grand Central Parkway, Las Vegas NV 89155, Attorney for Clark County Department of Environment and

Sustainability, Division of Air Quality (Air Quality), stated this is another example of delay and disruption. Ms. Jorgenson recommended the Board deny this motion by Mr. Yakubik as untimely.

Mr. Dennett stated that this meeting was properly noticed, that he had no knowledge of a pending Writ from the District Court precluding the hearing from going forward or a pending complaint from the Attorney General's office, nor that there was a violation of due process.

FINAL ACTION: It was moved by Board Member Dennett, seconded by Board Member Lahav to deny the appellants' oral motion to dismiss or, in the alternative, continue NOVs #9907, #9946, #9979, #9981, and #10008 to a future date.

Motion carried by the following vote:

Voting Aye: Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav  
Voting Nay: None  
Abstaining: None  
Absent: Donald Bordelove

**A. ASSURED DEVELOPMENT, INC. AND JOSEPH YAKUBIK, INDIVIDUALLY (DCOP #50962) – NOV #9907** – On June 17, 2024, the Hearing Officer found Assured Development, Inc. and Joseph Yakubik in violation of Sections 94.5(n)(1) and (2), and 94.13(b) of the AQRs for failure to implement control measures for long-term stabilization, as described in Best Management Practice 11 at permit closure, as identified by Air Quality Specialist Nahulu Kahananui and Senior Air Quality Specialist Katrinka Byers during a permit closure inspection on July 13, 2023, a complaint investigation on August 2, 2023, and follow-up inspections on August 9, 11 and 17, 2023, at the Milan Customs construction project, located at the northeast corner of Milan Street and Berlin Avenue, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$5,000.00. This appeal is continued from the August 7, 2024, October 2, 2024, and December 4, 2024 Hearing Board meetings. (For possible action)

Mr. Yakubik stated his first item of business was NRS 50.155 which is for the exclusion and segregation of witnesses. Mr. Yakubik requested the Board remove all the testifying witnesses from the room during the hearing of each case.

Ms. Jorgenson stated that her witness list for NOV #9907 would include: Nahulu Kahananui, Katrinka Byers, David Dean, and Anna Sutowska. She requested that Air Quality Supervisor Anna Sutowska be allowed to stay in the room for all hearings. Ms. Sutowska is a County representative for purposes of the documents that have been obtained, and Ms. Jorgenson relies on Ms. Sutowska's knowledge of identifying documents. One of the exceptions is designated representative of the party.

FINAL ACTION: It was moved by Board Member Lahav, seconded by Board Member Dennett, to deny the request to sequester Anna Sutowska for NOVs #9907, #9946, #9979, #9981, and #10008.

Motion carried by the following vote:

Voting Aye: Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav  
Voting Nay: None  
Abstaining: None  
Absent: Donald Bordelove

Mr. Yakubik stated his witness list for NOV #9907 would include: Mike Englehart, Elizabeth Rubio, Anita Karr, Richard Wyse, Nahulu Kahananui, and Anna Sutowska.

Ms. Jorgenson stated that Mike Englehart and Richard Wyse were not present for today's hearing and that Elizabeth Rubio and Anita Karr no longer worked for Clark County.

The Board asked Nahulu Kahananui, Katrinka Byers, and David Dean to leave the room until called for testimony.

Mr. Yakubik made objections and arguments in relation to NOV #9907.

Mr. Yakubik stated that if the Board doesn't want to rescind the Hearing Officer Order (Order), then he asked that the Order be modified to be consistent with long standing practices and procedures of Air Quality, and fines be commensurate with the violation.

Chair Sanders swore the following people in for questioning by Mr. Yakubik and Ms. Jorgenson:

Nahulu Kahananui, Air Quality Specialist, Enforcement Section  
Katrinka Byers, Sr. Air Quality Specialist, Dust Section  
David Dean, Air Quality Supervisor, Dust Section  
Anna Sutowska, Air Quality Supervisor, Enforcement Section

Mr. Yakubik questioned Mr. Kahananui, Ms. Byers, Mr. Dean, and Ms. Sutowska.

Ms. Jorgenson presented the facts of Air Quality's case pertaining to the appeal of NOV #9907. Ms. Jorgenson called Mr. Kahananui, Ms. Byers, Mr. Dean, and Ms. Sutowska to testify.

Mr. Yakubik cross examined Ms. Byers, Mr. Dean, and Ms. Sutowska.

Ms. Jorgenson requested that the NOV with all of its exhibits and Exhibit AA (bates number DAQ\_209 through DAQ\_249) be admitted into the record.

RECESS: 12:02 p.m.  
RECONVENE: 12:45 p.m.

Chair Sanders called the meeting back to order.

Mr. Yakubik made a closing statement. Mr. Yakubik asked the Board to rescind the Order for NOV #9907.

Ms. Jorgenson made a closing statement.

General discussion ensued amongst the Board.

FINAL ACTION: It was moved by Board Member Dennett, seconded by Board Member Lahav, to deny the appeal and affirm the Hearing Officer Order in the matter of NOV #9907.

Motion carried by the following vote:

Voting Aye: Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav  
Voting Nay: None  
Abstaining: None  
Absent: Donald Bordelove

FINAL ACTION: It was moved by Board Member Sanders, seconded by Board Member Hildreth, to affirm the Hearing Officer Order for assessment of administrative penalty in the amount of \$5,000.00.

Motion carried by the following vote:

Voting Aye: Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav  
Voting Nay: None  
Abstaining: None  
Absent: Donald Bordelove

FINAL ACTION: It was moved by Board Member Dennett, seconded by Board Member Sanders, to accept the following findings of facts and conclusions of law:

The Board finds on July 13, 2023, August 2, 2023, August 9, 2023, August 11, 2023, and August 17, 2023, Air Quality staff visited the permitted location in response to notification from Assured Development, Inc. (Assured) and Mr. Yakubik that they were prepared for a close out of the outstanding Dust Control Operating Permit (DCOP). On each of those occasions, staff for Air Quality recognized and determined that the standards for closure of the outstanding DCOP had not been met. Specifically, the Board finds that the dust mitigation effort had not been applied to the disturbed soils, and the project was not in compliance with BMP 11.

The Board concludes that Assured and Yakubik violated AQRs, specifically that soil was disturbed at the subject construction site and that Assured and Yakubik failed to stabilize soils as required by BMP 11.

The Board finds and determines, as discussed throughout the hearing, that the following applies in the matter of all four items (NOVs #9907, #9946, #9979, and #10008):

1. Assured and Yakubik argued under both the United States Constitution 14<sup>th</sup> Amendment and Nevada State Law that due process was not afforded because of the alleged failure of Air Quality to provide requested documents through subpoena or public records requests, because of a perceived failure of Air Quality to give timely notice of the December 4, 2024, Board meeting, and the inability of Assured and Yakubik to then prepare and provide documents and argument at this proceeding.
2. Air Quality argued that Assured and Yakubik had ample notice and opportunity to present evidence, a witness list, and motion prior to the January 28, 2025 meeting. Air Quality argued if Assured and Yakubik truly wanted their arguments considered by the Board, they would have submitted a motion presenting all their arguments to which Air Quality could have responded and Assured and Yakubik then could have replied. In addition, Air Quality presented evidence



that it had produced all the documents in its possession to Assured and Yakubik in accordance with the subpoena authorized by the Board at the October 2, 2024, Board meeting.

The Board, having considered those issues of potential violation of due process, finds and concludes that they are without merit and that Assured and Yakubik have failed to meet their burden of proof with regard to an alleged violation of due process. In addition, the Board concludes that the meeting was properly noticed.

The Board finds that the administrative penalty of \$5,000.00 assessed against Assured and Yakubik for its violation of the AQRs is reasonable and appropriate.

Motion carried by the following vote:

Voting Aye:	Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav
Voting Nay:	None
Abstaining:	None
Absent:	Donald Bordelove

- B. ATLAS HOLDINGS INTERNATIONAL LLC AND JOSEPH YAKUBIK, INDIVIDUALLY (Construction Project #57391) – NOV #9946** – On June 17, 2024, the Hearing Officer found Atlas Holdings International LLC and Joseph Yakubik in violation of Sections 94.13(a) and (b) of the AQRs for failure to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, as identified by Senior Air Quality Specialists Katrinka Byers and Andrew Kirk while performing routine patrol resulting in an initial inspection on November 8, 2023, and follow-up inspections on November 15 and 20, and December 11, 2023, at the 732 & 724 Naples | 729 Milan construction project (parcel numbers 179-04-510-004, 179-04-510-005, and 179-04-510-006), located at 732 North Naples Street, 729 North Milan Street, and 724 North Naples Street, respectively, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$5,937.50. This appeal is continued from the August 7, 2024, October 2, 2024, and December 4, 2024 Hearing Board meetings. (For possible action)

Mr. Yakubik stated for the record that per NRS 50.155 the following witnesses be excluded from the room during the hearing: Katrinka Byers, Andrew Kirk, David Dean, and Anna Sutowska.

Ms. Jorgenson requested that Anna Sutowska be excluded from the segregation of witnesses for NOV #9946.

The Board asked Katrinka Byers, Andrew Kirk and David Dean to leave the room until called for testimony. The Board allowed Ms. Sutowska to stay in the room.

Mr. Yakubik, representing appellants, made disclosures and objections.

Mr. Yakubik stated for the record that the general disclosures and objectives made can be used NOVs #9946, #9979, #9981, and #10008 instead of repeating the same facts for each case.

The Board and Counsel were in acceptance of that request.

Mr. Yakubik made arguments in relation to the appeal of NOV #9946.

Chair Sanders swore the following people in for questioning by Mr. Yakubik and Ms. Jorgenson:

David Dean, Air Quality Supervisor, Dust Section  
Andrew Kirk, Senior Air Quality Specialist, Dust Section  
Katrinka Byers, Senior Air Quality Specialist, Dust Section  
Anna Sutowska, Air Quality Supervisor, Enforcement Section

Mr. Yakubik called Mr. Dean, Mr. Kirk, and Ms. Byers to testify.

Ms. Jorgenson called Mr. Yakubik to testify. Mr. Yakubik stated that he was not testifying today and that there was no obligation for him to testify.

Mr. Dennett stated that there's no 5<sup>th</sup> amendment privilege to preclude Mr. Yakubik from testifying in a civil proceeding. Mr. Dennett noted Mr. Yakubik's refusal to participate in good faith in the proceeding after being named as a witness and as the appellant.

Ms. Jorgenson called Ms. Byers, Mr. Kirk, and Ms. Sutowska to testify.

Ms. Jorgenson presented the subpoena issued to Air Quality on October 2<sup>nd</sup>. Ms. Sutowska testified that she gathered all the documents required by the subpoena that existed, provided them to Ms. Jorgenson, who then provided them to Mr. Rock Rocheleau, attorney for the appellants at that time.

Chair Sanders called for closing arguments. Mr. Yakubik stated for the record that his closing argument was the same as what he presented for NOV #9907, and he didn't need to restate it again.

Ms. Jorgenson presented her closing statement for the appeal of NOV #9946

General discussion ensued amongst the Board.

**FINAL ACTION:** It was moved by Board Member Sanders, seconded by Board Member Bartlett, to deny the appeal and affirm the Hearing Officer Order in the matter of NOV #9946 including the assessment of an administrative penalty in the amount of \$5,937.50.

Motion carried by the following vote:

Voting Aye:	Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav
Voting Nay:	None
Abstaining:	None
Absent:	Donald Bordelove

**FINAL ACTION:** It was moved by Board Member Dennett, seconded by Board Member Sanders, to accept the following findings of fact and conclusions of law:  
The Board finds that Atlas Holdings International LLC (Atlas Holdings) and Yakubik violated AQRS for not applying best available control measures for dust as documented by inspections

that were performed by Air Quality staff on November 8, 2023, November 15, 2023, November 30, 2023 and December 11, 2023, at 732 North Naples Street, 729 North Milan Street, and 724 North Naples Street in Henderson, Clark County, Nevada.

The Board finds that Atlas Holdings and Yakubik attempted to apply for a dust permit, but one was not in place at the time. Despite that, Atlas Holdings and Yakubik were required to apply best available control measures for dust and failed to do so.

The Board finds and determines, as discussed throughout the hearing, that the following applies in the matter of all four items (NOVs #9907, #9946, #9979, and #10008):

1. Atlas Holdings and Yakubik argued under both the United States Constitution 14<sup>th</sup> Amendment and Nevada State Law that due process was not afforded because of the alleged failure of Air Quality to provide requested documents through subpoena or public records requests, because of a perceived failure of Air Quality to give timely notice of the December 4, 2024 Board meeting, and the inability of Atlas Holdings and Yakubik to then prepare and provide documents and argument at this proceeding.

2. Air Quality argued that Atlas Holdings and Yakubik had ample notice and opportunity to present evidence, a witness list, and motion prior to the January 28, 2025 hearing. Air Quality argued if Atlas Holdings and Yakubik truly wanted their arguments considered by the Board, they would have submitted the motion to which Air Quality could have responded, and Atlas Holdings and Yakubik then could have replied. In addition, Air Quality presented evidence that it had produced all the documents in its possession to Atlas Holdings and Yakubik in accordance with the subpoena authorized by the Board at the October 2, 2024 Board meeting.

The Board, having considered those issues of potential violation of due process, finds and concludes that they are without merit and that Atlas Holdings and Yakubik have failed to meet their burden of proof with regard to an alleged violation of due process. In addition, the Board concludes that the meeting was properly noticed.

The Board finds that the administrative penalty of \$5,937.50 assessed against Atlas Holdings and Yakubik for its violation of the AQRs is reasonable and appropriate.

Motion carried by the following vote:

Voting Aye:	Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav
Voting Nay:	None
Abstaining:	None
Absent:	Donald Bordelove

- C. ATLAS HOLDINGS INTERNATIONAL LLC AND JOSEPH YAKUBIK, INDIVIDUALLY (Construction Project #57391) – NOV #9979** – On June 17, 2024, the Hearing Officer found Atlas Holdings International LLC and Joseph Yakubik in violation of Sections 94.13(a) and (b), and 94.4.1(a) of the AQRs for failure to fully implement Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week; and for failing to obtain a Dust Control Operating Permit prior to commencing construction activities, as identified by Senior Air Quality Specialists Katrinka Byers and Andrew Kirk while performing follow-up inspections on January 10, 17, and 22, 2024, at the 732 & 724 Naples | 729 Milan construction project (parcel numbers 179-04-510-004, 179-04-510-005, and 179-04-510-006), located at 732 North Naples Street, 729 North Milan Street, and 724 North Naples Street, respectively, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$4,000.00. This appeal is continued from the August 7, 2024, October 2, 2024, and December 4, 2024 Hearing Board meetings. (For possible action)

Mr. Yakubik stated for the record that in an effort to save time, he stipulated that the same evidence, same questions and same position that was heard for NOV #9946 would be the same for NOVs #9979 and #10008. He asked the Board to find separate findings of fact for NOVs #9979 and #10008 when making their motions.

Ms. Jorgenson stated she was fine with Mr. Yakubik's request and that she would still be presenting Air Quality's case for NOVs #9979 and #10008 since Air Quality has the burden of proof.

Chair Sanders swore the following people in for questioning by Ms. Jorgenson:

Katrinka Byers, Senior Air Quality Specialist, Dust Section  
Andrew Kirk, Senior Air Quality Specialist, Dust Section  
Anna Sutowska, Air Quality Supervisor, Enforcement Section

Ms. Jorgenson presented Air Quality's case pertaining to the appeal of NOV #9979 and questioned witnesses previously sworn in by Chair Sanders.

Ms. Jorgenson requested that all the NOVs with exhibits be admitted into the record.

Chair Sanders asked for closing statements.

Mr. Yakubik made a closing statement stipulating the facts from his closing argument for NOV #9946 applied.

Ms. Jorgenson made a closing statement.

General discussion ensued amongst the Board.

**FINAL ACTION:** It was moved by Board Member Dennett, seconded by Board Member Lahav, to deny the appeal and affirm the Hearing Officer Order in the matter of NOV #9979 including the assessment of an administrative penalty in the amount of \$4,000.00.

Motion carried by the following vote:

Voting Aye:	Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav
Voting Nay:	None
Abstaining:	None
Absent:	Donald Bordelove

**FINAL ACTION:** It was moved by Board Member Dennett, seconded by Board Member Sanders, to accept the following findings of fact and conclusions of law:

The Board find that Atlas Holdings International LLC (Atlas Holdings) and Yakubik were required to obtain a DCOP and failed to do so. The Board finds that on January 10 and 17, 2024, at the subject construction site, Atlas Holdings and Yakubik failed to use best available control measure as demonstrated through documentation or inspections by Air Quality staff on those dates.

The Board finds and determines, as discussed throughout the hearing, that the following applies in the matter of all four items (NOVs #9907, #9946, #9979, and #10008):

1. Atlas Holdings and Yakubik argued under both the United States Constitution 14<sup>th</sup> Amendment and Nevada State Law that due process was not afforded because of the alleged failure of Air Quality to provide requested documents through subpoena or public records requests, because of a perceived failure of Air Quality to give timely notice of the December 4, 2024, Board meeting, and the inability of Atlas Holdings and Yakubik to then prepare and provide documents and argument at this proceeding.

2. Air Quality argued that Atlas Holdings and Yakubik had ample notice and opportunity to present evidence, a witness list, and motion prior to the January 28, 2025 hearing. Air Quality argued if Atlas Holdings and Yakubik truly wanted their arguments considered by the Board, they would have submitted the motion to which Air Quality could have responded, and Atlas Holdings and Yakubik then could have replied. In addition, Air Quality presented evidence that it had produced all the documents in its possession to Atlas Holdings and Yakubik in accordance with the subpoena authorized by the Board at the October 2, 2024, Board meeting.

The Board, having considered those issues of potential violation of due process, finds and concludes that they are without merit and that Atlas Holdings and Yakubik have failed to meet their burden of proof with regard to an alleged violation of due process. In addition, the Board concludes that the meeting was properly noticed.

The Board finds that the administrative penalty of \$4,000.00 assessed against Atlas Holdings and Yakubik for its violation of the AQRs is reasonable and appropriate.

Motion carried by the following vote:

Voting Aye:	Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav
Voting Nay:	None
Abstaining:	None
Absent:	Donald Bordelove

RECESS: 3:10 p.m.

RECONVENE: 3:20 p.m.

Chair Sanders called the meeting back to order.

**D. JOSEPH YAKUBIK AND DARCIE YAKUBIK, INDIVIDUALLY (Construction Project #57592) – NOV #9981** – On June 17, 2024, the Hearing Officer dismissed the violations alleged in NOV #9981 finding Joseph Yakubik and Darcie Yakubik not in violation of Sections 94.13(a) and (b) and 94.4.1(a) of the AQRs for failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week; and for failing to obtain a Dust Control Operating Permit prior to commencing construction activities, as identified by Senior Air Quality Specialists Katrinka Byers and Andrew Kirk, and Air Quality Supervisor David Dean during a routine patrol resulting in an initial inspection on January 17, 2024, and follow-up inspections on January 19 and February 14, 2024, at the 1028 Athens Avenue construction project (parcel numbers 160-33-801-021 and 160-33-801-020), located at 1024 and 1028 Athens Avenue, in Clark County, Nevada. This appeal is continued from the August 7, 2024, October 2, 2024, and December 4, 2024 Hearing Board meetings. (For possible action)

Ms. Jorgenson reported that Air Quality has withdrawn their appeal of NOV #9981.

- E. ATLAS HOLDINGS INTERNATIONAL LLC AND JOSEPH YAKUBIK, INDIVIDUALLY (Construction Project #57391) - NOV #10008** – On May 23, 2024, the Hearing Officer found Atlas Holdings International LLC and Joseph Yakubik in violation of Sections 94.13(a) and (b) of the AQRs for failure to fully implement Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, as identified by Senior Air Quality Specialists Katrinka Byers and Andrew Kirk during a follow-up inspection on March 21, 2024, at the 724 Naples & 729 Milan construction project (parcel numbers 179-04-510-005, 179-04-510-006, and 179-04-599-023), located at 724 North Naples Street and 729 North Milan Street, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$1,250.00. This appeal is continued from the August 7, 2024, October 2, 2024, and December 4, 2024 Hearing Board meetings. (For possible action)

Mr. Yakubik stated for the record that he stipulated the same evidence, questions and position that was heard for NOVs #9946 and #9979 would be the same for NOV #10008. He asked the Board to find separate findings of fact for NOV #10008 when making their motions.

Chair Sanders swore the following people in for questioning by Ms. Jorgenson:

Katrinka Byers, Senior Air Quality Specialist, Dust Section  
Andrew Kirk, Senior Air Quality Specialist, Dust Section  
Anna Sutowska, Air Quality Supervisor, Enforcement Section

Ms. Jorgenson presented Air Quality's case pertaining to the appeal of NOV #10008 and questioned witnesses previously sworn in by Chair Sanders.

Chair Sanders asked for closing statements.

Mr. Yakubik stated that he did not have a closing argument. Everything that was stated in NOVs #9946 and #9979 is stipulated for this case.

Mr. Jorgenson made a closing statement.

General discussion ensued between the Board.

**FINAL ACTION:** It was moved by Board Member Lahav, seconded by Board Member Bartlett, to deny the appeal and affirm the Hearing Officer Order in the matter of NOV #10008 as it relates to the finding of violation and modify the assessment of an administrative penalty from \$1,250.00 to \$1,750.00.

Motion carried by the following vote:

Voting Aye:	Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav
Voting Nay:	None
Abstaining:	None
Absent:	Donald Bordelove



**FINAL ACTION:** It was moved by Board Member Dennett, seconded by Board Member Sanders to accept the following findings of facts and conclusions of law:

The Board finds that Air Quality has demonstrated that Atlas Holdings International LLC (Atlas Holdings) and Yakubik, Individually, failed to employ best available control measures for dust at the subject construction site.

The Board finds and determines, as discussed throughout the hearing, that the following applies in the matter of all four items (NOVs #9907, #9946, #9979, and #10008):

1. Atlas Holdings and Yakubik argued under both the United States Constitution and 14<sup>th</sup> Amendment and Nevada State Law that due process was not afforded because of the alleged failure of Air Quality to provide requested documents through subpoena or public records requests, because of a perceived failure of Air Quality to give timely notice of the December 4, 2024 Board meeting, and the inability of Atlas Holdings and Yakubik to then prepare and provide documents and argument at this proceedings.

2. Air Quality argued that Atlas Holdings and Yakubik had ample notice and opportunity to present evidence, a witness list, and motion prior to the January 28, 2025 hearing. Air Quality argued if Atlas Holdings and Yakubik truly wanted their arguments considered by the Board, they would have submitted the motion to which Air Quality could have responded, and Atlas Holdings and Yakubik then could have replied. In addition, Air Quality presented evidence that it had produced all the documents in its possession to Atlas Holdings and Yakubik in accordance with the subpoena authorized by the Board at the October 2, 2024, Board meeting.

The Board, having considered those issues of potential violation of due process, finds and concludes that they are without merit and that Atlas Holdings and Yakubik have failed to meet their burden of proof with regard to an alleged violation of due process, in addition, the Board concludes that the meeting was properly noticed.

The Board finds that an administrative penalty of \$1,750.00 against Atlas Holdings and Yakubik for its violation of the AQRs is reasonable and appropriate.

Motion carried by the following vote:

Voting Aye:	Daniel Sanders, Ryan Dennett, Daniel Bartlett, Troy Hildreth, Amy Lahav
Voting Nay:	None
Abstaining:	None
Absent:	Donald Bordelove

**5. IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY THE BOARD AT FUTURE MEETINGS**

There were no emerging issues identified by the Board.

**6. PUBLIC COMMENT**

Chair Sanders asked if there were any persons present in the audience wishing to be heard. There being no one, Chair Sanders closed the public comments.

**7. ADJOURNMENT**

Chair Sanders thanked Ms. Jorgenson for her years of service to the department and to the Board. Vice-Chair Dennett also wished Ms. Jorgenson congratulations. Ms. Jorgenson thanked the Board.



Being no further business, Chair Sanders adjourned the meeting at 3:39 p.m.

Approved:

\_\_\_\_\_  
Daniel Sanders, Chair

\_\_\_\_\_  
Date

DRAFT

# **Assured Development, Inc., Atlas Holdings International LLC, and Joseph Yakubik, Individually**

## **Appeal of NOVs #9907, #9946, #9979, and #10008**

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NOV #9979, issued to Atlas Holdings International LLC and Joseph Yakubik .....	019
NOV #10008, issued to Atlas Holdings International LLC and Joseph Yakubik .....	023



March 11, 2025

**Certified Mail #9489 0090 0027 6551 9188 07  
and First Class Mail**

Mr. Joe Yakubik  
Assured Development, Inc.  
Atlas Holdings International LLC  
PO Box 530778  
Henderson NV 89053

Via Email Only: [joe@assurednv.com](mailto:joe@assurednv.com)

**Re:    Presentation of Competing Hearing Board Orders for:  
         Appeal NOV #9907 – Assured Development, Inc. and Joseph Yakubik, Individually  
         Appeal NOV #9946 – Atlas Holdings International LLC and Joseph Yakubik, Individually  
         Appeal NOV #9979 – Atlas Holdings International LLC and Joseph Yakubik, Individually  
         Appeal NOV #10008 – Atlas Holdings International LLC and Joseph Yakubik, Individually**

Dear Mr. Yakubik:

An agenda item to review competing Hearing Board Orders (Orders) from hearings conducted on January 28, 2025 has been added to the April 8, 2025 Hearing Board Agenda for action.

The above-entitled item has been scheduled for the Air Pollution Control Hearing Board meeting on **April 8, 2025, at 10:00 a.m.** in the Clark County Building Department - Presentation Room, located at 4701 West Russell Road, Las Vegas.

**Please provide me with your competing Orders for each Notice of Violation no later than 5:00 p.m., Tuesday, March 25, 2025. It is imperative that I receive your documents so they may be distributed to the Board Members for review before the meeting. You may email the documents to me at [agenforcement@clarkcountynv.gov](mailto:agenforcement@clarkcountynv.gov) or send them via fax to (702) 383-9994.**

If you have any questions, please contact me at (702) 455-0354.

Sincerely,

Sherrie D. Rogge, Administrative Secretary  
Division of Air Quality – Enforcement Section

SDR:sr

Enclosures:

1. Joseph Yakubik's email from February 18, 2025

**From:** [Sherrie Rogge](#)  
**To:** [Joe Yakubik](#)  
**Cc:** [Timothy Allen](#); [Nichole Kazimirovicz](#)  
**Subject:** Re: Hearing Board Orders/Recording of Jan Mtg  
**Date:** Tuesday, February 18, 2025 3:08:14 PM  
**Attachments:** [image001.png](#)

---

 [HB\\_01\\_28\\_2025\\_Audio\\_Recording 2.mp3](#)

Mr. Yakubik,

Attached is the recording from the 1/28/2025 Hearing Board meeting.

In response to your competing orders, yes they will be placed on the April 8, 2025 Hearing Board agenda. That meeting will start at 10:00 AM. Per Ms. Jorgenson's initial email, please submit your competing orders to me no later than Tuesday, March 25, 2025 so they can be included with the agenda for the Hearing Board's consideration.

Thank you,

*Sherrie D. Rogge*

Sherrie D. Rogge, Administrative Secretary  
Department of Environment and Sustainability  
Air Quality Division – Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118  
Phone: (702) 455-0354 Fax: (702) 383-9994  
Email: [sherrie.rogge@clarkcountynv.gov](mailto:sherrie.rogge@clarkcountynv.gov)  
My office hours: Tu-F, 6:30AM - 5:00PM  
DES Office Hours are MON-THURS: 7:30AM – 5:00PM.  
**DES Offices are CLOSED on FRIDAYS.**

---

**From:** Joe Yakubik <joe@assurednv.com>  
**Sent:** Tuesday, February 18, 2025 2:41 PM  
**To:** Sherrie Rogge <Sherrie.Rogge@clarkcountynv.gov>  
**Subject:** Re: Hearing Board Orders/Recording of Jan Mtg

If you could please resend as I am not seeing the recording.

Also please confirm that approval of the competing orders will be placed on the April agenda.

---

**From:** Sherrie Rogge <Sherrie.Rogge@clarkcountynv.gov>  
**Sent:** Tuesday, February 18, 2025 2:08 PM  
**To:** Joe Yakubik <joe@assurednv.com>; Timothy Allen <timothy.allen@clarkcountydandv.gov>;  
Nichole Kazimirovicz <nichole.kazimirovicz@clarkcountydandv.gov>

**Subject:** RE: Hearing Board Orders/Recording of Jan Mtg

Good afternoon Mr. Yakubik,

You mentioned that you need a copy of the January 28, 2025 Hearing Board recording. I sent that to you on February 4<sup>th</sup>. Did you not receive it?

In regards to obtaining a copy of the draft minutes, those aren't available until they go to the board for approval.

Thank you,

*Sherrie D. Rogge*

Sherrie D. Rogge, Administrative Secretary  
Clark County Department of Environment and Sustainability  
Division of Air Quality – Compliance & Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118  
Office: 702-455-0354/Fax: 702-383-9994  
Email: [sherrie.rogge@clarkcountynv.gov](mailto:sherrie.rogge@clarkcountynv.gov)  
**My office hours: Tu-F, 6:30AM – 5:00PM**  
**DES Office Hours are MON-THURS: 7:30AM – 5:30PM.**  
**DES Offices are CLOSED on FRIDAYS.**

---

**From:** Joe Yakubik <joe@assurednv.com>  
**Sent:** Tuesday, February 18, 2025 7:54 AM  
**To:** Timothy Allen <timothy.allen@clarkcountydandv.gov>; Sherrie Rogge <Sherrie.Rogge@clarkcountynv.gov>; Nichole Kazimirovicz <nichole.kazimirovicz@clarkcountydandv.gov>  
**Subject:** Re: Hearing Board Orders

That was not the direction of the Board, however, I will submit our competing order to the Board for review at the April 2025 meeting.

Sherri - can you please make sure the competing order review is on the April agenda? Can you also please forward the recording from the January meeting and draft minutes?

Thank you.

---

**From:** Timothy Allen <[Timothy.Allen@clarkcountydandv.gov](mailto:Timothy.Allen@clarkcountydandv.gov)>  
**Sent:** Thursday, February 13, 2025 10:17 AM  
**To:** Nichole Kazimirovicz <[Nichole.Kazimirovicz@clarkcountydandv.gov](mailto:Nichole.Kazimirovicz@clarkcountydandv.gov)>; Joe Yakubik <[joe@assurednv.com](mailto:joe@assurednv.com)>

**Subject:** RE: Hearing Board Orders

Hello Mr. Yakubik,

Let's just submit competing orders and the hearing board can decide what to sign or what parts of each proposed order to accept.

Thank you,

**Timothy Jay Allen**

Deputy District Attorney, Office of the District Attorney – Civil Division  
500 S. Grand Central Parkway, 5<sup>th</sup> Floor  
Las Vegas, Nevada 89155  
Tel: (702) 455-4761  
Fax: (702) 382-5178  
[Timothy.Allen@ClarkCountyDANV.gov](mailto:Timothy.Allen@ClarkCountyDANV.gov)

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---

**From:** Nichole Kazimirovicz <[Nichole.Kazimirovicz@clarkcountydانv.gov](mailto:Nichole.Kazimirovicz@clarkcountydانv.gov)>

**Sent:** Thursday, February 13, 2025 9:25 AM

**To:** Joe Yakubik <[joe@assurednv.com](mailto:joe@assurednv.com)>

**Cc:** Timothy Allen <[Timothy.Allen@clarkcountydانv.gov](mailto:Timothy.Allen@clarkcountydانv.gov)>

**Subject:** RE: Hearing Board Orders

Hello Mr. Yakubik, Mrs. Jorgenson has retired and Mr. Allen is taking over for her. I have CCed Mr. Allen so that he is aware that you do not agree with Mrs. Jorgenson's draft orders. If you cannot come to an agreement, the next step is to each submit competing proposed orders and the board will choose which order it believes matches its ruling.

Thank you,

**Nichole R. Kazimirovicz**

Deputy District Attorney, Office of the District Attorney – Civil Division  
500 S. Grand Central Parkway, 5<sup>th</sup> Floor  
Las Vegas, Nevada 89155

Tel: (702) 455-4761

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---

**From:** Joe Yakubik <[joe@assurednv.com](mailto:joe@assurednv.com)>

**Sent:** Wednesday, February 12, 2025 7:25 PM

**To:** Nichole Kazimirovicz <[Nichole.Kazimirovicz@clarkcountydانv.gov](mailto:Nichole.Kazimirovicz@clarkcountydانv.gov)>

**Subject:** Re: Hearing Board Orders

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I am in receipt of four draft orders that Mrs. Jorgenson submitted to me for my signature. I am not in agreement with the written orders and would ask that this item be placed on the agenda of the April 2025 board meeting.

---

**From:** Catherine Jorgenson <[Catherine.Jorgenson@clarkcountydانv.gov](mailto:Catherine.Jorgenson@clarkcountydانv.gov)>

**Date:** Thursday, February 6, 2025 at 1:45 PM

**To:** Joe Yakubik <[joe@assurednv.com](mailto:joe@assurednv.com)>

**Cc:** Shibi Paul <[SPaul@ClarkCountyNV.gov](mailto:SPaul@ClarkCountyNV.gov)>, Anna Sutowska  
<[Anna.Sutowska@ClarkCountyNV.gov](mailto:Anna.Sutowska@ClarkCountyNV.gov)>

**Subject:** Hearing Board Orders

Mr. Yakubik,



Attached please find the draft Hearing Board Orders for the hearings of NOVs 9907, 9946, 9979, and 10008 held on January 28, 2025. Please review and respond to Anna and Shibi no later than February 18, 2025.

If you don't have any edits, please include in your response your authorization to affix your electronic signature, and then Anna and Shibi will provide the orders to Sherrie Rogge for signature by the Hearing Board Chair.

If you don't respond by February 18<sup>th</sup>, the orders will be submitted to the Chair for signature with a notation in your signature block that you did not respond.

If you decide to provide edits by February 18<sup>th</sup>, then Anna and Shibi will review what you have provided with the deputy assigned to these matters to determine whether Air Quality can agree to the changes or not. If Air Quality agrees, then you will be provided with a final version for you to review and then provide authorization to affix your electronic signature.

If Air Quality cannot agree to your edits, then you and Air Quality may submit competing orders for the Hearing Board's consideration at its next meeting on April 8, 2025. If you decide to provide a competing order, please submit it to Sherrie Rogge by March 25, 2025 so it can be included with the agenda for that meeting.

Thank you,  
Catherine Jorgenson  
Deputy District Attorney  
Office of the District Attorney|Civil Division  
Clark County, Nevada  
702.455.4761  
[Catherine.Jorgenson@ClarkCountydanv.gov](mailto:Catherine.Jorgenson@ClarkCountydanv.gov)

**From:** [Joe Yakubik](#)  
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**Subject:** Re: Hearing Board Orders  
**Date:** Tuesday, February 18, 2025 7:54:21 AM  
**Attachments:** [image001.png](#)

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**To:** Joe Yakubik <[joe@assurednv.com](mailto:joe@assurednv.com)>

**Cc:** Shibi Paul <[SPaul@ClarkCountyNV.gov](mailto:SPaul@ClarkCountyNV.gov)>, Anna Sutowska  
<[Anna.Sutowska@ClarkCountyNV.gov](mailto:Anna.Sutowska@ClarkCountyNV.gov)>

**Subject:** Hearing Board Orders

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Thank you,  
Catherine Jorgenson  
Deputy District Attorney  
Office of the District Attorney|Civil Division  
Clark County, Nevada

702.455.4761

[Catherine.Jorgenson@ClarkCountydanv.gov](mailto:Catherine.Jorgenson@ClarkCountydanv.gov)

1 **BEFORE THE AIR POLLUTION CONTROL HEARING BOARD**

2 **CLARK COUNTY, NEVADA**

3 In the Matter of Notice of Violation #9907  
4 Issued to  
5 ASSURED DEVELOPMENT, INC. and  
6 JOSEPH YAKUBIK

7 *Appellants.*

**ORDER DENYING APPEAL OF HEARING  
OFFICER'S JUNE 20, 2024, ORDER  
CONCERNING NOTICE OF VIOLATION  
#9907**

8 The appeal of the Hearing Officer Order dated June 20, 2024, submitted by Assured  
9 Development, Inc. (**ASSURED**) and Joseph Yakubik (**YAKUBIK**), individually, was heard de novo  
10 by the Air Pollution Control Hearing Board (**BOARD**) on January 28, 2025. Clark County Department  
11 of Environment and Sustainability, Division of Air Quality (**AIR QUALITY**) represented by  
12 Catherine Jorgenson, Deputy District Attorney, and ASSURED and YAKUBIK, represented by  
13 YAKUBIK, appeared before the BOARD. Based on the record and the parties' written and oral  
14 argument and upon motion duly made, seconded and carried by unanimous vote of the members  
15 present, this BOARD makes the following findings of fact and conclusions of law:

16 Appellants' Oral Motion to Dismiss or Continue

17 A. ASSURED and YAKUBIK made an oral motion to dismiss Notice of Violation (**NOV**)  
18 #9907 or, in the alternative, continue the hearing based on arguments of due process. ASSURED and  
19 YAKUBIK argued that they had not received proper notice of the December 4, 2024, BOARD meeting  
20 at which time the BOARD scheduled the hearing for January 28, 2025, and set a schedule for both  
21 parties to submit briefs, evidence, and a witness list, if necessary.

22 B. AIR QUALITY argued that ASSURED and YAKUBIK had ample opportunity to  
23 present evidence, a witness list, and motion by January 17, 2025, for the January 28, 2025, hearing.  
24 AIR QUALITY argued if ASSURED and YAKUBIK truly wanted their arguments considered by the  
25 BOARD, they would have submitted a motion presenting all their arguments to which AIR QUALITY  
26 could have responded and ASSURED and YAKUBIK then could have replied. AIR QUALITY  
27 further argued that the motion was untimely.

28 C. The BOARD concludes that this meeting was properly noticed.

///

1 D. The BOARD hereby denies appellants' oral motion to dismiss or, in the alternative,  
2 continue NOV #9907 to a future date.

3 De Novo Hearing of NOV #9907

4 E. NOV #9907 was issued by AIR QUALITY to Appellants ASSURED and YAKUBIK  
5 on October 3, 2023, for alleged violation(s) of Dust Control Operating Permit (**DCOP**) #50962 and  
6 the Clark County Air Quality Regulations (**AQRs**) at the Milan Customs construction site located at  
7 the northeast corner of Milan Street and Berlin Avenue, in Clark County, Nevada. In the NOV, AIR  
8 QUALITY alleged violation of AQR Sections 94.5(n)(1) and (2), and 94.13(b) for failing to  
9 implement control measures for long-term stabilization, as described in Best Management Practice  
10 (**BMP**) 11 at permit closure.

11 F. ASSURED and YAKUBIK contested the NOV and requested a hearing before a  
12 Hearing Officer. At the hearing on June 17, 2024, the Hearing Officer found ASSURED and  
13 YAKUBIK in violation of AQR Sections 94.5(n)(1) and (2), and 94.13(b), on July 13, 2023, and  
14 August 2, 9, 11 and 17, 2023, as alleged in NOV #9907. The Hearing Officer assessed a Five Thousand  
15 and no/100 Dollars (\$5,000.00) penalty.

16 G. In accordance with AQR Section 7.5, ASSURED and YAKUBIK submitted a timely  
17 appeal of the Hearing Officer Order and requested a de novo hearing before the BOARD.

18 H. The BOARD finds that on July 13, 2023, August 2, 2023, August 9, 2023, August 11,  
19 2023, and August 17, 2023, AIR QUALITY staff visited the permitted location in response to  
20 notification from ASSURED and YAKUBIK that they were prepared for a close out of the outstanding  
21 DCOP. On each of those occasions, staff for AIR QUALITY recognized and determined that the  
22 standards for closure of the outstanding DCOP had not been met. Specifically, the BOARD finds that  
23 the dust mitigation effort had not been applied to the disturbed soils, and the project was not in  
24 compliance with BMP 11.

25 I. The BOARD concludes that ASSURED and YAKUBIK violated AQRs, specifically  
26 that soil was disturbed at the subject construction site and that ASSURED and YAKUBIK failed to  
27 stabilize soils as required by BMP 11.

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1 J. The BOARD finds that:

2 1. ASSURED and YAKUBIK argued under both the United States Constitution  
3 14th Amendment and Nevada state law that due process was not afforded because of the  
4 alleged failure of AIR QUALITY to provide requested documents through subpoena or public  
5 records requests, because of a perceived failure of AIR QUALITY to give timely notice of the  
6 December 4, 2024, BOARD meeting, and the inability of ASSURED and YAKUBIK to then  
7 prepare and provide documents and argument at this proceeding.

8 2. AIR QUALITY argued that ASSURED and YAKUBIK had ample notice and  
9 opportunity to present evidence, a witness list, and motion prior to the January 28, 2025  
10 hearing. AIR QUALITY argued if ASSURED and YAKUBIK truly wanted their arguments  
11 considered by the BOARD, they would have submitted a motion presenting all their arguments  
12 to which AIR QUALITY could have responded and ASSURED and YAKUBIK then could  
13 have replied. In addition, AIR QUALITY presented evidence that it had produced all the  
14 documents in its possession to ASSURED and YAKUBIK in accordance with the subpoena  
15 authorized by the BOARD at the October 2, 2024, BOARD meeting.

16 K. The BOARD, having considered those issues of potential violation of due process,  
17 finds and concludes that they are without merit and that ASSURED and YAKUBIK have failed to  
18 meet their burden of proof with regard to an alleged violation of due process. In addition, the BOARD  
19 concludes that the meeting was properly noticed.

20 L. The BOARD finds that the administrative penalty of Five Thousand and no/100 Dollars  
21 (\$5,000.00) assessed against ASSURED and YAKUBIK for its violation of the AQRs is reasonable  
22 and appropriate.

23 M. In accordance with the foregoing findings of fact and conclusions of law, the BOARD  
24 affirms the Hearing Officer Order in the matter of NOV #9907 including the assessment of an  
25 administrative penalty against ASSURED and YAKUBIK of Five Thousand and no/100 Dollars  
26 (\$5,000.00).

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**THEREFORE, IT IS HEREBY ORDERED** that:

A. ASSURED and YAKUBIK’s appeal is denied.

B. The Hearing Officer Order dated June 20, 2024, is affirmed.

C. An administrative penalty of Five Thousand and no/100 Dollars (\$5,000.00) is assessed against ASSURED and YAKUBIK for violation of AQR Sections 94.5(n)(1) and (2), and 94.13(b).

**IT IS SO ORDERED.**

DATED this 8th day of April, 2025.

AIR POLLUTION CONTROL HEARING BOARD

---

DANIEL SANDERS, CHAIR

Submitted by:

**STEVEN B. WOLFSON,  
DISTRICT ATTORNEY**

/s/

---

By: CATHERINE JORGENSEN  
Deputy District Attorney  
State Bar No. 006700  
500 South Grand Central Pkwy., Suite 5075  
Las Vegas, Nevada 89155-2215  
*Attorneys for Clark County*

Reviewed as to form and content by:

**JOSEPH YAKUBIK AND ASSURED DEVELOPMENT,  
INC.**

/s/

---

Joseph Yakubik, individually, and  
Joseph Yakubik, President of  
Assured Development, Inc.  
P.O. Box 530778  
Henderson, Nevada 89053  
Phone (702) 241-4040  
joe@assurednv.com  
*Appellants*

1 **BEFORE THE AIR POLLUTION CONTROL HEARING BOARD**

2 **CLARK COUNTY, NEVADA**

3 In the Matter of Notice of Violation #9946  
4 Issued to  
5 ATLAS HOLDINGS INTERNATIONAL LLC  
6 and JOSEPH YAKUBIK

**ORDER DENYING APPEAL OF HEARING  
OFFICER'S JUNE 20, 2024, ORDER  
CONCERNING NOTICE OF VIOLATION  
#9946**

7 *Appellants.*

8 The appeal of the Hearing Officer Order dated June 20, 2024, submitted by Atlas Holdings  
9 International LLC (**ATLAS HOLDINGS**) and Joseph Yakubik (**YAKUBIK**), individually, was heard  
10 de novo by the Air Pollution Control Hearing Board (**BOARD**) on January 28, 2025. Clark County  
11 Department of Environment and Sustainability, Division of Air Quality (**AIR QUALITY**) represented  
12 by Catherine Jorgenson, Deputy District Attorney, and ATLAS HOLDINGS and YAKUBIK,  
13 represented by YAKUBIK, appeared before the BOARD. Based on the record and the parties' written  
14 and oral argument and upon motion duly made, seconded and carried by unanimous vote of the  
15 members present, this BOARD makes the following findings of fact and conclusions of law:

16 Appellants' Oral Motion to Dismiss or Continue

17 A. ATLAS HOLDINGS and YAKUBIK made an oral motion to dismiss Notice of  
18 Violation (**NOV**) #9946 or, in the alternative, continue the hearing based on arguments of due process.  
19 ATLAS HOLDINGS and YAKUBIK argued that they had not received proper notice of the December  
20 4, 2024, BOARD meeting at which time the BOARD scheduled the hearing for January 28, 2025, and  
21 set a schedule for both parties to submit briefs, evidence, and a witness list, if necessary.

22 B. AIR QUALITY argued that ATLAS HOLDINGS and YAKUBIK had ample  
23 opportunity to present evidence, a witness list, and motion by January 17, 2025, for the January 28,  
24 2025, hearing. AIR QUALITY argued if ATLAS HOLDINGS and YAKUBIK truly wanted their  
25 arguments considered by the BOARD, they would have submitted a motion presenting all their  
26 arguments to which AIR QUALITY could have responded and ATLAS HOLDINGS and YAKUBIK  
27 then could have replied. AIR QUALITY further argued that the motion was untimely.

28 C. The BOARD concludes that this meeting was properly noticed.

///

1 D. The BOARD hereby denies appellants' oral motion to dismiss or, in the alternative,  
2 continue NOV #9946 to a future date.

3 De Novo Hearing of NOV #9946

4 E. NOV #9946 was issued by AIR QUALITY to Appellants ATLAS HOLDINGS and  
5 YAKUBIK on December 20, 2023, for alleged violation(s) of the Clark County Air Quality  
6 Regulations (AQRs) at the 732 & 724 Naples | 729 Milan construction site, located at 732 North  
7 Naples Street, 729 North Milan Street, and 724 North Naples Street, in Clark County, Nevada. In the  
8 NOV, AIR QUALITY alleged violation of AQR Sections 94.13(a) and (b) for failing to employ Best  
9 Available Control Measures and comply with soil stabilization standards at the site 24 hours a day,  
10 seven days a week.

11 F. ATLAS HOLDINGS and YAKUBIK contested the NOV and requested a hearing  
12 before a Hearing Officer. At the hearing on June 17, 2024, the Hearing Officer found ATLAS  
13 HOLDINGS and YAKUBIK in violation of AQR Sections 94.13(a) and (b) on November 8, 15, and  
14 20, 2023, and December 11, 2023, as alleged in NOV #9946. The Hearing Officer assessed a Five  
15 Thousand Nine Hundred Thirty-Seven and 50/100 Dollars (\$5,937.50) penalty.

16 G. In accordance with AQR Section 7.5, ATLAS HOLDINGS and YAKUBIK submitted  
17 a timely appeal of the Hearing Officer Order and requested a de novo hearing before the BOARD.

18 H. The BOARD finds that ATLAS HOLDINGS and YAKUBIK violated AQRs for not  
19 applying Best Available Control Measures for dust as documented by inspections that were performed  
20 by AIR QUALITY Staff on November 8, 2023, November 15, 2023, November 20, 2023, and  
21 December 11, 2023, at 732 North Naples Street, 729 North Milan Street, and 724 North Naples Street  
22 in Henderson, Clark County, Nevada.

23 I. The BOARD finds that ATLAS HOLDINGS and YAKUBIK attempted to apply for a  
24 dust permit, but one was not in place at the time. Despite that, ATLAS HOLDINGS and YAKUBIK  
25 were required to apply Best Available Control Measures for dust and failed to do so.

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1 J. The BOARD finds that:

2 1. ATLAS HOLDINGS and YAKUBIK argued under both the United States  
3 Constitution 14th Amendment and Nevada state law that due process was not afforded because  
4 of the alleged failure of AIR QUALITY to provide requested documents through subpoena or  
5 public records requests, because of a perceived failure of AIR QUALITY to give timely notice  
6 of the December 4, 2024, BOARD meeting, and the inability of ATLAS HOLDINGS and  
7 YAKUBIK to then prepare and provide documents and argument at this proceeding.

8 2. AIR QUALITY argued that ATLAS HOLDINGS and YAKUBIK had ample  
9 notice and opportunity to present evidence, a witness list, and motion prior to the January 28,  
10 2025 hearing. AIR QUALITY argued if ATLAS HOLDINGS and YAKUBIK truly wanted  
11 their arguments considered by the BOARD, they would have submitted the motion to which  
12 AIR QUALITY could have responded, and ATLAS HOLDINGS and YAKUBIK then could  
13 have replied. In addition, AIR QUALITY presented evidence that it had produced all the  
14 documents in its possession to ATLAS HOLDINGS and YAKUBIK in accordance with the  
15 subpoena authorized by the BOARD at the October 2, 2024, BOARD meeting.

16 K. The BOARD, having considered those issues of potential violation of due process,  
17 finds and concludes that they are without merit and that ATLAS HOLDINGS and YAKUBIK have  
18 failed to meet their burden of proof with regard to an alleged violation of due process. In addition, the  
19 BOARD concludes that the meeting was properly noticed.

20 L. The BOARD finds that the administrative penalty of Five Thousand Nine Hundred  
21 Thirty-Seven and 50/100 Dollars (\$5,937.50) assessed against ATLAS HOLDINGS and YAKUBIK  
22 for its violation of the AQRs is reasonable and appropriate.

23 M. In accordance with the foregoing findings of fact and conclusions of law, the BOARD  
24 affirms the Hearing Officer Order in the matter of NOV #9946 including the assessment of an  
25 administrative penalty against ATLAS HOLDINGS and YAKUBIK of Five Thousand Nine Hundred  
26 Thirty-Seven and 50/100 Dollars (\$5,937.50).

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**THEREFORE, IT IS HEREBY ORDERED** that:

- A. ATLAS HOLDINGS and YAKUBIK’s appeal is denied.
- B. The Hearing Officer Order dated June 20, 2024, is affirmed.
- C. An administrative penalty of Five Thousand Nine Hundred Thirty-Seven and 50/100 Dollars (\$5,937.50) is assessed against ATLAS HOLDINGS and YAKUBIK for violation of AQR Sections 94.13(a) and (b).

**IT IS SO ORDERED.**

DATED this 8th day of April, 2025.

AIR POLLUTION CONTROL HEARING BOARD

---

DANIEL SANDERS, CHAIR

Submitted by:

**STEVEN B. WOLFSON,  
DISTRICT ATTORNEY**

/s/  
By: CATHERINE JORGENSEN  
Deputy District Attorney  
State Bar No. 006700  
500 South Grand Central Pkwy., Suite 5075  
Las Vegas, Nevada 89155-2215  
*Attorneys for Clark County*

Reviewed as to form and content by:

**JOSEPH YAKUBIK AND ATLAS HOLDINGS  
INTERNATIONAL LLC**

/s/  
Joseph Yakubik, individually, and  
Joseph Yakubik, President of  
Global Equity Holdings, Inc., Manager of  
Atlas Holdings International LLC  
P.O. Box 530778  
Henderson, Nevada 89053  
Phone (702) 241-4040  
joe@assurednv.com  
*Appellants*

1 **BEFORE THE AIR POLLUTION CONTROL HEARING BOARD**

2 **CLARK COUNTY, NEVADA**

3 In the Matter of Notice of Violation #9979  
4 Issued to  
5 ATLAS HOLDINGS INTERNATIONAL LLC  
6 and JOSEPH YAKUBIK

7 *Appellants.*

**ORDER DENYING APPEAL OF HEARING  
OFFICER'S JUNE 20, 2024, ORDER  
CONCERNING NOTICE OF VIOLATION  
#9979**

8 The appeal of the Hearing Officer Order dated June 20, 2024, submitted by Atlas Holdings  
9 International LLC (**ATLAS HOLDINGS**) and Joseph Yakubik (**YAKUBIK**), individually, was heard  
10 de novo by the Air Pollution Control Hearing Board (**BOARD**) on January 28, 2025. Clark County  
11 Department of Environment and Sustainability, Division of Air Quality (**AIR QUALITY**) represented  
12 by Catherine Jorgenson, Deputy District Attorney, and ATLAS HOLDINGS and YAKUBIK,  
13 represented by YAKUBIK, appeared before the BOARD. Based on the record and the parties' written  
14 and oral argument and upon motion duly made, seconded and carried by unanimous vote of the  
15 members present, this BOARD makes the following findings of fact and conclusions of law:

16 Appellants' Oral Motion to Dismiss or Continue

17 A. ATLAS HOLDINGS and YAKUBIK made an oral motion to dismiss Notice of  
18 Violation (**NOV**) #9979 or, in the alternative, continue the hearing based on arguments of due process.  
19 ATLAS HOLDINGS and YAKUBIK argued that they had not received proper notice of the December  
20 4, 2024, BOARD meeting at which time the BOARD scheduled the hearing for January 28, 2025, and  
21 set a schedule for both parties to submit briefs, evidence, and a witness list, if necessary.

22 B. AIR QUALITY argued that ATLAS HOLDINGS and YAKUBIK had ample  
23 opportunity to present evidence, a witness list, and motion by January 17, 2025, for the January 28,  
24 2025, hearing. AIR QUALITY argued if ATLAS HOLDINGS and YAKUBIK truly wanted their  
25 arguments considered by the BOARD, they would have submitted a motion presenting all their  
26 arguments to which AIR QUALITY could have responded and ATLAS HOLDINGS and YAKUBIK  
27 then could have replied. AIR QUALITY further argued that the motion was untimely.

28 C. The BOARD concludes that this meeting was properly noticed.

///

1 D. The BOARD hereby denies appellants' oral motion to dismiss or, in the alternative,  
2 continue NOV #9979 to a future date.

3 De Novo Hearing of NOV #9979

4 E. NOV #9979 was issued by AIR QUALITY to Appellants ATLAS HOLDINGS and  
5 YAKUBIK on March 7, 2024, for alleged violation(s) of the Clark County Air Quality Regulations  
6 (AQRs) at the 732 & 724 Naples | 729 Milan construction site, located at 732 North Naples Street,  
7 729 North Milan Street, and 724 North Naples Street, in Clark County, Nevada. In the NOV, AIR  
8 QUALITY alleged violation of AQR Sections 94.13(a) and (b) for failing to employ Best Available  
9 Control Measures and comply with soil stabilization standards at the site 24 hours a day, seven days  
10 a week, and AQR Section 94.4.1(a) for failing to obtain a Dust Control Operating Permit (DCOP)  
11 prior to engaging in construction activities.

12 F. ATLAS HOLDINGS and YAKUBIK contested the NOV and requested a hearing  
13 before a Hearing Officer. At the hearing on June 17, 2024, the Hearing Officer found ATLAS  
14 HOLDINGS and YAKUBIK in violation of AQR Sections 94.13(a) and (b) on January 10 and 17,  
15 2024, and 94.4.1(a) on January 10, 17, and 22, 2024, as alleged in NOV #9979. The Hearing Officer  
16 assessed a Four Thousand and no/100 Dollars (\$4,000.00) penalty.

17 G. In accordance with AQR Section 7.5, ATLAS HOLDINGS and YAKUBIK submitted  
18 a timely appeal of the Hearing Officer Order and requested a de novo hearing before the BOARD.

19 H. The BOARD finds that ATLAS HOLDINGS and YAKUBIK were required to obtain  
20 a DCOP and failed to do so.

21 I. The BOARD finds that on January 10 and 17, 2024, at the subject construction site ,  
22 ATLAS HOLDINGS and YAKUBIK failed to use Best Available Control Measures as demonstrated  
23 through documentation or inspections by AIR QUALITY staff on those dates.

24 J. The BOARD finds that:

25 1. ATLAS HOLDINGS and YAKUBIK argued under both the United States  
26 Constitution 14th Amendment and Nevada state law that due process was not afforded because  
27 of the alleged failure of AIR QUALITY to provide requested documents through subpoena or  
28 public records requests, because of a perceived failure of AIR QUALITY to give timely notice



1 of the December 4, 2024, BOARD meeting, and the inability of ATLAS HOLDINGS and  
2 YAKUBIK to then prepare and provide documents and argument at this proceeding.

3 2. AIR QUALITY argued that ATLAS HOLDINGS and YAKUBIK had ample  
4 notice and opportunity to present evidence, a witness list, and motion prior to the January 28,  
5 2025 hearing. AIR QUALITY argued if ATLAS HOLDINGS and YAKUBIK truly wanted  
6 their arguments considered by the BOARD, they would have submitted the motion to which  
7 AIR QUALITY could have responded, and ATLAS HOLDINGS and YAKUBIK then could  
8 have replied. In addition, AIR QUALITY presented evidence that it had produced all the  
9 documents in its possession to ATLAS HOLDINGS and YAKUBIK in accordance with the  
10 subpoena authorized by the BOARD at the October 2, 2024, BOARD meeting.

11 K. The BOARD, having considered those issues of potential violation of due process,  
12 finds and concludes that they are without merit and that ATLAS HOLDINGS and YAKUBIK have  
13 failed to meet their burden of proof with regard to an alleged violation of due process. In addition, the  
14 BOARD concludes that the meeting was properly noticed.

15 L. The BOARD finds that the administrative penalty of Four Thousand and no/100  
16 Dollars (\$4,000.00) assessed against ATLAS HOLDINGS and YAKUBIK for its violation of the  
17 AQRs is reasonable and appropriate.

18 M. In accordance with the foregoing findings of fact and conclusions of law, the BOARD  
19 affirms the Hearing Officer Order in the matter of NOV #9979 including the assessment of an  
20 administrative penalty against ATLAS HOLDINGS and YAKUBIK of Four Thousand and no/100  
21 Dollars (\$4,000.00).

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1 **BEFORE THE AIR POLLUTION CONTROL HEARING BOARD**

2 **CLARK COUNTY, NEVADA**

3 In the Matter of Notice of Violation #10008  
4 Issued to  
5 ATLAS HOLDINGS INTERNATIONAL LLC  
6 and JOSEPH YAKUBIK

**ORDER DENYING APPEAL OF HEARING  
OFFICER'S MAY 29, 2024, ORDER  
CONCERNING NOTICE OF VIOLATION  
#10008**

7 *Appellants.*

8 The appeal of the Hearing Officer Order dated May 29, 2024, submitted by Atlas Holdings  
9 International LLC (**ATLAS HOLDINGS**) and Joseph Yakubik (**YAKUBIK**), individually, was heard  
10 de novo by the Air Pollution Control Hearing Board (**BOARD**) on January 28, 2025. Clark County  
11 Department of Environment and Sustainability, Division of Air Quality (**AIR QUALITY**) represented  
12 by Catherine Jorgenson, Deputy District Attorney, and ATLAS HOLDINGS and YAKUBIK,  
13 represented by YAKUBIK, appeared before the BOARD. Based on the record and the parties' written  
14 and oral argument and upon motion duly made, seconded and carried by unanimous vote of the  
15 members present, this BOARD makes the following findings of fact and conclusions of law:

16 Appellants' Oral Motion to Dismiss or Continue

17 A. ATLAS HOLDINGS and YAKUBIK made an oral motion to dismiss Notice of  
18 Violation (**NOV**) #10008 or, in the alternative, continue the hearing based on arguments of due  
19 process. ATLAS HOLDINGS and YAKUBIK argued that they had not received proper notice of the  
20 December 4, 2024, BOARD meeting at which time the BOARD scheduled the hearing for January  
21 28, 2025, and set a schedule for both parties to submit briefs, evidence, and a witness list, if necessary.

22 B. AIR QUALITY argued that ATLAS HOLDINGS and YAKUBIK had ample  
23 opportunity to present evidence, a witness list, and motion by January 17, 2025, for the January 28,  
24 2025, hearing. AIR QUALITY argued if ATLAS HOLDINGS and YAKUBIK truly wanted their  
25 arguments considered by the BOARD, they would have submitted a motion presenting all their  
26 arguments to which AIR QUALITY could have responded and ATLAS HOLDINGS and YAKUBIK  
27 then could have replied. AIR QUALITY further argued that the motion was untimely.

28 C. The BOARD concludes that this meeting was properly noticed.

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1 D. The BOARD hereby denies appellants' oral motion to dismiss or, in the alternative,  
2 continue NOV #10008 to a future date.

3 De Novo Hearing of NOV #10008

4 E. Notice of Violation (**NOV**) #10008 was issued by AIR QUALITY to Appellants  
5 ATLAS HOLDINGS and YAKUBIK on May 2, 2024, for alleged violation(s) of the Clark County  
6 AIR QUALITY Regulations (**AQRs**) at the 724 Naples & 729 Milan construction site, located at 724  
7 North Naples Street and 729 North Milan Street, in Clark County, Nevada. In the NOV, AIR  
8 QUALITY alleged violation of AQR Sections 94.13(a) and (b) for failing to employ Best Available  
9 Control Measures and comply with soil stabilization standards at the site 24 hours a day, seven days  
10 a week.

11 F. ATLAS HOLDINGS and YAKUBIK contested the NOV and requested a hearing  
12 before a Hearing Officer. At the hearing on May 23, 2024, the Hearing Officer found ATLAS  
13 HOLDINGS and YAKUBIK in violation of AQR Sections 94.13(a) and (b) on March 21, 2024, as  
14 alleged in NOV #10008. The Hearing Officer assessed a One Thousand Two Hundred Fifty and  
15 no/100 Dollars (\$1,250.00) penalty.

16 G. In accordance with AQR Section 7.5, ATLAS HOLDINGS and YAKUBIK submitted  
17 a timely appeal of the Hearing Officer Order and requested a de novo hearing before the BOARD.

18 H. The BOARD finds that AIR QUALITY has demonstrated that ATLAS HOLDINGS  
19 and YAKUBIK, individually, failed to employ Best Available Control Measures for dust at the subject  
20 construction site.

21 I. The BOARD finds that:

22 1. ATLAS HOLDINGS and YAKUBIK argued under both the United States  
23 Constitution 14th Amendment and Nevada state law that due process was not afforded because  
24 of the alleged failure of AIR QUALITY to provide requested documents through subpoena or  
25 public records requests, because of a perceived failure of AIR QUALITY to give timely notice  
26 of the December 4, 2024, BOARD meeting, and the inability of ATLAS HOLDINGS and  
27 YAKUBIK to then prepare and provide documents and argument at this proceeding.

28 2. AIR QUALITY argued that ATLAS HOLDINGS and YAKUBIK had ample

1 notice and opportunity to present evidence, a witness list, and motion prior to the January 28,  
2 2025 hearing. AIR QUALITY argued if ATLAS HOLDINGS and YAKUBIK truly wanted  
3 their arguments considered by the BOARD, they would have submitted the motion to which  
4 AIR QUALITY could have responded, and ATLAS HOLDINGS and YAKUBIK then could  
5 have replied. In addition, AIR QUALITY presented evidence that it had produced all the  
6 documents in its possession to ATLAS HOLDINGS and YAKUBIK in accordance with the  
7 subpoena authorized by the BOARD at the October 2, 2024, BOARD meeting.

8 J. The BOARD, having considered those issues of potential violation of due process,  
9 finds and concludes that they are without merit and that ATLAS HOLDINGS and YAKUBIK have  
10 failed to meet their burden of proof with regard to an alleged violation of due process. In addition, the  
11 BOARD concludes that the meeting was properly noticed.

12 K. The BOARD finds that an administrative penalty of One Thousand Seven Hundred  
13 Fifty and no/100 Dollars (\$1,750.00) against ATLAS HOLDINGS and YAKUBIK for its violation of  
14 the AQRs is reasonable and appropriate.

15 L. In accordance with the foregoing findings of fact and conclusions of law, the BOARD  
16 affirms the Hearing Officer Order in the matter of NOV #10008 as it relates to the finding of violation  
17 and modifies the assessment of an administrative penalty against ATLAS HOLDINGS and  
18 YAKUBIK from One Thousand Two Hundred Fifty and no/100 Dollars (\$1,250.00) to One Thousand  
19 Seven Hundred Fifty and no/100 Dollars (\$1,750.00).

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**THEREFORE, IT IS HEREBY ORDERED** that:

A. ATLAS HOLDINGS and YAKUBIK's appeal is denied.

B. The Hearing Officer Order dated May 29, 2024, is affirmed as to the finding of violation and modified as to the penalty assessed.

C. An administrative penalty of One Thousand Seven Hundred Fifty and no/100 Dollars (\$1,750.00) is assessed against ATLAS HOLDINGS and YAKUBIK for violation of AQR Sections 94.13(a) and (b).

**IT IS SO ORDERED.**

DATED this 8th day of April, 2025.

AIR POLLUTION CONTROL HEARING BOARD

---

DANIEL SANDERS, CHAIR

Submitted by:

Reviewed as to form and content by:

**STEVEN B. WOLFSON,  
DISTRICT ATTORNEY**

**JOSEPH YAKUBIK AND ATLAS HOLDINGS  
INTERNATIONAL LLC**

/s/

---

By: CATHERINE JORGENSON  
Deputy District Attorney  
State Bar No. 006700  
500 South Grand Central Pkwy., Suite 5075  
Las Vegas, Nevada 89155-2215  
*Attorneys for Clark County*

/s/

---

Joseph Yakubik, individually, and  
Joseph Yakubik, President of  
Global Equity Holdings, Inc., Manager of  
Atlas Holdings International LLC  
P.O. Box 530778  
Henderson, Nevada 89053  
Phone (702) 241-4040  
joe@assurednv.com  
*Appellants*

**ETON Transportation Corp.  
(DCOP #57148)**

**Appeal of NOV #9994**

**ETON Transportation Corp.,  
Environmental Transportation of Nevada, LLC  
d/b/a ETON, and Moe Truman, Individually  
(DCOP #57148)**

**Appeal of NOV #10078**

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**AIR POLLUTION CONTROL HEARING BOARD MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

DCOP #57148

NOV #9994 and #10078

**RESPONDENT'S PRE-HEARING  
BRIEF RE: NOTICES OF  
VIOLATION #9994 AND #10078**

Date of Hearing: April 8, 2025

Time of Hearing: 10:00 a.m.

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## **DISCLOSURE**

The undersigned counsel of record for Respondents certifies that the following are persons and entities that are sister companies with Respondents. These representations are made in order that the members of the Control Board may evaluate possible disqualification or recusal.

ETON Transportation Corp. (“ETON”) has no parent corporations. Further, no publicly-held company owns 10% or more of the ETON’s stock.

Tonopah & Tidewater Railroad Co (“Railroad Co.”). has no parent corporations. Further, no publicly-held company owns 10% or more of the Railroad Co’s stock.

Mitchell Truman is an individual.

Matthew L. Johnson of Johnson & Gubler, P.C., attorney for Respondents.

Russell G. Gubler of Johnson & Gubler, P.C., attorney for Respondents.

JOHNSON & GUBLER, P.C.

*/s/ Russell G. Gubler*

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**NOW COME** Tonopah & Tidewater Railroad Co. (“Railroad Co.”), ETON Transportation Corp. (“ETON”), and Mitchell “Moe” Truman (collectively, the “Respondents”), by and through their attorneys of the law firm of JOHNSON & GUBLER, P.C., and hereby submit this Pre-Hearing Brief, regarding the Clark County’s Notices of Violation #9994 and 10078.

***I. Introduction:***

Respondent, ETON, was issued the notices of violation #9994 and 10078, as follows:

**Violations Alleged:**

**NOV#9994**

By failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, ETON violated AQR Sections 94.13(a) and (b).

AQR Sections 94.13(a) and (b) state:

- (a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).
- (b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with Section 94.5(n)(2).

**NOV#10078**

**Violation 1:**

By failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON, and Truman violated AQR Sections 94.13(a) and (b).

AQR Sections 94.13(a) and (b) state:

- (a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).

(b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with 94.5(n)(2).

**Violation 2:**

By refusing entry or access to the Control Officer who requests entry for purposes of inspection, ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON, and Truman violated AQR Section 4.1(d)(1).

AQR Section 4.1(d)(1) states:

4.1 Authority and Responsibilities

(d) The Control Officer may enter and inspect any property, premise, or place where an air contaminant source is located or is being constructed, installed, or established at any reasonable time to ascertain compliance with the AQRs.

(1) No person shall:

- (i) Refuse access if the Control Officer requests entry for inspection and presents appropriate credentials.
- (ii) Obstruct, hamper, or interfere with an inspection.

Respondents request that the Board allow this matter to be reviewed in a federal forum. One of the issues raised here by Respondents is that this forum does not have jurisdiction to determine whether the AQR has the force and effect of federal law. Similarly, other federal questions are raised, which are better suited for a court of law.

The AQR is preempted by federal law. When state or local laws are an obstacle to the accomplishment and execution of an interstate carrier in the furtherance of its duty to move good between states a railroad's services, the laws are preempted. *See* 49 CFR 655.6; *Pike v. Bruce Church Inc.*, 397 U.S. 137 (1970). In this matter, the AQR is not conducive to interstate commerce, whether for a trucking company, a railroad company, or a pipeline company, as they are different from other states, including the state of Nevada.



Further, the AQR code is not consistent with a state-wide program. If an apparent conflict exists between the Interstate Commission Termination Act (“ICCTA”) of 1995 and a federal law, *courts* must strive to harmonize the two laws, giving effect to both laws if possible. *Association of American Railroads v. South Coast Air Quality Manag. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010). If an apparent conflict exists between ICCTA and a state or local law, however, different rules apply. *Association of American Railroads*, 622 F.3d at 1097 (emphasis added).

The Surface Transportation Board (“STB”) has explained that this system preserves a role for state and local agencies in the environmental regulation of railroads in at least two ways. First, to the extent that state and local agencies promulgate EPA-approved statewide plans under federal environmental laws (such as “statewide implementation plans” under the Clean Air Act), ICCTA generally does not preempt those regulations because it is possible to harmonize ICCTA with those federally recognized regulations. *Association of American Railroads*, 622 F.3d at 1098 (emphasis added).

The corollary to that rule is that, until approved by the EPA, state implementation plans do not have the force and effect of federal law. *Association of American Railroads*, 622 F.3d at 1098 (emphasis added). Thus, the Court in *Association of American Railroads*, 622 F.3d at 1098, required statewide plans and statewide implementation plan. AQR is not a statewide program.

The United States Supreme Court’s recent rulings in *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_\_\_ (2024) and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. \_\_\_\_ (2024), both ended the *Chevron* doctrine that gave preferences to agencies in interpreting statutes. Accordingly, this forum further does have does not have jurisdiction to determine whether the AQR has the force and effect of federal law.

Alternatively, DES failed to meet the conditions precedent, set forth in AQR 4.1(d)(1), including presentment, and therefore, the violations of all NOV's must fail.

Alternatively, DES insists that the Railroad Co. continues to water the Property and to place asphalt on the Property. However, water is not the "Best Available Control Measure" for this application. For the reasons stated herein, water is a precious resource in Southern Nevada, and watering the 1.17 acres 24 hours a day, 7 days a week, as required by the control officer, is not the best available control measures.

Alternatively, Respondents have attempted to comply. Roto Milling has been applied to the subject property and is within the AQR guidelines. Thus, Respondents are not violating the AQR and should not be fined while attempting to comply.

Similarly, Respondents are not being afforded Equal Protection. The Fifth Amendment's Due Process Clause of the United States Constitution requires the United States government to practice equal protection. The Fourteenth Amendment's Equal Protection Clause requires states (and local governments) to practice equal protection. Equal protection forces a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Under Equal Protection, a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances, which DES has failed to do for the reasons stated herein.

For these reasons, and the other reasons stated herein, Respondents request that the Board overturn the hearing officer's orders and further reject the violations and the fines.

## ***II. Statement of Facts:***

1. The Railroad Co. is a railroad company owning property located at located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property"). Exhibit 1, Deed.
2. The Railroad Co. was organized in the State of Nevada on July 9, 2004. Exhibit 2, Entity information.
3. On September 30, 2004, the Railroad Co. filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate a private rail line owned in Clark County, NV. The Railroad company may initiate and provide common carrier rail operations on and over the line. Accordingly, the Railroad Co. became a Class III rail carrier. Exhibit 3, Federal Register Docket No. 34547.
4. The Railroad Co. entered into a lease with ETON. Exhibit 5, Lease.
5. ETON obtained a dust control permit for grubbing, effective August 30, 2023.
6. During its occupancy, ETON performed services for the Railroad Co. at the Property in the assistance of its business of moving goods across state lines, in interstate commerce.
7. Since January 1, 2024, the Railroad Co. has occupied the Property. The Railroad Co. never applied for or executed a dust control permit.
8. In addition to the Property, the Railroad Co. is the owner of rails, but uses the Property as one of its facilities and yards, as a parking lot, in the assistance of its business of moving goods across state lines, in interstate commerce.
9. The Railroad Co. engages in interstate commerce and works with other railroads in the shipment of items across state lines. Exhibit 6, News 8 report.
10. In the furtherance of Railroad Co.'s federally assigned duties to maintain safe railroad service, the Railroad Co. bought a Caterpillar D9L with a serial # of 7G426. Exhibit A of Exhibit 7, Declaration of Mitchell Truman.

11. This tracked bulldozer is kept in the ready mode for immediate deployment at the Property, 24 hours a day, 7 days a week, in the event of a rail derailment, to open up rail service.

Exhibit B of Exhibit 7, Declaration of Mitchell Truman.

12. On January 8 and 9, 2024, Canduella Rowsell and/or Katrinka Byers appeared at the Property, wanting to perform an “inspection.”

13. On or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an “inspection.” Exhibit 7, Declaration of Mitchell Truman.

14. At no time on these dates (or before) did either Byers, Rowsell or Crandall present or attempt to present any credentials, showing that they were officers with Air Quality. Exhibit 7, Declaration of Mitchell Truman. Further, on information and belief, Rowsell and Crandall do not possess appropriate credentials that would verify that they are inspectors for Air Quality. *See e.g.*, Exhibit 8, Federal EPA Inspector Credentials.<sup>1</sup>

15. The Property is covered with six inches of roto milling, which is at least ¼ inch in thickness. Exhibit 9, photographs of Property.

16. It is impractical to pave the Property as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property. Exhibit 7, Declaration of Mitchell Truman.

17. Six inches of roto milling is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act. Exhibit 10, Declaration of Miller.

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<sup>1</sup> On or about August 28, 2024, Rowsell or Crandall were asked for their Credentials, to which they showed a card to obtain access to an office.

18. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black top is not a viable palliative, and roto milling is the only viable dust palliative. Exhibit 10, Declaration of Miller; Exhibit 11, Declaration of Harber.

19. Roto milling meets the requirement as a comparable palliative for dust abatement, particularly when there is track equipment operated on the property. Exhibit 11, Declaration of Harber; *see also* Exhibit 12, Declaration of McDonough; Exhibit 13, Meldrum.

20. Professionally, the roto milling on the Property is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act. Exhibit 10, Declaration of Miller; Exhibit 13, Declaration of Meldrum.

21. Similarly, for a property to be used for parking trucks, there is no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling. Exhibit 12, Declaration of McDonough.

22. By requiring the Property to be paved with asphalt, as opposed to roto milling, Clark County will create more air pollution from its actives. The following required items are needed to make virgin asphalt (all of which are activities that release CO<sub>2</sub> into the atmosphere, require additional water to stop dust, and/or wash the material to have it prepared to make asphalt):

- a. Mining the rock;
- b. Fuel manufacturing to prepare fuel for the quarry equipment;
- c. Transportation of the fuel to the paving yard;
- d. Power generation to move the fuel from the refinery to the local fuel terminal;
- e. Transportation of the rock by haul trucks from the quarry site to the crusher;
- f. Generator to power the crushing equipment.
- g. Fuel usage to move the material by a loader to and around the plant;

- h. Fuel usage to transport the asphalt oil to the hot plant;
- i. Fuel usage to transfer the asphalt oil from the refiner to the local terminal;
- j. Fuel usage to heat the plant to heat the rock to allow the asphalt oil to adhere to the rock;
- k. Fuel usage for the hot asphalt to be delivered to the site.
- l. Fuel usage for the laydown machine to lay the asphalt.

Exhibit 13, Declaration of Meldrum.

23. Paving instead of roto milling is not the best practice in this application on the Property (as used by other political entities). Exhibit 13, Declaration of Meldrum; Exhibit 14, Declaration of Montandon.

24. Further, DES' actions are discriminatory in nature, as DES fails to enforce its policies against other rail roads. Exhibit 15, photographs of rails by other owners in Clark County.

25. Further, AQR is invalid, as it is not a state-wide program. Exhibit 16, photographs of rails in other Nevada counties.

### **III. Legal Arguments:**

#### ***A. DES has failed to meet the conditions precedent under AQR 4.1. Respondents are not in violation of AQR 4.1(d)(1) (Violation #2).***

Respondents are not in violation of AQR 4.1(d)(1),<sup>2</sup> as alleged. AQR Section 4.1(d)(1) states, as follows:

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<sup>2</sup> DES may also argue NRS 445B.580. However, Violation 2 only cites to AQR Section 4.1(d)(1) – not NRS 445B.580. *See* NOV#10078, p. 4. Therefore, for DES to now argue NRS 445B.580 fails to give Respondents proper notice, and therefore, fails to give Responds Due Process by a government entity. Therefore, the argument must fail, and the Board should dismiss the case because DES has failed to show that DES personnel (1) requested entry; (2) showed their credentials; and/or (3) even have credentials to show, as more fully explained below.

#### 4.1 Authority and Responsibilities

(d) The Control Officer may enter and inspect any property, premise, or place where an air contaminant source is located or is being constructed, installed, or established at any reasonable time to ascertain compliance with the AQRs.

(1) No person shall:

(i) Refuse access *if* the Control *Officer requests entry for inspection and presents appropriate credentials.*

(ii) Obstruct, hamper, or interfere with an inspection.

AQR 4.1(d)(1) (emphasis added).

When an officer appears to inspect a property, the officer must request to enter the property and present the appropriate credentials as a condition precedent to entering the property. Further, it is a federal and state crime to trespass onto railroad properties. *See* Exhibit 17; Exhibit 18.

On January 8 and 9, 2024, Canduella Rowsell and/or Katrinka Byers appeared at the Property, wanting to perform an “inspection.”. Similarly, on or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an “inspection.” On January 8/9, 2024, Rowsell and/or Byers appeared at the Property, but did not request to enter the Property. Similarly, on January 9, 2024, Canduella Rowsell and Noel Crandall

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Alternatively, even if NRS 445B.580 did apply, DES is still held to the same condition precedent. NRS 445B.240 (Power of representatives of Department to enter and inspect premises), states:

1. Any duly authorized officer, employee or representative *of the Department* may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time *for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640,*<sup>2</sup> inclusive, and rules and regulations in force pursuant thereto.

2. No person shall:

(a) Refuse entry or access to any authorized representative of the Department who *requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.*

(b) Obstruct, hamper or interfere with any such inspection.

3. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

NRS 445B.240 (emphasis added).

appeared at the Property, but did not request to enter the Property. They were trespassing and merely entered the Property. When ask why Rowsell and Crandall they did not stop to sign in at the guardhouse, they responded to Mr. Truman they saw no one there and drove in. The guard was in fact in the guardhouse, and followed them after entering. Exhibit 26. Clearly marked on the Property was a sign that all visitors must sign in to enter the Property. The reason for the guard house is that from time to time, the Railroad Co. has hazardous material on the Property, and the Railroad Co. offers those that sign in a respirator in the event that poison gas is released. One of the individuals stated that her husband was a hazmat specialist and that she knew everything about hazardous materials, but when pressed if she was knowable with placarding nomenclature, she agreed she was not aware of said nomenclature.

Although ETON applied for a permit that agreed to access during normal business hours, it still expected persons to check in the office at the Property. This was not done on the dates in January, 2024. Further, ETON certainly did not agree to grant access to the Property, without showing the appropriate credentials. Moreover, the Railroad Co. and Truman never personally applied for the permit, and did not authorize entry.

Regardless, at no time on these dates (or before) did any of the individuals purportedly from the County ever present or attempt to present any credentials, showing that they were officers with Air Quality. Exhibit 7, Declaration of Mitchell Truman.

On information and belief, these individuals do not possess appropriate credentials that would verify that they are inspectors for Air Quality. Appropriate credentials would be a badge, with a name, photograph, credential number, department, affiliation, chip, and an indication of the person's authority. *See e.g.*, Exhibit 8, Federal EPA Inspector Credentials. On or about August 28, 2024, Rowsell or Crandall were asked for their Credentials, to which they showed a card to obtain access to an office



somewhere not on the Property. However, this is not an appropriate credential. Access to an office somewhere else is not proper authority to enter the Property. Further, even if the access to an office somewhere else was an appropriate credential, it was shown after the dates noticed for violation.

In Respondents' experience, the following government agencies all carry credentials and show their credentials: FEEMA, asking to conduct on-site training; FBI, for a background check of a neighbor; FBI, illegal dumping of medical waste by another shipper; FBI, for campaign contribution violation; Federal Department of Justice, in a witness tampering case; Federal Railroad Administration, during a safety audit; State of Nevada Public Utilities Commission, railroad section, conducting an audit; Trucking, for conducting an audit; Federal Department of Transportation, to conduct an audit; State of Nevada Department of Taxation, to conduct an audit of ethanol coming in by rail; Clark County Corners Office, to investigate the death in a rail car; Federal Treasury Department, for REM taxes; Federal Homeland Security, for training on site; Metro for a death next to the property; Las Vegas Fire department, for an inspection; ATS, for an inspection of rail cars from Mexico; DEA, for an inspection of rail cars from Mexico; Nevada Highway patrol, requesting an audit; State of Nevada OSHA, for a death investigation on site; Federal Department of Bureau of Land Management, for potential trespassing; IRS, for an audit of REM on Alcohol taxes; Department of Energy, for Income nuclear waste from Fermi lab and hauling Nuclear waste; Clark County Aviation, for a site tour; UP Railroad police, checking on rail theft; United States Air Force, Checking on property owned next to Nellis; Department of Defense, working on storage of a train's load of tanks; Pipeline & Hazardous Material Safety Administration, for an audit of safety plan; Clark County Dog catcher, asking about a dog; Federal Mine Safety Administration, for a site audit; Constable office, to Execute a writ of garnishment; USA Remote sensing lab, wanting to install air pollution monitoring station; Metro (in uniforms),

various reasons over the years; Metro (under cover), regarding a robbery at Sahara and Buffalo; FDIC Auditor, related to the failed bank Community Bank of Nevada; and Vegas Valley Water District Safety.

Thus, DES has failed to meet the conditions precedent, set forth in AQR 4.1(d)(1), and therefore, cannot prevail on Violation #2.<sup>3</sup>

Further, even if the permit was signed, allowing a DES worker on the property, without signing in, Respondent is required by federal regulations to maintain security on the Property, which is superior to state law. *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 472, 133 S. Ct. 2466, 2468 (2013) (Under the Supremacy Clause, U. S. Const. art. VI, cl. 2, state laws that require a private party to violate federal law are preempted and, thus, are without effect.)<sup>4</sup> The Railroad Co. is required to maintain a Security Plan by the U.S. Department of Transportation. *See* Exhibit 24, DOT, Security Requirements.<sup>5</sup> Pursuant to the security requirements, the Railroad Co. maintains a Security Plan. Exhibit 25, Security Plan. As part of the security plan, the Railroad Co. is responsible to check any suspicious activity, which includes

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<sup>3</sup> DES may argue that Respondent allowed them on the Property in or about July or August of 2024. However, this is not sufficient, as Respondents felt coerced. In *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), the Supreme Court announced a new analytical approach under the Self-Incrimination Clause of the Fifth Amendment in cases involving custodial interrogation. *Miranda* held that no statements stemming from custodial interrogation of a suspect would be admissible unless the police first provided four "warnings." *United States v. Rivas-Lopez*, 988 F. Supp. 1424, 1430 (1997). The Supreme Court walked back on this later, but still held that a proper inquiry must focus at least initially, if not exclusively, on whether the subsequent confession is itself free of actual coercion. *United States v. Rivas-Lopez*, 988 F. Supp. 1424, 1431 (1997).

Although the facts of this case are not directly related to self-incrimination, *Miranda* and subsequent cases still are instructive when a government employee is coercing another to relinquish a constitutional right. Here, on the occasion that Respondents allowed DES employees on the Property, three disagreeable DES employees were present, and in a very forceful manner, explained why they believed that they could access the Property. Again, they did not show their credentials but were allowed on the Property, after the coercive acts. Thus, any fines as a result, should be reversed.

<sup>4</sup> The Supremacy Clause, found in Article VI, paragraph 2 of the U.S. Constitution, establishes that federal law takes precedence over state law when the two laws conflict. This means that federal law can preempt state law, either expressly or impliedly.

<sup>5</sup> DOT HM-232

Fake IDs and badges. *Id.* Therefore, the Railroad Co. checks all persons coming into the property, as it is required to do so.

During the dates in interest, Canduella Rowsell, Noel Crandall, and/or Katrinka Byers were trespassing, as they merely entered the Property. Clearly marked on the Property was a sign that all visitors must sign in to enter the Property. As explained previously in their response, these people did not request to enter the Property.

Similarly, DES' harassment, coercion, and violation of civil rights still continues. On March 20, 2025, a Clark County vehicle followed a truck into the Property, once the gate was open. The driver of the vehicle did not check in or ask permission to enter the Property. However, as an employee jogged towards the vehicle to check the ID of the driver of the vehicle and to learn why they were entering into the terminal, the vehicle sped out of the Property, and the employee had to jump out of the way of the vehicle way to avoid being hit. Exhibit 26; Exhibit 29. Similarly, on March 27, 2025, the employee saw a Clark County AQ pickup on a walking trail that follows I-11 from Sahara Road to the Flamingo Wash. A man was standing in the pickup taking photos of the Property. Once he saw the employee, the man got down in his pickup and drove down the walking path. Exhibit 26. This is a repeated civil rights violation that continues, despite no trespassing signs, and the location of the office being clearly marked. *See* Exhibits 26-29.

***B. Similarly, because DES failed to meet the conditions precedent, set forth in AQR 4.1(d)(1), Violation #1 of both NOV's must also fail.***

Violation #1 of both NOV's should also fail. Fruit of the poisonous trees is a doctrine that extends the exclusionary rule to make evidence inadmissible if it was derived from evidence that was illegally obtained. If the evidential "tree" is tainted, so is its "fruit." *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 385 (1920).

For the reasons set forth above, DES has failed to meet the conditions precedent in AQR 4.1(d)(1). Although this is considered a civil matter, the Fruit of the Poisonous Tree doctrine should be applied here, as DES is a government entity, enforcing a regulation, and seeking to fine companies and individuals. Thus, any evidence taken for an inspection should not be considered, as it is fruit of the poisonous tree, and Violation #1 for both NOV's should be rejected and dismissed.

***C. AQR is preempted by Federal law.***

AQR is preempted by Federal Law. Commerce Clause Art. I, §8, Cl. 3, states, in part, Congress shall have the power to . . . regulate commerce . . . among the several states . . . .” The Supremacy Clause Art. VI, Cl. 2, also states, “This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . , shall be the supreme law of the land . . . .”

The Interstate Commerce Act, established in 1887, and then the ICCTA of 1995 grants the STB authority over rail service.<sup>6</sup> That authority includes the ability to regulate items such as rates, classifications rules, practices, routes, ***services, and facilities, among others***, even if the tracks are located entirely within one state. The definition of “transportation” included within the STB’s purview is broad, including a locomotive, car, ***vehicle, vessel, warehouse, yard, property, facility, instrumentality, or equipment*** of any kind related to the movement of passengers and/or property by

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<sup>6</sup> The Act abolished the Interstate Commerce Commission (ICC) and established the STB under the U.S. Department of Transportation. It is now an independent agency.

ICCTA Statutory Preemption language (49 USC §10501):

(b) The jurisdiction of the Board over-

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, ***services, and facilities of such carriers***; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and ***preempt the remedies provided under Federal or State law***. [Emphasis added.]

rail. This preemption applies to rail carriers, operating in interstate commerce, and those operating on their behalf, including transloaders.

In *Chicago and North Western Transportation Company v. Kalo Brick and Tile Co.*, 450 U.S. 311 (1991), the Supreme Court held, “The ICA is among the most pervasive and comprehensive of federal regulatory schemes . . . . Since the turn of the century, we have frequently invalidated attempts by the States to impose on common carriers obligations that are plainly inconsistent with the plenary authority of the ICC] . . .” The Court further said, “[There] can be no divided authority over interstate commerce, and . . . the acts of Congress on that subject are supreme and exclusive. Consequently, state efforts to regulate commerce must fall when they conflict with or interfere with federal authority over the same activity.” *Id.* at 318-9.

Attempts by states and municipalities to exert their authority over rail-related service or structures usually fail. The city of Auburn in Washington State tried to require a full environmental impact statement of a proposed rail line reopening, but was denied. *City of Auburn v. US Government*, 154 F. 3d 1025, 29 Env'tl. L. Rep. 20,096 (9th Cir. 1998). The City of Auburn argued that there was no express preemption of local regulation in ICCTA, and that Congress meant to preempt economic regulation, not “essential local police power required to protect the health or safety of citizens.” However, the court rejected the City’s position, noting the long history of judicial recognition that rail operations need to be regulated at the federal, not local level.

The STB denied the request of Winchester, Mass. to regulate use of a freight yard which residents claimed was too noisy at night. Winchester claimed that its zoning regulations prohibited the use, but the STB ruled that federal law preempted the town’s regulations. *Boston & Maine Corporation & Springfield Terminal Railroad Company* – Petition for Declaratory Order, 2013 WL 5869470, October 30, 2013.

The reason federal control of rail transportation is important is clear – if every city, town, county, and state could put its own restrictions on rail service, it would cripple it and destroy any semblance of a unified national system. The smooth operation of the rail system is protected by prohibiting states and municipalities from any requirements that would inhibit that system. Although very limited local or state regulation is allowed if the regulation is directly related to public health and safety, such as compliance with building and fire codes, rail lines cannot be required to apply for environmental permits governed by local or state law. *See Green Mountain Railroad Corp. v. Vermont*, 404 F.3d 638 (2005).

Even restrictions on activities somewhat removed from actual rail service are also prohibited because they would have an effect on the provision of rail service. In *Norfolk Southern Railway Co. v. City of Alexandria*, 608 F.3d 150 (2010), the City’s ordinance regulating when trucks could enter and leave the rail facility was struck down because that restriction would cause a back-up in unloading the rail cars and have a limiting effect on rail service.

Thus, when state or local laws are an obstacle to the accomplishment and execution of an interstate carrier in the furtherance of its duty to move good between states a railroad’s services, the laws are preempted. *See* 49 CFR 655.6; *Pike v. Bruce Church Inc.*, 397 U.S. 137 (1970). Specifically, in this matter, the AQR is not conducive to interstate commerce, whether for a trucking company, a railroad company, or a pipeline company, as they are different from other states, including the state of Nevada.

DES will likely argue that these rules do not apply under *Association of American Railroads v. South Coast Air Quality Manag. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010). However, DES’ reliance is misguided.

***D. AQR is not consistent with a state-wide program***

The AQR code is not consistent with a state-wide program. If an apparent conflict exists between ICCTA ***and a federal law***, then the courts must strive to harmonize the two laws, giving effect to both laws if possible. *Association of American Railroads v. South Coast Air Quality Manag. Dist.*, 622 F.3d

1094, 1097 (9th Cir. 2010). If an apparent conflict exists between ICCTA and a state or local law, however, different rules apply. *Association of American Railroads*, 622 F.3d at 1097 (emphasis added).

The STB has explained that this system preserves a role for state and local agencies in the environmental regulation of railroads in at least two ways. First, to the extent that state and local agencies promulgate EPA-approved statewide plans under federal environmental laws (such as “statewide implementation plans” under the Clean Air Act), ICCTA generally does not preempt those regulations because it is possible to harmonize ICCTA with those federally recognized regulations. *Association of American Railroads*, 622 F.3d at 1098 (emphasis added).

The corollary to that rule is that, until approved by the EPA, state implementation plans do not have the force and effect of federal law. *Association of American Railroads*, 622 F.3d at 1098 (emphasis added).<sup>7</sup> Thus, the Court in *Association of American Railroads*, 622 F.3d at 1098, required statewide plans and statewide implementation plan. DES fails to show that the AQR is a statewide program. Instead, DES has argued that that Respondents’ arguments seem to be based on a fundamental misunderstanding of the Clean Air Act, its regulations, Nevada’s state implementation Plan, the NRS, the NAC, and the AQRs. However, statewide implementation plan, as required in *Association of American Railroads* is pretty clear.

Second, to the extent that state and local agencies enforce their generally applicable regulations in a way that does **not unreasonably burden railroad activity**, ICCTA does not preempt such regulation, despite the fact that the regulation does not have the force and effect of federal law. *Association of*

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<sup>7</sup> In *Association of American Railroads*, the court found that the South Coast Air Quality Management District's rules did not have the force and effect of federal law. Although the District promised to, the District had not submitted the rules to the **state agency**, CARB, for its approval. Thus, in turn, if CARB approved, CARB would submit the rules to the federal EPA as part of California's state implementation plan. Once approved by EPA, state implementation plans have “the force and effect of federal law.”

*American Railroads*, 622 F.3d at 1098 (emphasis added). ICCTA preempts those rules unless they are rules of general applicability **that do not unreasonably burden railroad activity**. *Association of American Railroads*, 622 F.3d at 1097-98 (Noting that the STB has recognized that ICCTA likely would not preempt local laws that prohibit the dumping of *harmful substances or wastes*, because such a generally applicable regulation would not constitute an unreasonable burden on interstate commerce).

The EPA bypassed the whole requirement to implement a state-wide program when the AQR was approved. The AQR is not a *state* implemented plan; it is a *county* implemented plan as required in *Association of American Railroads*. For some reason, the State is competent to take care of and implement the plans for the Clean Water Act, but not the Clean Air Act.

Section 52.1490(61) of Title 40 of the CFR shows that the plan that was approved by the EPA is not a state-wide plan.

(61) The following plan revision was submitted on March 26, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(1) Section 93, adopted on June 22, 2000 by the Clark County Board of Commissioners and amended on March 4, 2003; Section 94, ***adopted on June 22, 2000 by the Clark County Board of Commissioners*** and amended on March 18, 2003; and, the “Construction Activities Dust Control Handbook”, adopted June 22, 2000 by the Clark County Board of Commissioners and amended on March 18, 2003.

(emphasis added). Thus, the AQR was adopted by the Clark County Board of Commissioners, not the legislature and governor of Nevada.

AQR Sections 94.13(a) and (b) are not part of a state-implemented plan:

94.13 Best Available Control Measures

(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall ***employ BACM*** and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).



(b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with Section 94.5(n)(2).

(emphasis added).

AQR 94.2 Defines BACM as follows:

“Best Available Control Measures” and “BACM” means those Control Measures that are the **best available** with current technology for reducing or eliminating the release of Particulate Matter into the atmosphere from Construction Activities. These include, but are not limited to, all measures listed as Best Management Practices and any other Control Measures required by the Control Officer.

(emphasis added).

In contrast, the Nevada state-implemented plan allows for officials to use common sense and to be reasonable. NRS 445B.100 states as follows:

1. It is the public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State.
2. It is the intent of NRS 445B.100 to 445B.640, inclusive, to:
  - (a) Require the use of **reasonably available methods** to prevent, reduce or control air pollution throughout the State of Nevada;

(emphasis added). Similarly, NAC 445B.22037, states,

1. No person may cause or permit the handling, transporting or storing of any material in a manner which allows or may allow controllable particulate matter to become airborne.
2. Except as otherwise provided in subsection 4, no person may cause or permit the construction, repair, demolition, or use of unpaved or untreated areas without first putting into effect an ongoing program using the best practical methods to prevent particulate matter from becoming airborne. As used in this subsection, ***“best practical methods”*** includes, but is not limited to, paving, ***chemical stabilization***, watering, phased construction and revegetation.

(emphasis added). Thus, best available (County) compared to best practical or reasonably available methods (State) are not the same. They are quite different, and the AQR is not part of a state-wide implemented plan.

Similarly, the method in which the State of Nevada implements a program is quite different from the way that DES is attempting to enforce its program against Respondents. *See* Exhibit 16, railroad yards in other counties in the State of Nevada. Thus, again, the AQR is not conducive to interstate commerce, whether for a trucking company, a railroad company, or a pipeline company, as they are different from other states, including the state of Nevada. Because of the nature of the Respondents' business, interstate commerce, the standard for the Respondents should revert back to the state plan, so that the Respondents have one set of rules.

***E. The end of the Chevron doctrine and Chevron preference.***

The EPA was not authorized to bypass the State of Nevada when it approved the AQR, as it was required to approve a state-wide implemented plan. The United States Supreme Court's recent rulings in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799 (2024), both ended the *Chevron* doctrine that gave preferences to agencies in interpreting statutes. Accordingly, this forum further does have jurisdiction to determine whether the AQR has the force and effect of federal law.

In *Loper* and *Corner Post*, the Supreme Court has created a new framework for challenges to existing and developing regulatory landscape. First, in the 6-3 *Loper* decision, the Court overruled its decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.* Previously, under the *Chevron* doctrine, when a reviewing court determined that a statute was ambiguous or that Congress had not directly addressed the precise question at issue, the Court, rather than imposing its own interpretation of the statute, would defer to the agency's interpretation as long as the agency's interpretation was based on a permissible construction of the statute. In *Loper*, the Court concluded that *Chevron* deference conflicts with separation of powers principles and the command of the APA that courts, **not agencies**, are to "decide all relevant questions of law" and "interpret statutory provisions."

Stated another way, the Court made clear that it "remains the responsibility of the court to decide whether the law means what the agency says." The Court reinforced that "courts, not agencies, will decide 'all relevant questions of law' arising on review of agency action" and prescribed "no deferential standard for courts to employ in answering those legal questions." Therefore, the Court concluded, the APA "makes clear that agency interpretations of statutes – like agency interpretations of the Constitution – are not entitled to deference." In so holding, the Court specifically rejected arguments that federal agencies, rather than courts, are better suited to determine what ambiguities in a federal law might mean, including when those ambiguities involve technical or scientific questions that fall within an agency's area of expertise. Finally, the Court noted that "to the extent that Congress and the Executive Branch may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute."

Going forward, *Loper* means that: (1) "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and "may not defer to an agency interpretation of the law simply because a statute is ambiguous." (2) Courts still can consider the "interpretations and opinions" of the relevant agency and should accord "due respect" for the specialized expertise and informed judgement of the agency. However, the weight of those interpretations and opinions will "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."

Following *Loper Bright*, courts must now exercise their independent judgment in deciding whether an agency acted within its statutory authority, even when a statute is ambiguous. To accomplish that, federal courts will use their traditional statutory interpretation tools to resolve statutory ambiguities.

Thus, here, the EPA overstepped its authority by approving a non-state-wide implemented program, known as the AQR. As a result, the AQR does not have the force and effect of federal law. Moreover, Respondents object to the jurisdiction of this forum, as a court must interpret whether the EPA has overstepped its authority by approving the AQR, and whether the AQR has the force and effect of federal law, as well as any of the other constitutional issues raised in this response.

***F. The AQR unreasonably burdens railroad activity by interfering with Interstate Commerce.***

Again, ICCTA preempts those rules that unreasonably burden railroad activity. *Association of American Railroads*, 622 F.3d at 1097-98.

Here, Respondents, the Railroad Co. and ETON, are both a railroad and an interstate trucking company. The Railroad Co has a federal docket number and is a public utility. ETON has a DOT number. Respondents move goods from one state to another. Respondents are required to adhere to Federal laws and regulations as it is engaging in fulfilling its federal obligations to move goods across state lines.

Currently, the Property has six inches of roto milling, which is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act.

Further, the Railroad Co., does work for other railroads. In addition, the Railroad Co. has track equipment, which is necessary to conduct business. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black top is not a viable palliative, and roto milling is the only viable dust palliative. It is impractical to pave the Property as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property. The AQR is a direct obstacle to the Railroad Co.'s services and to interstate commerce.

Further, the Railroad Co. has occupied the Property. The Railroad Co. never applied for or executed a dust control permit.

Further, for a property to be used for parking trucks, there is no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling. On August 28, 2024, Rowsell and Crandall confirmed that there were no dust emissions. On the other hand, asphalt is much more expensive, causing a burden to businesses, including Respondents. This restricts trade, and is an unreasonably burden on railroad activity and interstate commerce.

Therefore, Respondents have not committed any of the violations and request that the Board reject the violations and fines.

DES has argued that the Railroad Co. is not a rail carrier, and therefore, all of its allegations as a rail carrier are not applicable. DES cites to the 2006 Federal Register that states that the agreement between Pan Western and the Railroad Co. was never consummated. However, DES's argument fails for several reasons. A railroad company may be formed by organizing a corporation under NRS Chapter 78. *See* NRS 78.075. Tonopah & Tidewater Railroad Co. is such a corporation that was organized under NRS Chapter 78, with the designation of the words, "Railroad Co." *See* Exhibit 2.

Further, the Nevada legislature has never otherwise defined the term, "railroad company". As a result, the Supreme Court of Nevada looked to the Black's Law Dictionary to define the term. *Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019). The term is defined by Black's Law Dictionary as "[a] corporation organized to construct, maintain, and operate railroads." Railroad Corporation, Black's Law Dictionary (10th ed. 2014). This is consistent with the common meaning of railroads and other statutes wherein the Legislature has defined railroads as operating on railways. *See, e.g.*, NRS 484A.200 (defining "railroad" as one that operates on "stationary rails"); NRS 484B.050 (same); NRS 710.300 (requiring a "railway" or "railway lines" for railroad utilities). *Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019).

Here, Las Vegas Paving Corporation obtained an easement on certain property from Pan Western, which is on the same property mentioned in the Federal Register. *See* Exhibit 20. This easement was recorded and runs with the land. *Id.* Thereafter, in 2008, the Railroad Co. obtained a Licensing Agreement with Las Vegas Paving Corporation that allows the Railroad Co. to “***Operate [an] industrial railroad on the property.***” Exhibit 21, Licensing Agreement (emphasis added). In 2010, the Railroad Co. purchased the physical steel rails from Pan Western that are held on the property. Exhibit 22, Purchase Agreement. These rails are stationary on the Property. Exhibit 23, photograph of rails. Further, cars are able to switch lanes, which requires an operator. *Id.* These are all features common to rails and trains. Thus, the Railroad Co. is a railroad company under Nevada law as it maintains and operates a railroad, and holds itself out as a railroad company. *See Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019).<sup>8</sup>

DES has argued that the Railroad Co. is not a rail carrier. However, the federal register states that the Railroad Co. will become a Class III rail carrier. Exhibit 3. DES has argued that the agreement with Pan Western was never consummated to lease the property. However, this is irrelevant. The Railroad Co. later consummated an agreement with Las Vegas Paving Corporation that allows the Railroad Co. to “operate” the rails on the property. Exhibit 21. Further, as indicated in the STB Finance Document No. 34958, the grant of authority is permissive. Once a Board exemption has become effective, it is up to the parties to move forward with the underlying transaction. Thus, the STB refused to publicly confirm that the lease and operating exemption for the Railroad Co. was null and void. Besides, the Federal Register only applies to whether or not the Railroad Co. is a class-three carrier, which is one that is not as heavily regulated by the STB as opposed to some other carrier. It does not, however, prohibit the Railroad Co. from being a railroad company under Nevada law.

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<sup>8</sup> Further, the Railroad Co. is a railroad company, as the Public Utilities Commission regulates it.

Thus, for these reasons, all arguments that Respondents have made pursuant to the status as a railroad company, *are applicable*. And, whether or not the Railroad Co. is a railroad company, the AQR still unreasonably burdens interstate commerce.

***G. Water and Pavement are not the best available control measures.***

DES has insisted that the Railroad Co. continues to water the Property and to place asphalt on the Property. However, water is not the “Best Available Control Measure” for this application. Water is a precious resource in Southern Nevada, and watering the 1.17 acres 24 hours a day, 7 days a week, as required by the control officer, is not the best available control measures. Further, water is expensive.

Similarly, because the Railroad Co. owns and/or utilizes track equipment, pavement is not the best available control source either. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black top is not a viable palliative, and roto milling is the only viable dust palliative. It is impractical to pave the Property as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property. For a property to be used for parking trucks, there is no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling. On August 28, 2024, Rowsell and Crandall confirmed that there were no dust emissions. On the other hand, asphalt is much more expensive, causing a burden to businesses, including Respondents.

Further, AQR violates an executive order to reduce greenhouse gas emissions, as well as the Paris Agreement. *See* Exhibit 19, executive order. By requiring the Property to be paved with asphalt, as opposed to roto milling, DES will create more air pollution from its actives. The following items are needed to make virgin asphalt (all of which are activities that release CO<sub>2</sub> into the atmosphere, require additional water to stop dust, and/or wash the material to have it prepared to make asphalt):

- a. Mining the rock;
- b. Fuel manufacturing to prepare fuel for the quarry equipment;

- c. Transportation of the fuel to the paving yard;
- d. Power generation to move the fuel from the refinery to the local fuel terminal;
- e. Transportation of the rock by haul trucks from the quarry site to the crusher;
- f. Generator to power the crushing equipment.
- g. Fuel usage to move the material by a loader to and around the plant;
- h. Fuel usage to transport the asphalt oil to the hot plant;
- i. Fuel usage to transfer the asphalt oil from the refiner to the local terminal;
- j. Fuel usage to heat the plant to heat the rock to allow the asphalt oil to adhere to the rock;
- k. Fuel usage for the hot asphalt to be delivered to the site.
- l. Fuel usage for the laydown machine to lay the asphalt.

Exhibit 13, Declaration of Meldrum. In addition, asphalt contributes to global warming. *See* <https://www.smithsonianmag.com/smart-news/hot-days-asphalt-may-release-much-air-pollution-cars-180975756/>. This is contrary to a Nevada executive order. Exhibit 19, EO.

Therefore, again, water and asphalt in this application are not the best available control measures.

***H. The Roto Milling is within the AQR guidelines, and Respondents are not violating the AQR.***

AQR Sections 94.13(a) and (b) state:

(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14)<sup>9</sup>.

(b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with 94.5(n)(2).<sup>10</sup>

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<sup>9</sup> As applicable here, AQR 94.14 (Emission Standards), does not allow a dust plume.

<sup>10</sup> Under AQR 94.5(n)(2), a final stabilization must be in accordance with BMP 11. BMP 11(3) allows the following for long-term stabilization:



## AQR 94.12 Soil Stabilization Standards

(a) The Responsible Official shall ensure that all contractors, operators, and other Persons involved in Construction Activities employ effective Control Measures.

(b) One or more of the following methods shall be implemented to maintain Dust control on all disturbed soils on Construction sites and staging areas to the extent necessary to pass the Drop Ball Test described in Section 94.15.5:

...

(3) Completely covered with Clean Gravel.<sup>11</sup>

(4) Treated with a Dust Suppressant.

In its NOV's, DES never states that a drop ball test was used. Therefore, no violation or fine should be assessed against Respondents.

Further, the Property is covered with Roto Milling, which is in the size of at least .25 inches, processed, and less than 6% silt. Exhibit 9, photo. It is an effective dust suppressant and does not allow for a dust plume. On August 28, 2024, Rowsell and Crandall visited the Property and stated that there were no dust emissions from the Property. Therefore, no fine should be assessed against Respondents.

Similarly, the roto milling is sufficient for long-term stabilization, under BMP 11. Roto milling is a dust palliative that works just as effectively as asphalt, and works better, considering the track equipment on the Property. It qualifies as a clean gravel and a dust suppressant, as confirmed by

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[P]ermanent metal or wood fencing and/or a post and cable at least 3 feet high, or other similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:

(A) Water, or

(B) Dust Palliative.

<sup>11</sup> AQR 94.2: "Clean Gravel" means a mineral or rock aggregate ranging in size from 0.25 to 3 inches on its longest dimension that is either natural or the product of a mineral processing operation and contains no more than 6% silt by weight.

RowSELL and Crandall on August 28, 2024. Further, the Property is surrounded by fencing. Therefore, no violations or fine should be assessed against Respondents.

***I. DES has discriminated against Respondents by not enforcing the AQR unevenly.***

Under Equal Protection, a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances. The Fifth Amendment's Due Process Clause of the United States Constitution requires the United States government to practice equal protection. The Fourteenth Amendment's Equal Protection Clause requires states (and local governments) to practice equal protection. Equal protection forces a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Thus, the equal protection clause is crucial to the protection of civil rights.

Based on the type of discrimination alleged, the individual will first need to prove that the governing body actually discriminated against the individual. The individual will need to prove that the governing body's action resulted in actual harm to them. After proving this, the court will typically scrutinize the governmental action in one of several three ways to determine whether the governmental body's action is permissible: these three methods are referred to as strict scrutiny, intermediate scrutiny, and rational basis scrutiny. The court will determine which scrutiny the individual will be subject to, relying on legal precedent to determine which level of scrutiny to use.

Here, DES is discriminating against the Railroad Co. In comparison, DES does not regulate other railroad companies, and require them to pave around their rails, as it does with the Railroad Co. *See* Exhibit 15, photographs of rails by other owners in Clark County. None of the roads adjacent to or in the rail track or yards are paved, nor does DES mandate their coal cars have no tarping over them, and fugitive coal dust protrudes from their cars as they travel though the Las Vegas Valley and the length of Clark County. There can be no rational basis for this conduct.

Therefore, the Board should reject the violations and the fine.

***IV. Conclusion***

For the reasons stated herein, Respondents request that the Board overturn the hearing officer's orders and further reject the violations and the fines.

DATED this 28<sup>th</sup> day of March, 2025.

JOHNSON & GUBLER, P.C.

*/s/ Russell G. Gubler*

---

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2025, I caused to be sent a true and correct copy of the foregoing RESPONDENT’S PRE-HEARING BRIEF RE: NOTICES OF VIOLATION #9994 AND #10078 via electronic mail, as indicated, to the following parties:

Sherrie D. Rogge  
aenforcement@clarkcountynv.gov

Timothy Allen  
timothy.allen@clarkcountydav.gov

*/s/ Russell G. Gubler*

---

An Employee of Johnson & Gubler, P.C.

## **EXHIBITS**

	<b><u>DESCRIPTION</u></b>
1.	Grant, Bargain, Sale Deed
2.	NV Secretary of State Entity Information
3.	Federal Register, 58594
4.	Federal Register, 75293
5.	Commercial Lease Agreement
6.	Local News 8 Report
7.	Declaration of Mitchell Truman
7A.	Invoice
7B.	Photograph of Dozer at Property
8.	Information on EPA Inspector Credentials
9.	Photographs of Property
10.	Declaration of Joe Miller
11.	Declaration of Paul Harber
12.	Declaration of David M McDonough
13.	Declaration of Floyd Meldrum
14.	Declaration of Michael Montandon
15.	Rails/rail yards in Clark County, Nevada
16.	Rails/rail yards outside of Clark County, Nevada
17.	US Trespass Information
18.	NV Trespass Information
19.	Executive Order
20.	Agreement to Convey Easement
21.	Licensing Agreement
22.	Purchase Agreement.
23.	Photo of rails
24.	Hazardous Materials Transportation Security Requirements
25.	TTRR Security Plan
26.	Declarations of Willard Strickler
27.	Declarations of Crystal Thorne
28.	Office Sign
29.	Declaration of Frankie Nevarez
30.	Hearing Officer Meeting Transcript (October)
31.	Hearing Officer Meeting Transcript (November)

# Exhibit 1

Inst #: 20230907-0000999  
Fees: \$42.00  
RPTT: \$5100.00 Ex #:  
09/07/2023 11:52:49 AM  
Receipt #: 5383566  
Requestor:  
FNTG NCS Las Vegas  
Recorded By: OSA Pgs: 6  
Debbie Conway  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

APN: 161-07-103-014, 015 & 016  
Affix R.P.T.T.: \$5,100.00

**RECORDING REQUESTED BY:**  
**FIDELITY NATIONAL TITLE**  
**WHEN RECORDED MAIL TO AND**  
**MAIL TAX STATEMENT TO:**  
**TONOPAH & TIDEWATER RAILROAD CO., A**  
**NEVADA CORPORATION**  
**ATTN: KATHERINE TRUMAN**  
**4680 N. CIMARRON ROAD**  
**LAS VEGAS, NV 89129**

ESCROW NO: 42054616-420-KS1

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

Colvin Industrial Property Group, LLC Series E, a series of Colvin Industrial Property Group, LLC, a Nevada series limited liability company, as to Parcel 1 who acquired title as Colvin Industrial Property Group, LLC - Series E, a Nevada limited liability company and Colvin Industrial Property Group, LLC - Series A, a series of Colvin Industrial Property Group, LLC, a Nevada series limited liability company, as to Parcel 2 who acquired title as Colvin Industrial Property Group, LLC - Series A, a Nevada series limited liability company and Middlefork Holdings, LLC, a Nevada limited liability company, as to Parcel 3 who erroneously acquired title as Middlefolk Holdings LLC

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

**Tonopah & Tidewater Railroad Co., a Nevada corporation**

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

Subject to:

1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 6<sup>th</sup> day of September, 2023.

**SELLERS:**

**Colvin Industrial Property Group, LLC  
Series E, a series of Colvin Industrial  
Property Group, LLC, a Nevada series  
limited liability company**



**By: Michael F. Colvin, Manager**

Michael F. Colvin, Manager

**Colvin Industrial Property Group, LLC - Series  
A, a series of Colvin Industrial Property Group,  
a Nevada series limited liability company**



**By: Michael F. Colvin, Manager**

Michael F. Colvin, Manager

**Middlefork Holdings, LLC, a Nevada limited  
liability company**



**By: Michael F. Colvin, Manager**

Michael F. Colvin, Manager

STATE OF NEVADA

} ss:

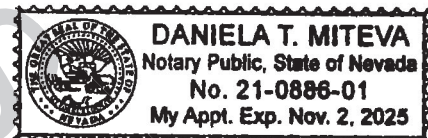
COUNTY OF CLARK

On SEPTEMBER 6, 2023  
appeared before me, a Notary Public, **Michael F. Colvin,**  
**as Manager of Colvin Industrial Property Group,**  
**LLC Series E and A,** personally known or proven to  
me to be the person(s) whose name(s) is/are  
subscribed to the above instrument, who  
acknowledged that he/she/they executed the  
instrument for the purposes therein contained.



Notary Public

My commission expires: 11-2-25





STATE OF NEVADA

}ss:

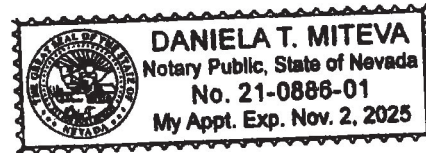
COUNTY OF CLARK

On SEPTEMBER 6, 2023  
appeared before me, a Notary Public, Michael F. Colvin,  
as Manager of Middlefork Holdings, LLC,  
personally known or proven to me to be the person(s)  
whose name(s) is/are subscribed to the above  
instrument, who acknowledged that he/she/they  
executed the instrument for the purposes therein  
contained.



Notary Public

My commission expires: NOV 2, 2025



**EXHIBIT "A"**

PARCEL 1: APN 161-07-103-014

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M. D. B. AND M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, AS DESIGNATED BY SURVEY MAP THEREOF ON FILE IN FILE 4, PAGE 97 OF REGISTERED PROFESSIONAL ENGINEERS FILE IN THE OFFICE OF THE COUNTY RECORDS OF CLARK COUNTY, NEVADA; THENCE NORTH 89° 43' WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, A DISTANCE OF 63.45 FEET TO A POINT; THENCE SOUTH 01° 10'50" EAST A DISTANCE OF 361.25 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 43' WEST A DISTANCE OF 120.58 FEET TO A POINT; THENCE SOUTH 01° 10'50" EAST A DISTANCE OF 167.45 FEET TO A POINT; THENCE SOUTH 89° 43' EAST A DISTANCE OF 120.58 FEET TO A POINT; THENCE NORTH 01° 10'50" WEST A DISTANCE OF 167.45 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE ABOVE LEGAL PREVIOUSLY APPEARED IN DOCUMENT RECORDED AUGUST 21, 2018 IN BOOK 20180821 AS INSTRUMENT NO. 000756, OFFICIAL RECORDS.

PARCEL 2: APN 161-07-103-015

THAT PORTION OF NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST M.D.B.&M., CLARK COUNTY, NEVADA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF FOUR MILE PARK AS THE SAME IS DESIGNATED BY SURVEY ON FILE IN FILE 1, PAGE 13, OF REGISTERED PROFESSIONAL ENGINEER'S FILE, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, THENCE SOUTH 1°10'50" EAST ALONG THE EAST LINE OF SAID FOUR MILE PARK A DISTANCE OF 284.2 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 1°10'50" EAST A DISTANCE OF 507.8 FEET TO A POINT; THENCE NORTH 88°49'10" EAST A DISTANCE OF 634.8 FEET TO A POINT; THENCE NORTH 52°31'30" WEST A DISTANCE OF 812.89 FEET TO TA TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND AS CONVEYED TO THE COUNTY OF CLARK BY DEED RECORDED AUGUST 05, 2002 IN BOOK 20020805 AS DOCUMENT NO. 001482, OFFICIAL RECORDS.

NOTE: THE ABOVE LEGAL PREVIOUSLY APPEARED IN DOCUMENT RECORDED AUGUST 16, 2018 IN BOOK 20180816 AS INSTRUMENT NO. 001376, OFFICIAL RECORDS.

PARCEL 3: APN 161-07-103-016

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, AS DESIGNATED BY SURVEY MAP THEREOF ON FILE IN FILE 4, PAGE 97 OF REGISTERED PROFESSIONAL ENGINEERS FILE IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA; THENCE NORTH 89°43' WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7 A DISTANCE OF 63.45 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 525.22 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°43' WEST A DISTANCE OF 120.58 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 69.70 FEET TO A POINT; THENCE SOUTH 26°43' WEST A DISTANCE OF 56.35 FEET TO A POINT; THENCE SOUTH 52°31'30" EAST A DISTANCE OF 124.45 FEET TO A POINT; THENCE NORTH 26°43' EAST A DISTANCE OF 106.33 FEET TO A POINT; THENCE NORTH 01°10'50" WEST A DISTANCE OF 100.19 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE ABOVE LEGAL PREVIOUSLY APPEARED IN DOCUMENT RECORDED AUGUST 15, 2017 IN BOOK 20170815 AS INSTRUMENT NO. 002262, OFFICIAL RECORDS.

PARCEL 3A:

AN EASEMENT ACROSS THE EASTERLY FIFTEEN (15) FEET OF:

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, AS DESIGNATED BY SURVEY MAP THEREOF ON FILE IN FILE 4, PAGE 97 OF REGISTERED PROFESSIONAL ENGINEERS FILE IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA; THENCE NORTH 89°43' WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7 A DISTANCE OF 63.45 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 361.25 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°3' WEST A DISTANCE OF 120.58 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 167.45 FEET TO A POINT; THENCE SOUTH 89°43' EAST A DISTANCE OF 120.58 FEET TO A POINT; THENCE NORTH 01°10'50" WEST A DISTANCE OF 167.45 FEET TO THE TRUE POINT OF BEGINNING.

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)
- a. 161-07-103-014
- b. 161-07-103-015
- c. 161-07-103-016

2. Type of Property:
- a. ☒ Vacant Land                      b. ☐ Single Fam. Res.
- c. ☐ Condo/Twnhse                      d. ☐ 2-4 Plex
- e. ☐ Apt. Bldg                              f. ☐ Comm'l/Ind'l
- g. ☐ Agricultural                          h. ☐ Mobile Home
- i. Other \_\_\_\_\_

**FOR RECORDERS OPTIONAL USE ONLY**

Book \_\_\_\_\_ Page \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property: \$ 1,000,000.00
- b. Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_
- c. Transfer Tax Value \$ 1,000,000.00
- d. Real Property Transfer Tax Due: \$ 5,100.00

4. **If Exemption Claimed**

- a. Transfer Tax Exemption, per NRS 375.090, Section \_\_\_\_\_
- b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity Grantor

Signature \_\_\_\_\_ Capacity Grantee

**SELLER (GRANTOR) INFORMATION**

**(REQUIRED)**

Print Name: Colvin Industrial Property Group, LLC  
Series E, a series of Colvin Industrial Property Group,  
LLC, a Nevada series limited liability company and  
Colvin Industrial Property Group, LLC - Series A, a  
Nevada series limited liability company and Middlefork  
Holdings, LLC, a Nevada limited liability company

Address: 7674 W. Lake Mead Blvd., Ste. 150

City: Las Vegas

State: NV

Zip: 89128

**BUYER (GRANTEE) INFORMATION**

**(REQUIRED)**

Print Name: Tonopah & Tidewater Railroad Co., a  
Nevada corporation

Address: 4680 N. Cimarron Rd.

City: Las Vegas

State: NV

Zip: 89129

**COMPANY/PERSON REQUESTING RECORDING (Required if not Seller or Buyer)**

Print Name: Fidelity National Title Group

Escrow No.: 42054616-420-KS1

Address: 6385 S Rainbow Blvd, Suite 130

City, State, Zip: Las Vegas, NV 89118

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# Exhibit 2

**ENTITY INFORMATION**

**ENTITY INFORMATION**

**Entity Name:**

TONOPAH & TIDEWATER RAILROAD CO.

**Entity Number:**

C18165-2004

**Entity Type:**

Domestic Corporation (78)

**Entity Status:**

Active

**Formation Date:**

07/09/2004

**NV Business ID:**

NV20041526496

**Termination Date:**

**Annual Report Due Date:**

7/31/2024

**Compliance Hold:**

**REGISTERED AGENT INFORMATION**

**Name of Individual or Legal Entity:**

KATHERINE TRUMAN

**Status:**

Active

**CRA Agent Entity Type:**

**Registered Agent Type:**

Non-Commercial Registered Agent

**NV Business ID:**

**Office or Position:**

**Jurisdiction:**

**Street Address:**

4680 N. CIMARRON RD, LAS VEGAS, NV, 89129, USA

**Mailing Address:**

**OFFICER INFORMATION**

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Secretary	KATHERINE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	03/01/2021	Active
Treasurer	KATHERINE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	03/01/2021	Active
President	JAKE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	06/17/2020	Active
Director	JAKE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	06/17/2020	Active

Page 1 of 1, records 1 to 4 of 4

**CURRENT SHARES**

Class/Series	Type	Share Number	Value
	Authorized	75,000	1.000000000000

Page 1 of 1, records 1 to 1 of 1



Number of No Par Value Shares:

**0**

Total Authorized Capital:

**75,000**

[Filing History](#)

[Name History](#)

[Mergers/Conversions](#)

[Return to Search](#)

[Return to Results](#)



# Exhibit 3

formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 24, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-21977 Filed 9-29-04; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34547]

#### **Tonopah & Tidewater Railroad Co.— Lease and Operation Exemption—Pan Western Corporation**

Tonopah & Tidewater Railroad Co. (TTRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail line owned by Pan Western, extending from milepost 0.0 to milepost 2.66 in Clark County, NV. Pan Western intends to lease the railroad line to TTRR so that TTRR may initiate and provide common carrier rail operations on and over the

line. TTRR will become a Class III rail carrier. TTRR certifies that its projected revenues are not expected to exceed those of a Class III rail carrier or \$5 million annually.

The transaction was due to be consummated on or after September 9, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34547, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Jeffrey O. Moreno, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036-1601.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 22, 2004.

By the Board, David M. Konschnick,  
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04-21981 Filed 9-29-04; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### **Office of Research and Development; Government Owned Invention Available for Licensing**

**AGENCY:** Office of Research and Development, VA.

**ACTION:** Notice of Government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Mindy L. Aisen, Department of Veterans Affairs, Acting Director,

Technology Transfer Program, Office of Research and Development (12TT), 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202-254-0473; e-mail at [mindy.aisen@mail.va.gov](mailto:mindy.aisen@mail.va.gov). Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is: PCT Patent Application No. PCT/US03/25189 "Touch Screen Applications for Outpatient Process Automation"

Dated: September 22, 2004.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 04-21919 Filed 9-29-04; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### **Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Leavenworth, KS**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of intent to enter into an enhanced-use lease.

**SUMMARY:** The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 50 acres at the Dwight D. Eisenhower VA Medical Center in Leavenworth, Kansas. The selected lessee will finance, redevelop, manage, maintain and operate a mixed-use development that would provide services and accommodations relating to affordable senior housing, long-term care, long-term housing for veterans, transitional housing with supportive services for veterans, and educational and community support facilities on the site, at no cost to VA.

#### **FOR FURTHER INFORMATION CONTACT:**

Malinda D. Pugh, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8192.

**SUPPLEMENTARY INFORMATION:** 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely

# Exhibit 4

a. The Task Force Chairman may establish working groups to perform specific assignments with the approval of the Designated Federal Official. The Chairman may designate members from either the Task Force or the public to serve on working groups. The Working Group Chair will be a Task Force member. Recording or videotaping of working group meetings may only be performed by the sponsor, Designated Federal Official, or their designee.

b. Any recommendations to the Department by working groups must be approved by the Task Force as a whole.

15. *Filing Date:* October 27, 2006, is the filing date and the effective date of this Charter which will expire in 2 years from this filing date, unless sooner terminated or extended.

*Conclusion:* The first meeting of the National Safe Routes to School Task Force to the Secretary of Transportation will be held on January 11, 2007, from 8:30 a.m. to 5 p.m., e.t. at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

(Authority: Section 1404(h) of Pub. L. 109–59; Pub. L. 92–463, 5 U.S.C., App. II § 1.)

Issued on: December 7, 2006.

**J. Richard Capka,**

*Federal Highway Administrator.*

[FR Doc. E6–21226 Filed 12–13–06; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34958]

#### Nevada Pacific Railroad Corporation—Lease and Operation Exemption—Rail Lines of Pan Western Corporation

Nevada Pacific Railroad Corporation (NPRC),<sup>1</sup> a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail line owned by Pan Western, extending between milepost 0.0, and milepost 2.66, in Clark County, NV.<sup>2</sup> Pan Western

intends to lease the railroad line to NPRC so that NPRC may initiate and provide common carrier rail operations on and over the line.

NPRC certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier or \$5 million annually. The transaction was scheduled to be consummated on or about November 21, 2006, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34958, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Dated: December 7, 2006.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6–21174 Filed 12–13–06; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, January 9, 2007, at 9:30 a.m. Central Time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, January 9, 2007, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, PO Box 3205, Milwaukee, WI 53201, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various IRS issues

Dated: December 7, 2006.

**John Fay,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6–21227 Filed 12–13–06; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday January 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, January 17, 2007, from 2 p.m. Pacific Time to 3:30 p.m. Pacific Time via a telephone conference call.

<sup>1</sup> The verified notice of exemption was originally filed under the name UP Nevada Railroad LLC. However, the Union Pacific Railroad Company objected to this name as a violation of its trademarks. Accordingly, by letters filed November 20, and November 22, 2006, counsel addressed issues relating to the identity and name of the Applicant in this proceeding and in the latter letter, requested that Nevada Pacific Railroad Corporation be substituted as the Applicant.

<sup>2</sup> This line was the subject of a notice of exemption that, according to the current verified notice, was never consummated. See *Tonopah & Tidewater Railroad Co.—Lease and Operation Exemption—Pan Western Corporation*, STB Finance Docket No. 34547 (STB served Sept. 30, 2004).

# Exhibit 5

## **COMMERCIAL LEASE AGREEMENT**

**THIS LEASE (this "Lease") dated this 1st day of September, 2023**

**BETWEEN:**

**Tonopah & Tidewater Railroad of 2596 Stratford Ave  
Telephone: (702) 348-6370  
(the "Landlord")**

**OF THE FIRST PART**

**- AND -**

**ETON of 3426 Losee Rd, North Las Vegas, NV 89030, USA  
Telephone: (702) 851-1743  
(the "Tenant")**

**OF THE SECOND PART**

**IN CONSIDERATION OF** the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

### **Definitions**

- 1. When used in this Lease, the following expressions will have the meanings indicated:**
  - a. "Additional Rent" means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;**
  - b. "Building" means the Lands together with all buildings, improvements, equipment, fixtures, property and facilities from time to time thereon, as from time to time altered, expanded or reduced by the Landlord in its sole discretion;**
  - c. "Common Areas and Facilities" mean:**
    - i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are**

- not designated or intended by the Landlord to be leased to tenants of the Building including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Building; and
- ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;
- d. "Lands" means the land legally described as:
    - i. 16107103015, 16107103016, 16107103014;
  - e. "Leasable Area" means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined, calculated and certified by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements;
  - f. "Premises" means the commercial premises at 2956 Stratford Ave, Las Vegas, NV 89121, USA;
  - g. "Rent" means the total of Base Rent and Additional Rent.

## **Intent of Lease**

- 2. It is the intent of this Lease and agreed to by the Parties to this Lease that rent for this Lease will be on a gross rent basis meaning the Tenant will pay the Base Rent and any Additional Rent and the Landlord will be responsible for all other service charges related to the Premises and the operation of the Building save as specifically provided in this Lease to the contrary.

## **Leased Premises**

- 3. The Landlord agrees to rent to the Tenant the commercial premises municipally described as 2956 Stratford Ave, Las Vegas, NV 89121, USA (the "Premises").

**The Premises will be used for only the following permitted use (the "Permitted Use"):**  
**Truck parking.**

- 4. While the Tenant, or an assignee or subtenant approved by the Landlord, is using and occupying the Premises for the Permitted Use and is not in default under the Lease, the Landlord agrees not to Lease space in the Building to any tenant who will be conducting in such premises as its principal business, the services of: Truck parking.**

## **Term**

- 5. The term of the Lease commences at 12:00 noon on September 1, 2023 and ends at 12:00 noon on December 31, 2023(the "Term").**
- 6. Should the Tenant remain in possession of the Premises with the consent of the Landlord after the natural expiration of this Lease, a new tenancy from month to month will be created between the Landlord and the Tenant which will be subject to all the terms and conditions of this Lease but will be terminable upon either party giving one month's notice to the other party.**
- 7. Upon 30 days' notice, the Landlord may terminate the tenancy under this Lease if the Tenant has defaulted in the payment of any portion of the Rent when due.**
- 8. Upon 60 days' notice, the Landlord may terminate the tenancy under this Lease if the Tenant fails to observe, perform and keep each and every of the covenants, agreements, stipulations, obligations, conditions and other provisions of this Lease to be observed, performed and kept by the Tenant and the Tenant persists in such default beyond the said 60 days' notice.**

## **Rent**

- 9. Subject to the provisions of this Lease, the Tenant will pay a base rent of \$10,000.00, payable per month, for the Premises (the "Base Rent"), without setoff, abatement or deduction. In addition to the Base Rent, the Tenant will pay for any fees or taxes arising from the Tenant's business.**
- 10. The Tenant will pay the Base Rent on or before the first of each and every month of the Term to the Landlord.**
- 11. No acceptance by the Landlord of any amount less than the full amount owed will be taken to operate as a waiver by the Landlord for the full amount or in any way to defeat or affect the rights and remedies of the Landlord to pursue the full amount.**



## **Use and Occupation**

12. The Tenant will open the whole of the Premises for business to the public fully fixtured, stocked and staffed on the date of commencement of the Term and throughout the Term, and will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined from time to time by the Landlord.
13. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.
14. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with any statute, including any subordinate legislation, which is in force now or in the future and taking into account any amendment or re-enactment, or any government department, local authority, other public or competent authority or court of competent jurisdiction and of the insurers in relation to the use, occupation and enjoyment of the Building (including in relation to health and safety compliance with the proper practice recommended by all appropriate authorities).

## **Quiet Enjoyment**

15. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

## **Distress**

16. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as Rent, or any part of the Rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.

## **Overholding**

17. If the Tenant continues to occupy the Premises without the written consent of the Landlord after the

expiration or other termination of the Term, then, without any further written agreement, the Tenant will be a month-to-month tenant at a minimum monthly rental equal to twice the Base Rent and subject always to all of the other provisions of this Lease insofar as the same are applicable to a month-to-month tenancy and a tenancy from year to year will not be created by implication of law.

## **Additional Rights on Reentry**

**18. If the Landlord reenters the Premises or terminates this Lease, then:**

- a. notwithstanding any such termination or the Term thereby becoming forfeited and void, the provisions of this Lease relating to the consequences of termination will survive;**
- b. the Landlord may use such reasonable force as it may deem necessary for the purpose of gaining admittance to and retaking possession of the Premises and the Tenant hereby releases the Landlord from all actions, proceedings, claims and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith or consequential thereupon;**
- c. the Landlord may expel and remove, forcibly, if necessary, the Tenant, those claiming under the Tenant, and their effects, as allowed by law, without being taken or deemed to be guilty of any manner of trespass;**
- d. in the event that the Landlord has removed the property of the Tenant, the Landlord may store such property in a public warehouse or at a place selected by the Landlord, at the expense of the Tenant. If the Landlord feels that it is not worth storing such property given its value and the cost to store it, then the Landlord may dispose of such property in its sole discretion and use such funds, if any, towards any indebtedness of the Tenant to the Landlord. The Landlord will not be responsible to the Tenant for the disposal of such property other than to provide any balance of the proceeds to the Tenant after paying any storage costs and any amounts owed by the Tenant to the Landlord;**
- e. the Landlord may relet the Premises or any part of the Premises for a term or terms which may be less or greater than the balance of the Term remaining and may grant reasonable concessions in connection with such reletting including any alterations and improvements to the Premises;**
- f. after reentry, the Landlord may procure the appointment of a receiver to take possession and collect rents and profits of the business of the Tenant, and, if necessary to collect the rents and profits the receiver may carry on the business of the Tenant and take possession of the personal property used in the business of the Tenant, including inventory, trade fixtures, and furnishings, and use them in the business without compensating the Tenant;**

- g. after reentry, the Landlord may terminate the Lease on giving 5 days' written notice of termination to the Tenant. Without this notice, reentry of the Premises by the Landlord or its agents will not terminate this Lease;**
- h. the Tenant will pay to the Landlord on demand:**

  - i. all rent, Additional Rent and other amounts payable under this Lease up to the time of reentry or termination, whichever is later;**
  - ii. reasonable expenses as the Landlord incurs or has incurred in connection with the reentering, terminating, reletting, collecting sums due or payable by the Tenant, realizing upon assets seized; including without limitation, brokerage, fees and expenses and legal fees and disbursements and the expenses of keeping the Premises in good order, repairing the same and preparing them for reletting; and**
  - iii. as liquidated damages for the loss of rent and other income of the Landlord expected to be derived from this Lease during the period which would have constituted the unexpired portion of the Term had it not been terminated, at the option of the Landlord, either:**

    - i. an amount determined by reducing to present worth at an assumed interest rate of 12% per annum all Base Rent and estimated Additional Rent to become payable during the period which would have constituted the unexpired portion of the Term, such determination to be made by the Landlord, who may make reasonable estimates of when any such other amounts would have become payable and may make such other assumptions of the facts as may be reasonable in the circumstances; or**
    - ii. an amount equal to the Base Rent and estimated Additional Rent for a 6months.**

## **Inspections and Landlord's Right to Enter**

- 19. During the Term and any renewal of this Lease, the Landlord and its agents may enter the Premises to make inspections or repairs. Except where the Landlord or its agents consider it an emergency, the Landlord will provide the Tenant with written notice 24 hours prior to entering.**

## **Insurance**

- 20. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. The Tenant is advised that, if insurance coverage is desired by the Tenant, the Tenant should inquire of Tenant's insurance agent regarding a Tenant's policy of insurance.**

21. Both the Landlord and the Tenant is responsible for insuring the Landlord's contents and furnishings in or about the Premises for either damage or loss for the benefit of the Landlord.
22. Both the Landlord and the Tenant is responsible for insuring their respective interests and property in the Premises for damage or loss for the benefit of the Tenant and the Landlord. Such insurance should include such risks as fire, theft, vandalism, flood and disaster.
23. Both the Landlord and the Tenant is responsible for insuring the Premises for liability insurance for the benefit of the Tenant and the Landlord.

## **Abandonment**

24. If at any time during the Term, the Tenant abandons the Premises or any part of the Premises, the Landlord may, at its option, enter the Premises by any means without being liable for any prosecution for such entering, and without becoming liable to the Tenant for damages or for any payment of any kind whatever, and may, at the Landlord's discretion, as agent for the Tenant, relet the Premises, or any part of the Premises, for the whole or any part of the then unexpired Term, and may receive and collect all rent payable by virtue of such reletting, and, at the Landlord's option, hold the Tenant liable for any difference between the Rent that would have been payable under this Lease during the balance of the unexpired Term, if this Lease had continued in force, and the net rent for such period realized by the Landlord by means of the reletting. If the Landlord's right of reentry is exercised following abandonment of the premises by the Tenant, then the Landlord may consider any personal property belonging to the Tenant and left on the Premises to also have been abandoned, in which case the Landlord may dispose of all such personal property in any manner the Landlord will deem proper and is relieved of all liability for doing so.

## **Governing Law**

25. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Nevada, without regard to the jurisdiction in which any action or special proceeding may be instituted.

## **Severability**

26. If there is a conflict between any provision of this Lease and the applicable legislation of the State of Nevada (the 'Act'), the Act will prevail and such provisions of the Lease will be amended or deleted as

necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

### **Assignment and Subletting**

27. The Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises, nor grant any license or part with possession of the Premises or transfer to any other person in whole or in part or any other right or interest under this Lease (except to a parent, subsidiary or affiliate of the Tenant), without the prior written consent of the Landlord in each instance, which consent will not be unreasonably withheld so long as the proposed assignment or sublease complies with the provisions of this Lease.
28. Notwithstanding any assignment or sublease, the Tenant will remain fully liable on this Lease and will not be released from performing any of the terms, covenants and conditions of this Lease.
29. If the Lease is assigned or if the Premises or any part of the Premises are sublet or occupied by anyone other than the Tenant, the Landlord may collect rent directly from the assignee, subtenant or occupant, and apply the net amount collected, or the necessary portion of that amount, to the rent owing under this Lease.
30. The prohibition against assigning or subletting without the consent required by this Lease will be constructed to include a prohibition against any assignment or sublease by operation of law.
31. The consent by the Landlord to any assignment or sublease will not constitute a waiver of the necessity of such consent to any subsequent assignment or sublease.

### **Bulk Sale**

32. No bulk sale of goods and assets of the Tenant may take place without first obtaining the written consent of the Landlord, which consent will not be unreasonably withheld so long as the Tenant and the Purchaser are able to provide the Landlord with assurances, in a form satisfactory to the Landlord, that the Tenant's obligations in this Lease will continue to be performed and respected, in the manner satisfactory to the Landlord, after completion of the said bulk sale.

### **Care and Use of Premises**

33. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.
34. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable

opinion of the Landlord, disturbs the comfort or convenience of other tenants.

- 35. The Tenant will not engage in any illegal trade or activity on or about the Premises.
- 36. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

### **Surrender of Premises**

- 37. At the expiration of the lease term, the Tenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

### **Hazardous Materials**

- 38. The Tenant will not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on the Premises or that might be considered hazardous by any responsible insurance company.

### **Rules and Regulations**

- 39. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

### **General Provisions**

- 40. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease will not operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Landlord's rights in respect of any subsequent default or breach.
- 41. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.
- 42. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recoverable by the Landlord as rental arrears.
- 43. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.

44. Time is of the essence in this Lease.
45. This Lease will constitute the entire agreement between the Landlord and the Tenant. Any prior understanding or representation of any kind preceding the date of this Lease will not be binding on either party to this Lease except to the extent incorporated in this Lease. In particular, no warranties of the Landlord not expressed in this Lease are to be implied.

**IN WITNESS WHEREOF** the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this 28st day of August, 2023.

Shauna M. Wier

(Witness)

Tonopah & Tidewater Railroad (Landlord)

Per: [Signature] (SEAL)

Shauna M. Wier

(Witness)

ETON (Tenant)

Per: [Signature] (SEAL)

# Exhibit 6





## LOCAL NEWS

## Tanks on Trains: Why so many were in Las Vegas

Military equipment from Fort Hood in Texas moves through Las Vegas for troops training at Fort Irwin in California. (Photos: Instagram @LeroyNotCenkins)

by: [Duncan Phenix](#)

Posted: Mar 14, 2022 / 05:51 PM PDT

Updated: Mar 15, 2022 / 12:41 PM PDT

SHARE



**LAS VEGAS (KLAS)** — Dozens of tanks, armored personnel carriers, troop transport vehicles, Bradley fighting vehicles, and much more were recently seen in downtown Las Vegas and around the valley. All of them loaded onto rail cars being hauled to somewhere from somewhere.

Many people posted videos on social media, wondering what was happening. Given the similar scenes coming out of western Russia, some found it troubling as it prepared to invade Ukraine. 8 News Now found an answer.



For anyone who has been around the valley and Southern California for a while knows, there is a strong military presence. In Las Vegas, there is Nellis Air Force Base and the National Guard with equipment. Across the state line in Southern California, there is the Marine Corps Logistics Base Barstow, Fort Irwin, and Edwards Air Force Base, to name a few.



These installations often move equipment, including tanks, by rail through Las Vegas; this was exactly what happened last week.

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Military equipment from Fort Hood in Texas moves through Las Vegas for troops training at Fort Irwin in California. (Photos: Instagram @LeroyNotCenkins)



Military equipment from Fort Hood in Texas moves through Las Vegas for troops training at Fort Irwin in California. (Photos: Instagram @LeroyNotCenkins)



According to a spokesperson with Fort Irwin, the Army was doing a routine movement of equipment from Fort Irwin to Fort Hood in Texas. Currently, soldiers from Fort Hood are at Fort Irwin for training. The spokesperson said these troop training and equipment rotations happen during at least 10 out of the 12 months a year.

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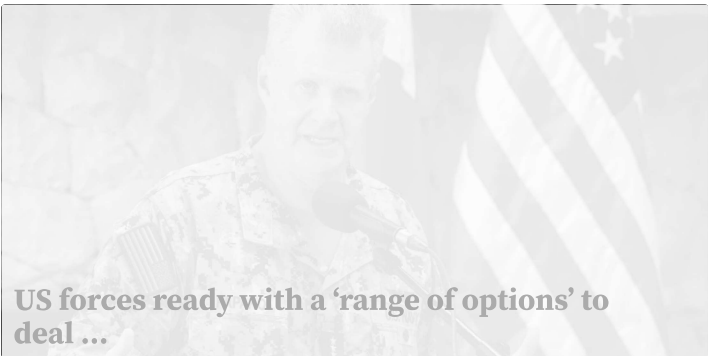
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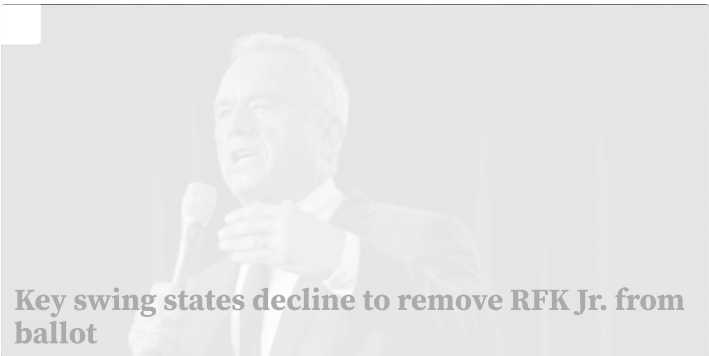
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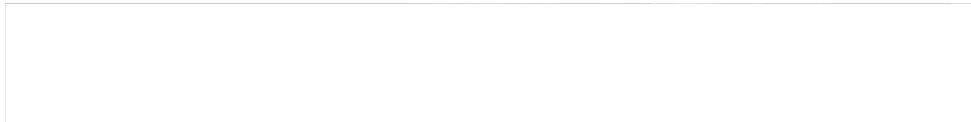


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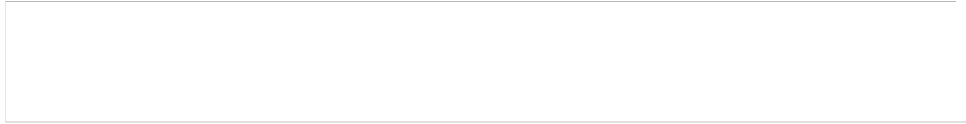
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## WHAT DO YOU THINK?



Which party will control the House of Representatives after the 2024 general election?

- ☐ Republicans
- ☐ Democrats
- ☐ It's a toss-up
- ☐ Other / No opinion

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# Exhibit 7

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
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[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF MITCHELL  
TRUMAN IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Mitchell Truman, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I am a manager of the rail operation for the Tonopah & Tidewater Railroad Co. (the "Railroad Co."), owner of the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property")

3. The Railroad Co. is the owner of rails, but uses the Property as one of its facilities and yards, in the assistance of its business of moving goods across state lines, in interstate commerce.

4. In the furtherance of Railroad Co.'s federally assigned duties to maintain safe railroad service, the Railroad co. bought a Caterpillar D9L with a serial # of 7G426. A true and correct cop of the invoice for the purchase of the D9N, is attached hereto as Exhibit A.


5. This tracked bulldozer is kept in the ready mode for immediate deployment at the Property, 24 hours a day, 7 days a week, in the event of a rail derailment, to open up rail service. A true and correct photograph, showing that the D9L is kept at the Property, is attached hereto as Exhibit B.

6. It is impractical to pave the Property as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property.

7. On or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an "inspection." However, at no time on these dates (or before) did either Rowsell or Crandall present or attempt to present any credentials, showing that they were officers with Air Quality.

Further, Declarant saith naught.

DATED: September 4, 2024

 9-4-24  
\_\_\_\_\_  
Mitchell Truman

# Exhibit 7A

**PAID IN FULL**

Invoice #:	19617
Date:	4/28/2023
Page:	1

**SOLD TO:** # 144521  
 Moe Truman  
 3426 Losee Rd North  
 Las Vegas, NV 89030  
 Phone: 702-632-2931

moe@eton.me; crs@eton.me; kathy@eton.me  
 5/9 Made a WT today for 100,000 will make another tomorrow for 11,000.  
 5/8 Had problem rec'vg email. Will send wire in next day or two. kre  
 5/5 EM Payment Reminder CM  
 E-Mailed on 4/28/2023 to moe@eton.me  
 E-Mailed on 5/5/2023 to moe@eton.me  
 E-Mailed on 5/5/2023 to moe@eton.me  
 E-Mailed on 5/5/2023 to moe@eton.me  
 E-Mailed on 5/5/2023 to moe@eton.me  
 E-Mailed on 5/7/2023 to moe@eton.me, crs@eton.me, kathy@eton.me  
 E-Mailed on 5/8/2023 to moe@eton.me, crs@eton.me, kathy@eton.me

Lot#	INVENTORY# - DESCRIPTION	QUANTITY UNIT PRICE	EXTENDED PRICE
20	51657 - 2022 Agrotk 680 Hydraulic Hammer  Location: Washougal Washington ***Unused Manufacturer Consignment*** S/N: SSHH68022110202 2 Bits, 2.7" Bit Diameter, 585 Joule Impact Energy, 400 - 700 BPM, 9.5 - 16 gpm Working Flow, 1/2" Hydraulic Hose, Tool Kit, Nitrogen Charge Kit, To Fit 40-80hp Skidsteer Loader	1 x 1,600.00	1,600.00 T .
		Buyer's Premium -	160.00 T .
		Internet Service Fee -	40.00 T .
23	52642 - 2023 Agrotk PD680-PZ Hydraulic Post Driver  Location: Washougal Washington ***Unused Manufacturer Consignment*** To Fit Skidsteer Loader	1 x 1,500.00	1,500.00 T .
		Buyer's Premium -	150.00 T .
		Internet Service Fee -	37.50 T .
99	53192 - 1974 Caterpillar 613 Elevating Motor Scraper  Location: Boring Oregon ***End-User Consignment*** S/N: 71M2852 Engine: Caterpillar 1160 Diesel OROPS, Paddle Wheel, 23.5-25 Tires, *This item is located in Boring, Oregon and can be viewed by appointment only. To schedule	1 x 12,000.00	12,000.00 .

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
 Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224

**PAID IN FULL**

Invoice #:	19617
Date:	4/28/2023
Page:	2

#144521 Moe Truman

Lot#	INVENTORY# - DESCRIPTION	UNIT PRICE	EXTENDED PRICE
	a preview or to ask questions about this item call 888-230-8840 *		
		Buyer's Premium -	1,200.00 . .
		Internet Service Fee -	300.00 . .
113	52038 - 1985 Caterpillar D9L Crawler Dozer	1 x 77,500.00	77,500.00 . T
	Location: Spokane Washington		
	***End-User Consignment***		
	S/N: 4Y031156		
	Engine: Caterpillar 3412 Diesel Transmission: 3 Speed		
	4-Way 16' U-Blade, EROPS, Cab, CB Radio, 4-Barrel Multi-Shank		
	Ripper w/2 Shanks, 24" Single Bar Tracks, *Hydraulic Leak*, *Ripper		
	Shanks & Blade Tips Were Removed For Transportation but Come		
	With the Unit*, **Per Seller work done - Ripper Contol Valve & Track		
	Link Assembly @ 4993 Hours, Complete Undercarriage &		
	Reseal/Rerod Bklade Lift Cylinders @2226 Hours, New Hydraulic Oil		
	Cooler @ 3477 Hours, Re-seal Blade Lift Cylinders @ 4601 Hours**		
	Hours: 6,125		
		Buyer's Premium -	7,750.00 . T
		Internet Service Fee -	750.00 . T
	Total Quantity: 4.00		
	Total Extended Price: 92,600.00		
	0% Buyer's Premium: 0.00		
	Buyer's Premium: 9,260.00		
	Internet Service Fee: 1,127.50		
	Tax1 Washougal, WA (8.5%) 0606: 296.44		
	Tax2 Spokane City, WA 3210 (9.0%): 7,740.00		
	Invoice Total: \$111,023.94		
	wire Transfer PAR 230509024277 kre - 5/9/2023 - 100,000.00		
	wire Transfer PAR 230510018702 kre - 5/10/2023 - 11,023.94		
	Remaining Invoice Balance: \$0.00		

All items must be removed from the auction site by 7 days from the sale date or storage fees will be charged per the terms of the sale.

I acknowledge that all sales are "As Is, Where Is" with no warranties or guarantees and that no sale shall be invalidated; nor shall the auctioneers be liable as a result of inaccuracies of description, condition or defect of any item being sold.



**PAID IN FULL**

Invoice #:	19617
Date:	4/28/2023
Page:	3

**WIRE TRANSFER INSTRUCTIONS**

Please send wires to : C/o:  
J. Stout Auctions US Bank  
520 S. 28th Street 16415 SE McGillivray Blvd.  
Washougal, WA 98671 Vancouver WA 98683

Routing # 125000105 Account # 153568618240

Please reference your Buyer # and Invoice #

**Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671**

**Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224**

**Portland Retail Sale Center: 12841 NE Whitaker Way, Portland, OR 97230**

**\* (888) 230-8840 \* [www.jstoutauction.com](http://www.jstoutauction.com)**

**UNPAID**

Invoice #:	19617
Date:	4/28/2023
Page:	1

# 144521

SOLD TO:

Moe Truman  
3426 Losee Rd North  
Las Vegas, NV 89030  
Phone: 702-632-2931

moe@eton.me, crs@eton.me, kathy@eton.me

5/5 EM Payment Reminder CM

E-Mailed on 4/28/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/7/2023 to moe@eton.me, crs@eton.me, kathy@eton.me

Lot#	INVENTORY# - DESCRIPTION	QUANTITY UNIT PRICE	EXTENDED PRICE
20	51657 - 2022 Agrotk 680 Hydraulic Hammer  Location: Washougal Washington ***Unused Manufacturer Consignment*** S/N: SSHH68022110202 2 Bits, 2.7" Bit Diameter, 585 Joule Impact Energy, 400 - 700 BPM, 9.5 - 16 gpm Working Flow, 1/2" Hydraulic Hose, Tool Kit, Nitrogen Charge Kit, To Fit 40-80hp Skidsteer Loader Receipt # 22-5103	1 x 1,600.00	1,600.00 T .
		Buyer's Premium -	160.00 T .
		Internet Service Fee -	40.00 T .
23	52642 - 2023 Agrotk PD680-PZ Hydraulic Post Driver  Location: Washougal Washington ***Unused Manufacturer Consignment*** To Fit Skidsteer Loader Receipt # 23-1033	1 x 1,500.00	1,500.00 T .
		Buyer's Premium -	150.00 T .
		Internet Service Fee -	37.50 T .
99	53192 - 1974 Caterpillar 613 Elevating Motor Scraper  Location: Boring Oregon ***End-User Consignment*** S/N: 71M2852 Engine: Caterpillar 1160 Diesel OROPS, Paddle Wheel, 23.5-25 Tires, *This item is located in Boring, Oregon and can be viewed by appointment only. To schedule a preview or to ask questions about this item call 888-230-8840 *, Receipt # offsite	1 x 12,000.00	12,000.00 . .
		Buyer's Premium -	1,200.00 . .

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224



**UNPAID**

Invoice #:	19617
Date:	4/28/2023
Page:	2

#144521 Moe Truman

Lot#	INVENTORY# - DESCRIPTION	UNIT PRICE	EXTENDED PRICE
		-----	-----
		Internet Service Fee -	300.00 . .
		-----	-----
113	52038 - 1985 Caterpillar D9L Crawler Dozer	1 x 77,500.00	77,500.00 . T
	Location: Spokane Washington		
	***End-User Consignment***		
	S/N: 4Y031156		
	Engine: Caterpillar 3412 Diesel Transmission: 3 Speed		
	4-Way 16' U-Blade, EROPS, Cab, CB Radio, 4-Barrel Multi-Shank		
	Ripper w/2 Shanks, 24" Single Bar Tracks, *Hydraulic Leak*, *Ripper		
	Shanks & Blade Tips Were Removed For Transportation but Come		
	With the Unit*, **Per Seller work done - Ripper Control Valve & Track		
	Link Assembly @ 4993 Hours, Complete Undercarriage &		
	Reseal/Rerod Blade Lift Cylinders @2226 Hours, New Hydraulic Oil		
	Cooler @ 3477 Hours, Re-seal Blade Lift Cylinders @ 4601 Hours**		
	Hours: 6,125		
		Buyer's Premium -	7,750.00 . T
		-----	-----
		Internet Service Fee -	750.00 . T
		-----	-----
		Total Quantity:	4.00
		Total Extended Price:	92,600.00
		0% Buyer's Premium:	0.00
		Buyer's Premium:	9,260.00
		Internet Service Fee:	1,127.50
		Tax1 Washougal, WA (8.5%) 0606:	296.44
		Tax2 Spokane City, WA 3210 (9.0%):	7,740.00
		Invoice Total:	\$111,023.94
		Remaining Invoice Balance:	\$111,023.94

All items must be removed from the auction site by 7 days from the sale date or storage fees will be charged per the terms of the sale.

I acknowledge that all sales are "As Is, Where Is" with no warranties or guarantees and that no sale shall be invalidated; nor shall the auctioneers be liable as a result of inaccuracies of description, condition or defect of any item being sold.

Signature

Date

## WIRE TRANSFER INSTRUCTIONS

Please send wires to :

C/o:

J. Stout Auctions

US Bank

Washougal Sale Center &amp; Corporate Office: 520 S. 28th St. Washougal, WA 98671

Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224



**UNPAID**

Invoice #:	19617
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520 S. 28th Street  
Washougal, WA 98671

16415 SE McGillivray Blvd.  
Vancouver WA 98683

Routing # 125000105    Account # 153568618240

Please reference your Buyer # and Invoice #

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224  
Portland Retail Sale Center: 12841 NE Whitaker Way, Portland, OR 97230  
\* (888) 230-8840 \* [www.jstoutauction.com](http://www.jstoutauction.com)

# Secure Message Center

## Invoice: Auction 248 - 144521 - Invoice# 19617

moe@eton.me

**Received:** May 8, 2023 8:35 AM  
**Expires:** May 22, 2023 8:35 AM  
**From:** kari@jstoutauction.com  
**To:** moe@eton.me, crs@eton.me, kathy@eton.me  
**Cc:**  
**Subject:** Invoice: Auction 248 - 144521 - Invoice# 19617

**Attachments:**  Invoice\_19617.pdf

This message was sent securely using Zix

**\*\*Read below to avoid delays - Updated Payment & Pickup Instructions\*\***

### PAYMENT INSTRUCTIONS:

-  
Payment is due in full by end of day on May 4<sup>th</sup>. Failure to pay by this date will result in automatic late fees added to your balance due. We CANNOT release ANY items until payment is received and you receive a "Paid in Full" Invoice. Your items **MUST** be removed from the auction location by May 12<sup>th</sup> by scheduling a PICKUP APPOINTMENT. Failure to pick up by this date will result in storage charges, that are due before removal of your items.

### Payment Methods:

Credit/Debit cards. We can process only \$5,000 per card. To use your card, complete the Credit Card Authorization Form attached and email it back to this same email address. The name on the credit card must match the name on the invoice. There is a 3% charge for paying by credit card.

Wire Transfer. Bank account and routing numbers are at the end of your invoice. Please include your invoice number on the wire transfer. Note: your bank might charge a fee for wire transfers. We recommend that you call us to verify the account information before sending wire.

079

**Bank Deposit.** Go to any US Bank and deposit funds by cash with exact change, check or cashier's check. Our bank account information is located at the end of the invoice.

**Cashier's, Personal or Business Check Deposits:** Your deposit will not be posted until the funds have cleared the bank, including cashier's checks. This could take 1 to 3 business days.

**Cash Deposits :** Please bring exact change, the bank does not give cash back. U.S. Bank may ask for personal information along with your government issued photo ID. Cash payments will be posted the following business day.

**WE DO NOT ACCEPT CASH ONSITE.**

**WE DO NOT ACCEPT CHECKS, OR MONEY ORDERS OF ANY KIND ONSITE.**

**SALES TAX:**

-  
Sales tax is added to all invoices for items located in Washington or any other state locations where sales tax is charged. You must pay the sales tax based on where you take possession of your items. Unless you provide documentation that proves you hold a status of tax exempt.

**Resellers :**

Provide your state Reseller Permit or Resale Certificate and/or Dealer License.

Your business name on your invoice must match your resale documentation.

Provide a statement indicating what items on your invoice are for resale.

Non-Resident businesses will need to complete a Washington approved tax exempt form.

**Other Tax Exemptions:**

Notify us if you are exempt from tax for any other reason.

Provide tax exemption form for review. You may be required to complete an additional state approved form.

J. Stout Auctions holds the right to refuse tax exemption without the appropriate state approved documentation.

**Non-Residents:**

Once yearly, you can request a refund of a portion of your Washington state tax you paid from the Washington DOR website here: <https://dor.wa.gov/file-pay-taxes/apply-tax-refund/state-sales-tax-refund-qualified-nonresidents>

If you are having your items shipped to you, your transport company can provide us with a bill of lading (BOL)/Export documentation that shows the items being delivered, for a tax rate adjustment.

The BOL must show the pickup and delivery address and a description of the item(s) being shipped.

The BOL must include a verifiable Motor Carrier (MC) # or USDOT #.

If J. Stout Auctions has Nexus in the state in which you are having your item(s) delivered, we will adjust the tax to the delivery location tax rate. Note: If the tax rate is higher this will increase your total amount due.

WE DO NOT PROVIDE/CREATE BOLs ; that is for the shipping company to provide to the buyer or J. Stout Auctions.

**PICKUP:**

**PICK UP HOURS: Monday – Friday from 8am – 4pm**

Once J. Stout receives your payment in full, you will receive a “paid in full” receipt that you will need to take with you to pick up your items. You CANNOT pick up your items without a paid in full receipt.

When you get your receipt, please email back a requested appointment day and time and Tanya will put you on our schedule. Or you can call our main line at 888-230-8840.

We will provide you with a gate release upon scheduling an appointment for offsite locations. Please bring your paid in full receipt when picking up your items.

Please pay close attention to the OFFSITE PICKUP INSTRUCTIONS described in your Lot description on your invoice. There may be different deadlines, etc. We have multiple offsite locations in this auction.

J. Stout Auctions does not provide shipping. Shipping/Transport is the sole responsibility of the buyer.

**\*\* MAKE SURE YOUR SHIPPER KNOWS YOUR FULL NAME AND INVOICE NUMBER AS A REFERENCE UPON PICK UP\*\***

**\*\*We do not have the supplies or resources to package or ship your materials. Any pallets you may see in the pictures are for pictures only and may not be included with your items\*\***

Thank you for your business.

If you cannot open the attached file you will need to download the Adobe Acrobat Reader from:  
<http://get.adobe.com/reader/>

This message was secured by Zix®.

Secured by **zix** This service is hosted by Zix on behalf of JSTOUT Auction More Information

# Exhibit 7B







# Exhibit 8





## Compliance

CONTACT US <<https://epa.gov/compliance/forms/contact-us-about-compliance>>

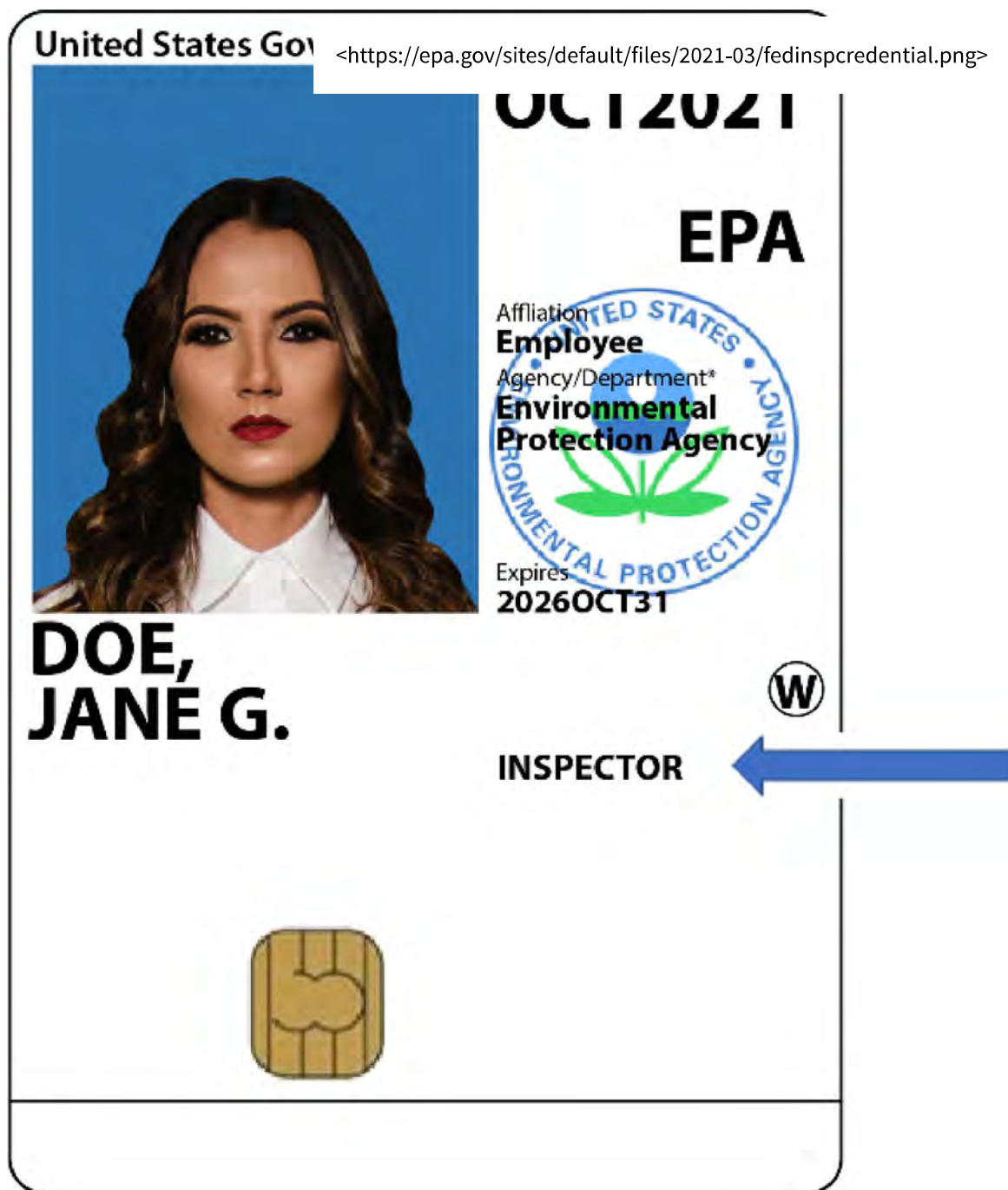
# What is an EPA Inspector Credential?

EPA Inspector credentials may be issued to federal EPA employees, employees of other federal agencies, contractors, senior environmental employees, states, tribes, territories, and local governments who are authorized by EPA to conduct inspections or investigations and take samples on EPA's behalf under the various federal environmental statutes.

## Federal EPA Inspector Credentials

Federal EPA inspector credentials include an "inspector" designation in the center of the badge.

# Federal EPA Inspector Credential



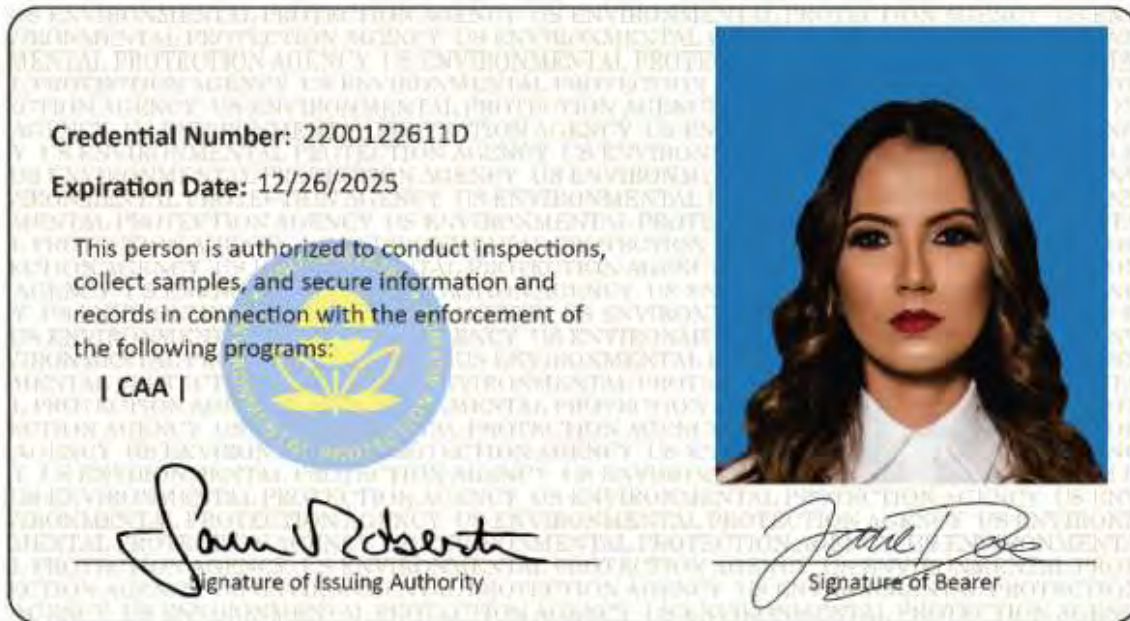
# Non-Federal EPA Inspector Credentials

EPA Inspector credentials issued to non-federal employees are laminated and often carried in bifolds. They have a hologram of the EPA emblem and a statute specific designation on them. Inspector credentials issued to non-federal employees include the following codes to designate the inspector's affiliation:

- **St** (State)
- **Tr** (Tribe)
- **Te** (Territory)
- **SE** (Senior Environmental Employee or SEE)
- **Co** (Contractor)

## 2-Piece Laminated Non-Federal EPA Inspector Credential





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[Compliance Home <https://epa.gov/compliance>](https://epa.gov/compliance)

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[How We Monitor Compliance <https://epa.gov/compliance/how-we-monitor-compliance>](https://epa.gov/compliance/how-we-monitor-compliance)

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**Compliance Monitoring Programs** <<https://epa.gov/compliance/compliance-monitoring-programs>>

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**CAA** <<https://epa.gov/compliance/clean-air-act-caa-compliance-monitoring>>

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**CERCLA** <<https://epa.gov/compliance/superfund-cercla-compliance-monitoring>>

---

**CWA** <<https://epa.gov/compliance/clean-water-act-cwa-compliance-monitoring>>

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**FIFRA** <<https://epa.gov/compliance/federal-insecticide-fungicide-and-rodenticide-act-compliance-monitoring>>

---

**RCRA** <<https://epa.gov/compliance/resource-conservation-and-recovery-act-rcra-compliance-monitoring>>

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**SDWA** <<https://epa.gov/compliance/safe-drinking-water-act-compliance-monitoring>>

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**TSCA** <<https://epa.gov/compliance/toxic-substances-control-act-tsca-compliance-monitoring>>

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**Good Laboratory Practices (GLP)** <<https://epa.gov/compliance/good-laboratory-practices-standards-compliance-monitoring-program>>

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**State Review Framework** <<https://epa.gov/compliance/state-review-framework>>

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**NPDES Electronic Reporting** <<https://epa.gov/compliance/npdes-ereporting>>

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**Compliance Assistance Centers** <<https://epa.gov/compliance/compliance-assistance-centers>>

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**National Enforcement Training Institute (NETI)** <<https://epa.gov/compliance/national-enforcement-training-institute-neti>>

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**Resources and Guidance Documents** <<https://epa.gov/compliance#resources>>

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**Compliance Assistance** <<https://epa.gov/compliance/resources-and-guidance-documents-compliance-assistance>>

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**Compliance Monitoring** <<https://epa.gov/compliance/resources-and-guidance-documents-compliance-monitoring>>

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**State Oversight** <<https://epa.gov/compliance/state-oversight-resources-and-guidance-documents>>

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Contact Us <<https://epa.gov/compliance/forms/contact-us-about-compliance>> to ask a question, provide feedback, or report a problem.

LAST UPDATED ON OCTOBER 25, 2023

**Assistance** <<https://epa.gov/lep/assistance>>

مساعدة <<https://epa.gov/lep/assistance#ar>>

幫助 (繁體版)

<<https://epa.gov/lep/assistance#chi-tr>>

**Asistans** <<https://epa.gov/lep/assistance#hc>>

**Assistância**

<<https://epa.gov/lep/assistance#port>>

**Tulong** <<https://epa.gov/lep/assistance#tag>>

**Ayuda** <<https://epa.gov/lep/assistance#esp>>

幫助 (簡體版)

<<https://epa.gov/lep/assistance#chi-s>>

**Aide** <<https://epa.gov/lep/assistance#fr>>

지원 <<https://epa.gov/lep/assistance#kor>>

Помощь <<https://epa.gov/lep/assistance#rus>>

Trợ Giúp <<https://epa.gov/lep/assistance#viet>>



## Discover

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### Hotlines

<<https://epa.gov/aboutepa/epa-hotlines>>

## EPA www Web Snapshot

<<https://epa.gov/utilities/wwwepagov-snapshots>>

## Grants

<<https://epa.gov/grants>>

## No FEAR Act Data

<<https://epa.gov/ocr/whistleblower-protections-epa-and-how-they-relate-non-disclosure-agreements-signed-epa>>

## Plain Writing

<<https://epa.gov/web-policies-and-procedures/plain-writing>>

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<<https://epa.gov/privacy>>

## Privacy and Security Notice

<<https://epa.gov/privacy/privacy-and-security-notice>>

## Regulations.gov



<<https://www.regulations.gov/>>

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## USA.gov



<<https://www.usa.gov/>>

## White House



<<https://www.whitehouse.gov/>>

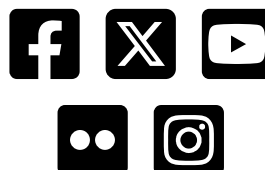
## FOIA Requests

<<https://epa.gov/foia>>

## Frequent Questions

<<https://epa.gov/home/frequent-questions-specific-epa-programstopics>>

## Follow.



# Exhibit 9











# Exhibit 10

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF JOE MILLER  
IN SUPPORT OF RESPONSE TO  
NOTICE OF VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Joe Miller, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.
2. I received my engineering credentials from the University of Minnesota.
3. I have worked for the following Construction companies in Las Vegas,  
Nevada

- a. Ames Construction
- b. Frehner Construction
- c. Agg Industries.

4. I have been involved in all aspect of soil stabilization for over 20 years in while I managed project Clark County.

5. Six inches of roto milling is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act.

6. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black top is not a viable palliative, and roto milling is the only viable dust palliative.

7. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property").

8. Professionally, the roto milling on the Property is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act.

Further, the Declarant saith naught.

DATED: September 5, 2024

  
\_\_\_\_\_  
Joe Miller

# Exhibit 11

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF PAUL HARBER  
IN SUPPORT OF RESPONSE TO  
NOTICE OF VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Paul Harber, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I was a principal for the construction company, Harbor Company, which has been in business since 1995.

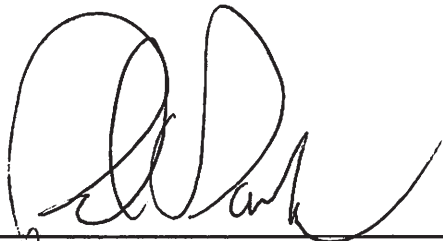
3. Based on my years in construction in the Las Vegas Valley, I am under the opinion that roto milling meets or exceeds the requirement as a comparable palliative for dust abatement, particularly when there is track equipment operating on the property.

4. Black top is not a viable palliative when there is track equipment operating on the property. Roto milling is the only viable dust palliative when there is track equipment operating on the property.

5. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property"), which is covered with roto milling, and meets the requirements as a comparable palliative for dust abatement.

Further, Declarant saith naught.

DATED: 9/5/2024

  
\_\_\_\_\_  
Paul Harber



# Exhibit 12

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF DAVID M  
MCDONOUGH IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, David M. McDonough, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I am the president of Aztech Materials Testing, Inc., located at 4700 Cooper Sage St A, Las Vegas, NV 89115.

3. I am an accredited tech in material testing for the State of Nevada.
4. I have personally performed material testing for the following governmental agencies: Department of Defense, Nevada Department of Transportation, United States Bureau of Reclamation, Clark County, City of Las Vegas, and many others.
5. As an accredit tech, for a property to be used for parking trucks, I can tell no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling.
6. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property"), which is covered with roto milling, and meets the requirements as an adequate comparable palliative for dust abatement.
7. Further, Declarant saith naught.

DATED: September 5, 2024

  
David M. McDonough

# Exhibit 13

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF FLOYD  
MELDRUM IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Floyd Meldrum, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I graduated from the University of Utah with a degree in Engineering, and received my wet stamp as an engineer in 1963 in the State of Utah.

3. I was the owner of a construction and engineering company called Southern Nevada Paving, Inc. (“SNP”) from 1964 until 2009.

4. I am familiar with roto milling, as it is a palliative that is more than adequate to suppress fugitive dust for a trucking or rail yard.

5. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the “Property”), which is covered with roto milling.

6. It is my professional opinion, as an engineer, that roto milling will allow the Property to be in compliance with the Clean Air Act. Similarly, roto milling is a recycled material that works just as well as asphalt for tracked equipment.

7. By requiring the Property to be paved with asphalt, as opposed to roto milling, Clark County will create more air pollution from its activities. The following required items are needed to make virgin asphalt (all of which are activities that release CO2 into the atmosphere, require additional water to stop dust, and/or wash the material to have it prepared to make asphalt):

- a. Mining the rock;
- b. Fuel manufacturing to prepare fuel for the quarry equipment;
- c. Transportation of the fuel to the paving yard;
- d. Power generation to move the fuel from the refinery to the local fuel terminal;
- e. Transportation of the rock by haul trucks from the quarry site to the crusher;
- f. Generator to power the crushing equipment.

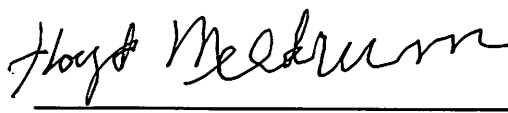
- g. Fuel usage to move the material by a loader to and around the plant;
- h. Fuel usage to transport the asphalt oil to the hot plant;
- i. Fuel usage to transfer the asphalt oil from the refiner to the local terminal;
- j. Fuel usage to heat the plant to heat the rock to allow the asphalt oil to adhere to the rock;
- k. Fuel usage for the hot asphalt to be delivered to the site.
- l. Fuel usage for the laydown machine to lay the asphalt.

8. If it is necessary, I can figure out the CO2 emissions that are generated for a ton of asphalt to show the increase in global warming to which the County is contributing.

9. As an engineer, I am concerned that Clark County would want paving for trucking lots, instead of roto milling. I believe that Air Quality Management's insistence on paving a parking lot in this application is a short-sighted practice, as this is not the best practice, when the use of a recycled material will meet the need, while reducing CO1 emissions.

Further, Declarant saith naught.

DATED: September 4, 2024

  
\_\_\_\_\_  
Floyd Meldrum

ST 3  
2024

# Exhibit 14



Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
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[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:	NOV #10078
ETON TRANSPORTATION CORP.,	Hearing Officer: Holly Fic
Respondent.	<b>DECLARATION OF MICHAEL MONTANDON IN SUPPORT OF RESPONSE TO NOTICE OF VIOLATION #10078</b>
	Date of Hearing: September 19, 2024
	Time of Hearing: 9:00 a.m.

---

I, Michael Montandon, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I was the Mayor of the City of North Las Vegas from 1997-2009.

3. While I was Mayor, NLV was a proponent of using roto millings for a dust palliative for several reasons: (1) roto milling worked to keep dust reduced to more than

acceptable limits; (2) NLV found that roto millings produced less of a heat load back into the atmosphere than black-top paving, and as a result, kept our neighborhoods around the property with roto millings cooler; (3) the use of roto millings kept the product from going to the land fill; and (4) for the companies in NLV with tracked equipment, roto millings provide a way to keep the dust reduced to acceptable limits, while not destroying the black top.

Further, Declarant saith naught.

DATED: September 5, 2024



---

Michael Montandon

# Exhibit 15

# Boulder City Railroad

Search OpenWeb

Property Information

Parcel: 18608398001

Jurisdiction: Boulder City - 89005

Sale Date: Not Available

Sale Price: Not Available

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

filter owners...

Parcel

Owners

Recorded Document

Recorded Date

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft

X: 870871 Y: 26692123

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 1,000

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Print



113

# Clark County Aviation



Search OpenWeb

Property Information

Parcel: 17706301025

Owner Name(s): COUNTY OF CLARK(AVIATION)

Jurisdiction: CC Enterprise - 89118

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 16.23

Recorded Doc Number: 19940204 00000080

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 767472 Y: 26725869

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 1,000

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An aerial photograph showing a large, mostly empty lot outlined in purple. The lot is situated next to a large, multi-story industrial building with a grey roof. To the left of the lot is a parking lot filled with several white vehicles. The surrounding area appears to be a mix of developed and undeveloped land, with some trees and other structures visible in the background. The image is part of a web application interface, as evidenced by the sidebar on the left and the bottom status bar.

OpenWeb v4.3.5

100ft

115

# Clark County Owned Property



Search OpenWeb

×

Q

Property Information

Parcel: 17706101003

Owner Name(s): COUNTY OF CLARK(PUBLIC WORKS)

Site Address: 0

Jurisdiction: CC Enterprise - 89118

Sale Date: 01/1999

Sale Price: \$370,000

Estimated Lot Size: 3.12

Recorded Doc Number: 20070320 00003077

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft

X: 768347 Y: 26727640

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 2,000

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Print

An aerial photograph showing a large, undeveloped lot outlined in pink. The lot is situated between a residential area with several houses and a large parking lot on the left, and a multi-lane highway on the bottom. The lot itself is mostly bare earth with some sparse vegetation and a few small structures or vehicles visible near the highway. The surrounding area includes various commercial and residential buildings, parking lots, and roads.

117

# Dodge Commercial Rail Line



Property Information

Parcel: 14006110005  
Owner Name(s): DODGE COMMERCIAL HOLDINGS L L C  
Site Address: 4611 MITCHELL ST  
Jurisdiction: North Las Vegas - 89081  
Sale Date: 01/2003  
Sale Price: \$1,007,500  
Estimated Lot Size: 3.63  
Construction Year: 1997  
Recorded Doc Number: 20130509 00001803  
Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property  
Coords in State Plane ft  
X: 800030 Y: 26791061  
Flight Date: Most Current Flight  
Current View: Aerial Imagery Only  
1: 500

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# Eastgroup Properties



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Q

Property Information

Parcel: 16230801001

Owner Name(s): EASTGROUP PROPERTIES L P

Site Address: 5580 ARVILLE ST

Jurisdiction: CC Paradise - 89118

Sale Date: 05/2009

Sale Price: \$11,050,000

Estimated Lot Size: 9.39

Construction Year: 1998

Recorded Doc Number: [20090527 00003654](#)

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft. ▼

X: 769954 Y: 26734837

Flight Date: Most Current Flight

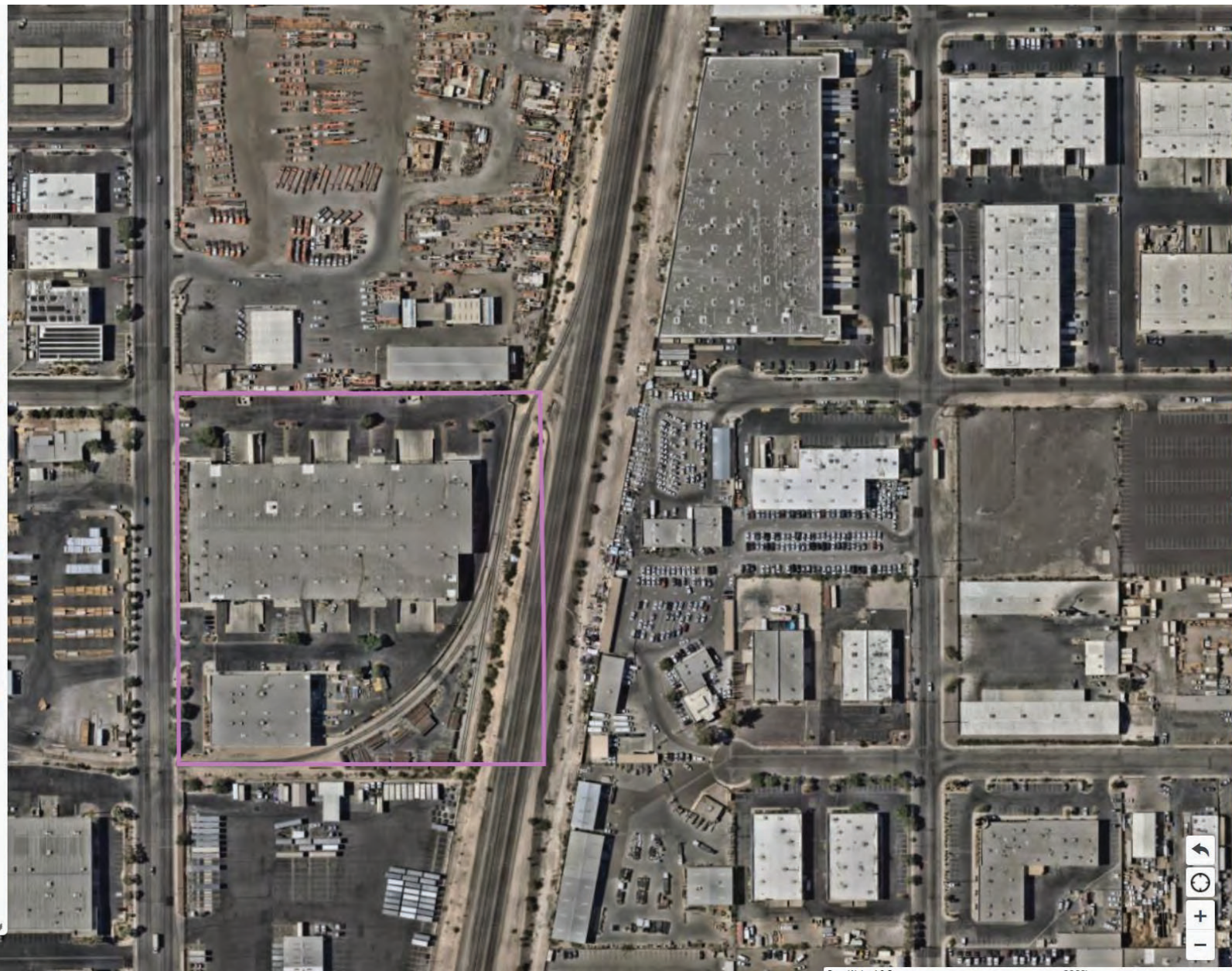
Current View: Aerial Imagery Only

1: 2,000

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# Hidden Valley Rails LLC



Search OpenWeb

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Q

Property Information

Parcel: 03132801005

Owner Name(s): HIDDEN VALLEY RAIL L L C

Site Address: 0

Jurisdiction: CC Moapa - 89025

Sale Date: 04/2013

Sale Price: \$900,000

Estimated Lot Size: 32.87

Recorded Doc Number: [20220811 00001471](#)

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 937173 Y: 26946826

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 1,000

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Print

An aerial photograph of a desert landscape. A winding road or path cuts through the sandy terrain, which is dotted with small, dark shrubs. A prominent purple line is drawn across the map, following a curved path that likely delineates a property boundary. In the bottom right corner, there is a vertical toolbar with icons for navigation and a scale bar indicating 100 feet. The text 'OpenWeb v4.3.5' is visible in the bottom right corner of the map area.

123

# JR Simplot



Search OpenWeb

×

Property Information

Parcel: 07130601001

Owner Name(s): SIMPLOT J R CO

Site Address: 1551 S MOAPA VALLEY BLVD

Jurisdiction: CC Moapa Valley - 89040

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 17.62

Construction Year: 1953

Recorded Doc Number: 00001843 01802463

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft

X: 996191 Y: 26891958

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 500

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# Lhoist North America





# Nevada Ready Mix



☰

Search OpenWeb

✕ 🔍

📌 Property Information

Parcel: 16230701009

Owner Name(s): NEVADA READY MIX CORPORATION

Site Address: 4301 WHACIENDA AVE

Jurisdiction: CC Paradise - 89118

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 2.45

Recorded Doc Number: 1990122100001362

Aerial Flight Date: []

🏠 Zoning and Planned Land Use

📄 Legal Description

👤 Ownership

💧 Flood Zone

👥 Elected Officials

🔗 Links

🛠️ Current Tool: Select Property

📍 Coords in State Plane ft. ▾

X: 770283 Y: 26735773

📅 Flight Date: Most Current Flight

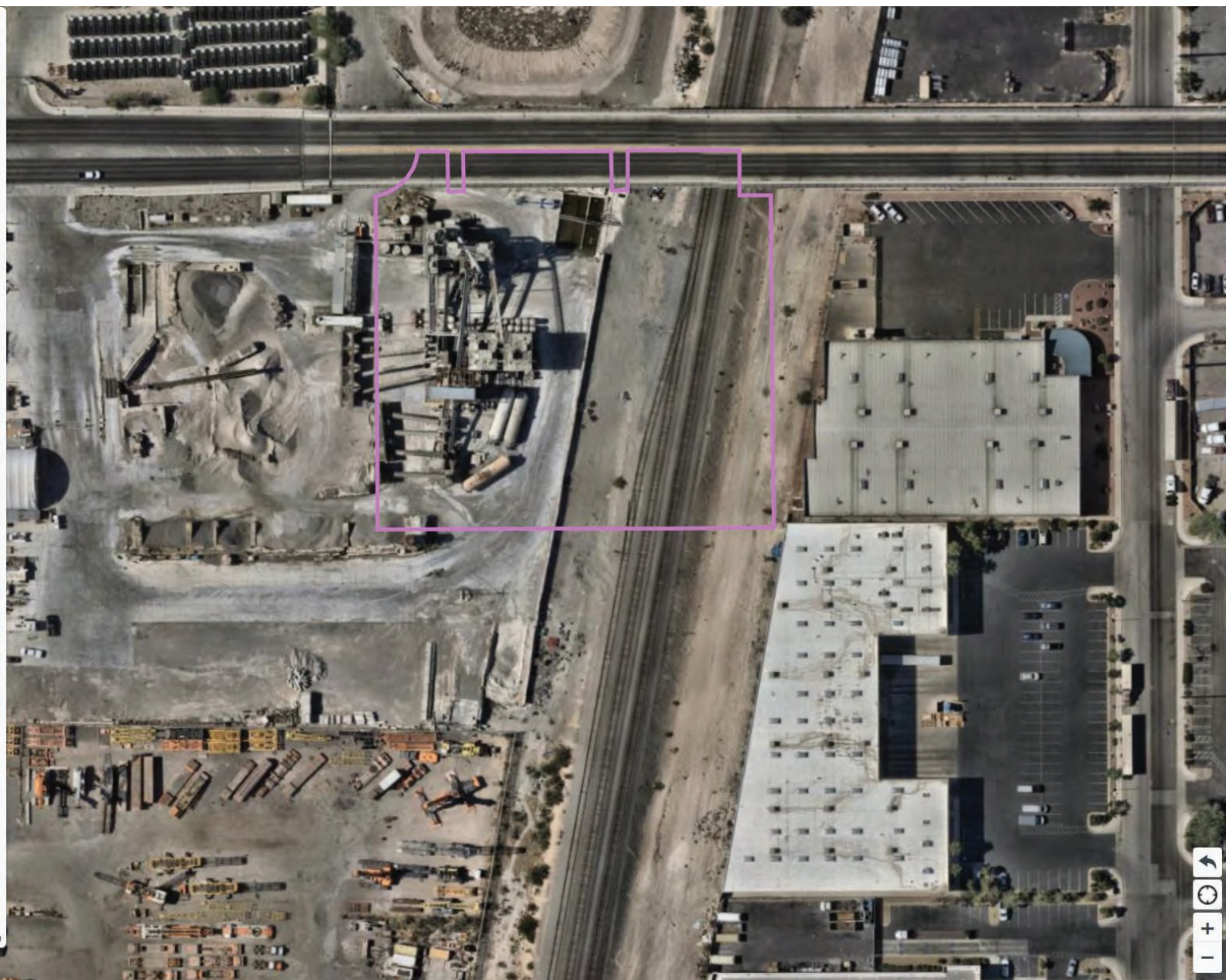
👁️ Current View: Aerial Imagery Only

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# Oil Terminal



Search OpenWeb

Property Information

Parcel: 16231698001

Jurisdiction: CC Paradise - 89118

Sale Date: Not Available

Sale Price: Not Available

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 771570 Y: 26731276

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 1,000

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Print

An aerial photograph of an industrial or commercial area. The scene includes several large, rectangular industrial buildings with flat roofs, some with multiple stories. There are extensive parking lots filled with cars and trucks. A railway line with multiple tracks runs diagonally across the middle of the image. To the right, there are large, cylindrical storage tanks and other industrial structures. A pink line is drawn across the image, starting from the top left and extending towards the bottom right. The bottom right corner of the image shows a scale bar indicating 100ft and the text 'OpenWeb v4.3.5'.

131

# Pabco Gypsum 1



Search OpenWeb

×

🔍

Property Information

Parcel:

14200001003

Owner Name(s):

PABCO BUILDING PRODUCTS L.L.C.

Site Address:

4001 STATE HWY 147

Jurisdiction:

CC Unincorporated - 89124

Sale Date:

Not Available

Sale Price:

Not Available

Estimated Lot Size:

639.2

Construction Year:

1964

Recorded Doc Number:

20031201 00003053

Aerial Flight Date:

[]

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool:

Select Property

Coords in

State Plane ft

▼

X:

864532

Y:

26785023

Flight Date:

Most Current Flight

Current View:

Aerial Imagery Only

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# Pabco Gypsum 2







# Pioneer Americas

Search OpenWeb

### Property Information

Parcel: 17813101012  
Owner Name(s): PIONEER AMERICAS LLC  
Site Address: 435 FOURTH ST  
Jurisdiction: CC.Unincorporated - 89015  
Sale Date: Not Available  
Sale Price: Not Available  
Estimated Lot Size: 214.3  
Construction Year: 1942  
Recorded Doc Number: [19871203 00000100](#)  
Aerial Flight Date: []

Print

### Zoning and Planned Land Use

### Legal Description

### Ownership

### Flood Zone

### Elected Officials

### Links

Current Tool: Select Property  
Coords in State Plane ft. v  
X: 823563 Y: 26718862  
Flight Date: Most Current Flight  
Current View: Aerial Imagery Only  
1: 5,000

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# Private Owner



☰

Search OpenWeb

✕ 🔍

📌 Property Information

Parcel: 16230501046

Owner Name(s): TASSAINER MINNIE

Site Address: 0

Jurisdiction: CC Paradise - 89118

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 1.5

Recorded Doc Number: 20170405 00000520

Aerial Flight Date: []

🏠 Zoning and Planned Land Use

📄 Legal Description

👤 Ownership

🌊 Flood Zone

🗳️ Elected Officials

🔗 Links

🛠️ Current Tool: Select Property

📍 Coords in State Plane ft ▾

X: 770180 Y: 26737639

📅 Flight Date: Most Current Flight

👁️ Current View: Aerial Imagery Only

1: 2,000

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🗑️



# Rockview Dairies



Search OpenWeb

Property Information

Parcel: 04202201002

Owner Name(s): ROCKVIEW DAIRIES INC

Site Address: 2055 E STATE HWY 168

Jurisdiction: CC Moapa - 89025

Sale Date: 04/2000

Sale Price: \$376,834

Estimated Lot Size: 5.04

Construction Year: 1973

Recorded Doc Number: [20000428 00001956](#)

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft

X: 950383 Y: 26943933

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 2,000

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An aerial photograph of a desert landscape. A property is outlined in a bright pink line. The property is situated between a dirt road to the north and a paved road to the south. To the east of the property is a multi-lane highway. The property itself contains several large, dark, cylindrical structures, possibly silos or storage tanks, and some smaller buildings. The surrounding area is arid with sparse vegetation and some scattered trees. The bottom right corner of the image shows the text "OpenWeb v4.3.5" and a scale bar indicating "200ft".

141

# Exhibit 16

# Elko Rail Yard



## TRANSLOAD FACILITIES

- [Auburn, Maine >](#)
- [Birmingham, Alabama >](#)
- [Bowbells, North Dakota >](#)
- [Brownsville, Texas >](#)
- [Butte, Montana >](#)
- [Cedar City, Utah >](#)
- [Chehalis, Washington >](#)
- [Denver, Colorado >](#)
- [Detroit, Michigan >](#)
- [Doraville, Georgia >](#)
- [DuBois, Pennsylvania >](#)
- [El Dorado, Kansas >](#)
- [Elko, Nevada >](#)**
- [Fernandina Beach, Florida >](#)
- [Greeley, Colorado >](#)
- [Hammond, Indiana >](#)
- [Junction City, Oregon >](#)
- [Los Angeles, California >](#)
- [Miami, Florida >](#)
- [New Stanton, Pennsylvania >](#)
- [Odessa, Texas >](#)
- [Pocatello, Idaho >](#)
- [Pocatello, Idaho Intermodal >](#)
- [Price, Utah >](#)
- [Rifle, Colorado >](#)
- [Rochester, New York >](#)
- [Salem, Oregon >](#)
- [Sayre, Pennsylvania >](#)
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## ELKO, NEVADA TRANSLOAD FACILITY



As the preferred storage and transportation hub for partners like Nevada Gold and Nevada Drilling, the Elko facility is a major player in the ground journey of valuable commodities such as sulphur, ammonium nitrate prill, concentrate, and cathodes, to name a few.

### RAIL SERVICES

- 60 railcar spots
- UP access
- Rail switching for industrial-served Customers

### TRANSLOAD SERVICES

- Rail-to-truck, truck-to-rail service
- Dry bulk transloading via conveyor
- Liquid bulk transportation
- Dimensional product handling
- Boxcar loading and unloading
- HAZMAT capable
- On-site boiler
- Trucking service available
- Certified truck scale

### INVENTORY MANAGEMENT

- Laydown space available upon request



**8852 E IDAHO ST  
ELKO, NV 89801**

[View Google Map >](#)

[Elko, NV Fact Sheet >](#)

[Transload Network Book >](#)

[CONTACT US >](#)

# Ely NV Rail Yard







# Fernly Rail Site





-25%

Deep Cycle Lithium Battery  
Sungoldpower Official

# Track expansion completed at Western Nevada Rail Park in Fernley



Industrial Realty Group in November 2020 purchased the Western Nevada Rail Park east of Fernley to construct a major railroad freight operations and commerce center site.

NNBW staff report

Tuesday, November 16, 2021

Discuss

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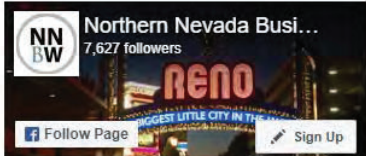
Email, Facebook, Twitter

Los Angeles-based Industrial Realty Group, LLC, recently announced it completed installation of an additional mile of rail track and improvements to the existing infrastructure at the 224-acre Western Nevada Rail Park site in Fernley.

With the new extension of 5,000 feet, the site now includes over 7,000 linear feet of track, according to a Nov. 1 press release.



NNBW on Facebook



# Fernly Oil Terminal





Search 40 assets

le Heart Trl

Dwight D. Eisenhower Hwy

Purple Heart Trl

Purple Heart Trl

Dwight D. Eisenhower Hwy

Logan Ln

Logan Ln

Logan Ln

E Front St

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Fremont St

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# Reno Rail Yard

# THE RENO-SPARKS TRANSLOAD FACILITY

Nexxt Logistics is a full-service transportation and distribution subsidiary of NEXXT Rail, LLC. We offer Rail and Truck Loading / Unloading and full Transloading services.



# Exhibit 17



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IN THIS SECTION



## Trespass Prevention

FRA works in partnership with railroads, state and local governments, and organizations to conduct outreach efforts to raise awareness about the inherent dangers and consequences of trespassing on railroad property—illegally entering or remaining on a railroad right-of-way. FRA also provides multiple resources to assist these stakeholders and the public to prevent trespassing.

### Trespassing Is Dangerous and Illegal

Trespassing is the leading cause of rail-related deaths in the United States. Nationally, more than 500 trespass fatalities occur each year. The number of trespassing occurrences on railroad property each year far exceeds the number of fatalities, which means the potential for more trespasser accidents.

It is illegal to access private railroad property anywhere other than a designated pedestrian or roadway crossing. Trespassers are most often pedestrians who walk across or along railroad tracks as a shortcut to another destination. Some trespassers are loitering or are engaged in recreational activities such as taking photographs, jogging, bicycling, hunting, or operating recreational off-highway vehicles (ROVs). Riding ROVs along railroad tracks leads to the erosion of an important part of the track foundation known as ballast, or the rock and soil material that supports the ties and rail. Damage to the ballast degrades the entire track structure and can lead to a train derailment—which can cause a hazardous materials spill or damage to other people and property.



### Always Expect a Train!

- Trains do not follow a set schedule, so they can come at any time of day from either direction.
- A train traveling at 55 miles per hour can take more than a mile to stop.
- Trains overhang railroad tracks by three feet or more on either side. Even when you are not standing directly on the tracks, you risk being hit by a train by being on railroad property.
- Despite their size, trains are relatively quiet and do not always sound warning horns when approaching a crossing.
- Never attempt to walk under, around, or between train cars, even when a train is at a complete stop.
- For more safety tips, view FRA's [I am a Pedestrian/Motorist](#) webpage.

### Community Trespass Prevention Program

The [Community Trespass Prevention Guide](#) is a program for local, state, and national partnerships aimed at reducing trespassing and its related injuries and deaths. The goal of the program is to create safer communities by fostering the development of long-term trespass prevention strategies through community problem-solving partnerships. The program incorporates a problem-solving model with a step-by-step approach for dealing with trespassing issues in communities.

### Trespass & Suicide Prevention Toolkit

FRA has an interactive resource, the [Trespass & Suicide Prevention \(TSP\) Toolkit](#), to identify effective strategies for trespass and suicide prevention and mitigation on the Nation's railroads. The TSP Toolkit is useful for individuals who work in railroad safety and for researchers, community members, suicide prevention groups, or other individuals or organizations with an interest in preventing trespassing and suicide.



### National Strategy to Prevent Trespassing on Railroad Property

FRA's National Strategy to Prevent Trespassing on Railroad Property is a 2018 Report to Congress that includes four strategic focus areas: data gathering and analysis, community site visits, funding, and partnerships with stakeholders.

Data gathering and analysis of trespass incidents and close calls enables FRA to target resources to trespassing "hot spots." Conducting community site visits helps FRA to learn more about the specific local circumstances that contribute to trespassing and work with partners to help implement and evaluate targeted mitigation strategies. Requesting and providing funding supports community-based efforts to deter trespassing. Finally, building strong and enduring partnerships with communities, law enforcement, railroads, and organizations with a shared interest in saving lives enables FRA to leverage and concentrate available resources, expertise, and local knowledge to reduce trespassing.

Click [here](#) to access the report.

## Resources

Expand All

Collapse All

Trespass Prevention Materials	▼
Rails With Trails	▼
Multimedia	▼
External Links	▼

Last updated: Friday, August 2, 2024

U.S. DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

1200 NEW JERSEY AVENUE, SE

WASHINGTON, DC 20590

202-366-4000

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Bipartisan Infrastructure Law

Safety Data  
Buy America  
Operation Lifesaver  
Railroad Safety Advisory Committee  
FRA Secure Area  
Proactive Disclosure

#### **I Am A...**

Railroad Traveler  
Reporter  
Educator/Student

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USA.gov  
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Web Policies and Notices  
Web Standards

# Exhibit 18

# Safety

## Trespassing

Railroads are private property. Trespassers are those who are on railroad property without permission. Trespassing along railroad rights-of-way is the leading cause of rail-related fatalities in America. Trespassers are most often pedestrians who walk across or along the railroad tracks as a shortcut, or are loitering or engaging in recreational activities. Trespassing on railroad property is a property crime and a general offense.



## Highway/Railway Crossings

A highway-railroad crossing is an intersection of railroad tracks and highway at the same grade level. It is critically important that drivers and pedestrians take special care at these crossings to ensure safety. The U.S. Department of Transportation offers the following steps for safety at highway/rail grade crossings:

- Approach with care
- Warn others that you are slowing down
- Turn on 4-way flashers
- Use pull-out lane if available
- Prepare to Stop
- Turn off fans and radio and roll down windows
- Be aware of the location of your cell phone for use in emergency
- Stop at least 15 feet, but not more than 50 feet from nearest rail
- Look and listen both ways, carefully
- Bend forward to see around mirrors and A-pillars
- If it won't fit, don't commit
- Trains extend beyond the width of the rails at least 3 feet on each side. Remember your vehicle – and cargo-overhang.
- Look again. Before you move, look again in both directions.
- Signal, watch for a safe gap, pull back onto the road if you used a pull-out lane
- Use the highest gear that will let you cross without shifting

## Operation Lifesaver

Operation Lifesaver's mission is to end collisions, deaths and injuries at highway-rail grade crossings and on rail property through a nationwide network of volunteers who work to educate people about rail safety.

### Larry Hamilton

Nevada Operation Lifesaver

600 Yucca Street

Boulder City, NV. 89005

(702) 286-3246

[real.larry.hamilton@gmail.com](mailto:real.larry.hamilton@gmail.com)



# Exhibit 19

[Skip to Main Content](#)



Nevada Governor Joe Lombardo

# Governor Sisolak Signs Executive Order Directing Administration to Collaborate on Achieving Nevada's Climate Goals

CARSON CITY, NV - November 22, 2019

Today, Governor Steve Sisolak signed Executive Order 2019-22 (EO) directing his administration, under the leadership of Director Bradley Crowell of the Nevada Department of Conservation and Natural Resources (DCNR) and Director David Bobzien of the Nevada Governor's Office of Energy (GOE), to collaborate with public, private, and tribal partners to help implement and accelerate cutting-edge solutions to advance the State of Nevada's ambitious climate goals.

The EO directs State of Nevada agencies to identify and evaluate policies and regulatory strategies to achieve the long-term goals of greenhouse gas emissions reductions, as required by Senate Bill 254 and in accordance with Nevada's commitments as a member of the US Climate Alliance. To help achieve these reduction targets, the administration, led by DCNR and GOE, will coordinate statewide efforts, including the facilitation of agency and stakeholder participation.

In addition to producing reports as required by Senate Bill 254, the Governor's administration will develop a State Climate Strategy, to be delivered by December 1, 2020, that will include recommendations to reduce carbon pollution from the electricity and transportation sectors, buildings, state operations, and other relevant sectors.

"This executive order will ensure Nevada continues to promote ambitious carbon-reduction standards that will help tackle the devastating impacts of climate change while creating good, high-paying jobs for Nevadans," **Gov. Steve Sisolak said.** "The impacts of climate change, and a job market that demands renewable energy and other clean technologies, are already here. For the sake of Nevada's future, and our children's future, we must take action."

"As the climate continues to warm, the science community has reported a significant increase in the severity and length of droughts and the frequency and intensity of wildfires," **DCNR Director Bradley Crowell said.** "With Nevada being the driest state in the nation, coupled with the risks and realities our State faces from climate change, smart climate solutions are critical to the long-term health and sustainability of our state. Under the Executive Order, we look forward to advancing strategies that reduce Nevada's climate footprint, promote clean energy, and foster a healthy and sustainable future for all."

"Pursuing these ambitious emissions reductions goals will require collaboration with local governments, tribal governments, businesses, and stakeholders from all across Nevada," **GOE Director David Bobzien said.** "This Executive Order provides the direction and framework for both combating climate change and realizing the economic opportunities of a decarbonized economy."

The Governor held the press conference at the Regional Transportation Commission of Washoe County, which has been a leader in investing in electric vehicle technology. The RTC was the first public agency in the State of Nevada to operate electric buses and added 17 to its fleet just last year.

The text of Executive Order 2019-22 is below:

## EXECUTIVE ORDER 2019-22 ORDER DIRECTING EXECUTIVE BRANCH TO ADVANCE NEVADA'S CLIMATE GOALS

**WHEREAS**, climate change poses a serious threat to Nevada's natural resources, public health, communities, and economy;

**WHEREAS**, on March 12, 2019, the State of Nevada joined the U.S. Climate Alliance and committed to supporting the United Nations Climate Goals established at the 2015 Paris Conference. The primary U.S. Climate Alliance goal is to reduce greenhouse gas emissions by at least 26-28 percent below 2005 levels by 2025;

**WHEREAS**, as part of the U.S. Climate Alliance, Nevada will implement policies to reduce greenhouse gas emission, track and report progress on its efforts to achieve greenhouse gas emission reduction goals, and accelerate new and existing policies to reduce carbon pollution and promote clean energy deployment;

**WHEREAS**, the State of Nevada's electricity generation portfolio consists of approximately two-thirds imported fossil fuels and there is opportunity for greater in-state production of renewable electricity resources;

**WHEREAS**, on April 22, 2019, Senate Bill 358 was signed into law raising Nevada's renewable portfolio standard to 50 percent by 2030;

**WHEREAS**, as of 2015, fossil fuel use in the transportation sector is now the largest greenhouse gas and carbon emitting sector in Nevada;

**WHEREAS**, on June 3, 2019, Senate Bill 254 was signed into law directing the Nevada Department of Conservation and Natural Resources (the "Department") to "not later than December 31, 2019, and each year thereafter, issue a report that includes an annual statewide inventory of greenhouse gas emissions in this State and a projection of annual greenhouse gas emissions in this State for the 20 years immediately following the date of the report;"

**WHEREAS**, the report required by Senate Bill 254 shall include an annual inventory and projection of greenhouse gas emissions from

**WHEREAS,** the report required by Senate Bill 254 shall include an annual inventory and projection of greenhouse gas emissions from the electricity production and transportation sectors, and it shall include an inventory and projection of greenhouse gas emissions every fourth year for the industry, commercial and residential, agriculture, and land use and forestry sectors;

**WHEREAS,** pursuant to Senate Bill 254, the report shall include a statement of policy options needed to reach the economy-wide greenhouse gas emission reduction goals called for in Senate Bill 254 of 28 percent below 2005 levels by 2025 and 45 percent below 2005 levels by 2030;

**WHEREAS,** Senate Bill 254 directs the Governor to “designate an entity or entities to consult with the Department and identify for the Department the policies required pursuant to paragraph (c) of subsection 2;”

**WHEREAS,** the statement of policy options required under SB 254 will be developed through consultation and coordination among applicable state agencies as established by this Executive Order and under the leadership and direction of the Department and the Governor’s Office of Energy with a focus on achieving greenhouse gas emission reductions in the areas of electricity production, transportation, industry, commercial and residential, agriculture, and land use and forestry;

**WHEREAS,** climate change poses significant threats to vulnerable communities who may lack the resources, geographic mobility, and technological expertise to adapt to changes, including pronounced threats to cultural resources, economic vitality, and the human health of all of Nevada’s communities and Indian tribes;

**WHEREAS,** Las Vegas, Nevada is the nation’s fastest warming city, with a temperature increase of 5.76 degrees Fahrenheit between 1970 and 2018, a trend posing significant impacts to public health and economic prosperity now and in the future;

**WHEREAS,** protection of Nevada’s iconic hunting, fishing, and outdoor recreation opportunities is critical to our heritage, quality of life, economy, and ability to attract and retain businesses in diverse industries;

**WHEREAS,** Nevada’s abundant solar, geothermal and wind renewable energy resources, along with a skilled and capable workforce, provide jobs and economic opportunities to Nevada families as a pillar of Nevada’s leadership in establishing a competitive clean energy and decarbonized economy;

**WHEREAS,** changing national and global market conditions demand that Nevada’s businesses seek pragmatic solutions to climate change that maintain competitiveness and create a stable investment environment;

**WHEREAS,** Nevada’s growing clean energy sector has driven economic diversification throughout the state leading to a nationwide leading annual growth of over 34 percent in clean energy jobs from 2017 to 2018, for a total of 32,311 clean energy jobs in Nevada as of 2018; and

**WHEREAS,** States have continued to lead on climate change, have taken state-level action that is benefitting state economies and strengthening communities, and are demonstrating leadership to the nation and the world that ambitious climate action is achievable and imperative.

**NOW, THEREFORE,** by the authority vested in me as Governor by the Constitution and laws of the State of Nevada and the United States, it is hereby ordered as follows:

**SECTION 1:** State agencies within the Executive branch of Nevada government shall collaborate, as applicable, to advance Nevada’s climate goals.

**SECTION 2:** The Director of the Department of Conservation and Natural Resources and the Director of the Governor’s Office of Energy shall coordinate the work of the state agencies through convening meetings, facilitating stakeholder participation, and providing strategic direction for meeting the goals and requirements as directed under the Executive Order.

**SECTION 3:** For purposes of fulfilling the requirements of Senate Bill 254, the Administrators or Directors (or designees) of the Public Utilities Commission of Nevada, the Department of Transportation, and the Department of Motor Vehicles shall participate as required under Section 2, subsection 3 of Senate Bill 254.

**SECTION 4:** The administration’s effort shall also include participation from representatives of the Department of Administration and the other state agencies as appropriate in fulfilling the requirements of Senate Bill 254. The administration will continue to work with its partners at the Nevada System of Higher Education to achieve the broader goals and objectives established under this Executive Order.

**SECTION 5:** The administration’s effort shall proceed in phases:

A. Phase 1 shall be completed by December 31, 2019 for purposes of finalizing the first annual report as required under Senate Bill 254. The report, as described in Senate Bill 254, shall include:

i. An annual report of Nevada’s greenhouse gas emission completed by the Nevada Division of Environmental Protection; and

ii. A statement of policy options completed by the appropriate state agencies as defined under Senate Bill 254 and included 163 in this Executive Order that could achieve reductions in projected greenhouse gas emissions by the sectors set forth under Section 2,

subsection 2(b) of Senate Bill 254.

B. Phase 2 shall build upon the work of Phase 1 and will culminate in a State Climate Strategy to be delivered to the Governor by December 1, 2020. The document shall include specific policy and budget recommendations to reduce greenhouse gas emissions and mitigate the effects of climate change as needed to meet the goals set forth under this Executive Order.

**SECTION 6:** The administration shall identify and evaluate policies and regulatory strategies, including but not limited to those identified pursuant to Senate Bill 254, to achieve reductions in greenhouse gas emissions, consistent with Nevada's commitment as a member of the U.S. Climate Alliance, across all categories of emission sources, and to further Nevada's resilience to climate change. Such policies and regulatory strategies shall include, but not be limited to, the following:

A. Comprehensive economy-wide or sector-specific programs to reduce carbon dioxide and other greenhouse gas pollution across Nevada, including market-based mechanisms that may be appropriate for Nevada's greenhouse gas emissions profile;

B. Support for transportation electrification and demand management, including infrastructure, fleet procurement, alternative funding mechanisms and other programs;

C. Building codes, and other programs to increase residential and commercial building energy efficiency; and

D. Enhancement of climate resiliency and mitigation of the impacts of climate change in urban and rural areas, including adoption of approaches to increase conservation, restoration and management of Nevada's forests, rangelands, and water resources.

**SECTION 7:** The administration shall prepare an agency risk assessment survey for all state agencies to identify and evaluate the potential impacts of climate change on their programs and operations, and to establish options for the integration of climate change mitigation and adaptation practices for their programs and operations.

**SECTION 8:** Each state agency shall prepare priority lists for building energy efficiency projects to be shared with the administration. The administration shall explore financing options and needed strategies for completion of these projects to achieve energy savings across state owned or leased buildings.

**SECTION 9:** The administration shall collaborate with local governments and tribal nations.

**SECTION 10:** The administration shall coordinate as much as possible with federal bureaus and agencies that manage land and natural resources in Nevada to help advance the priorities identified in the Executive Order.

**SECTION 11:** The administration shall consider the impact of proposed policies and programs on low-income and disadvantaged communities in Nevada.

**SECTION 12:** This order is effective upon signature and shall remain in effect until December 31, 2029 unless it is terminated earlier or extended beyond that date by subsequent Executive Order.

## Contact

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Ryan McNerney  
Communications Director  
[rmcinerney@gov.nv.gov](mailto:rmcinerney@gov.nv.gov)

## Attachments

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[Executive Order 2019-22 Directing Executive Branch to Advance Nevada's Climate Goals](#)

# EXHIBIT 20



(13)

**AGREEMENT TO CONVEY EASEMENT**

**THIS AGREEMENT TO CONVEY EASEMENT** (hereinafter referred to as "Agreement") is made and executed by and between **PAN WESTERN CORPORATION**, having its principal office at 4755 West University Avenue, Las Vegas, Nevada, hereinafter referred to as ("PWC"), and **LAS VEGAS PAVING CORPORATION**, having its principal office at 4420 S. Decatur Boulevard, Las Vegas, Nevada, hereinafter referred to as ("LVP").

**WITNESSETH:**

**WHEREAS**, PWC currently owns certain real property located in Clark county, Nevada (the legal description and assessor's parcel map of which are attached hereto as Exhibit "A" and "B", respectively, and made a part hereof and hereinafter referred to as "PWC's property"); and

**WHEREAS**, PWC has applied with Union Pacific Railroad, and has received the right to construct a railroad spur on PWC's property from the main railroad line, the construction thereof which is intended to begin in the near future, and a diagram thereof is attached hereto as Exhibit "C" and made a part hereof; and

**WHEREAS**, LVP currently owns certain real property contiguous with PWC's property (the legal description and assessor's parcel map of which are attached hereto as Exhibit "D" and "E", respectively, and made a part hereof, hereinafter referred to as "LVP's property"), and is desirous to, at some point in time in the future, connect to and continue from on LVP's property that portion of the railroad spur to be constructed by PWC (being at the common property boundary found at Point C on Exhibit "C"), and thereafter, to commonly use with PWC that portion of PWC's railroad spur to exist from the parties' common property line to the main line of Union Pacific Railroad (found at points AC on Exhibit "C").

**NOW THEREFORE**, in consideration of the sum of One Hundred Eighty Three Thousand Two Hundred Eighty Seven (\$183,287.00) Dollars, and other

consideration as hereinafter provided and reserved, and the mutual covenants, conditions and promises of the parties as herein stated, the parties hereto agree as follows:

1. PWC hereby agrees to grant and convey to LVP a permanent easement and right of way to use as means of ingress and egress to and from LVP's property and the Union Pacific main line, a certain portion of the railroad spur to be constructed and located on PWC's property, the same being more particularly described as that portion of PWC's railroad spur to be constructed and designated as Points AC on Exhibit "C", attached hereto and made a part hereof. A copy of the Grant of Permanent Easement to be executed shall be substantially in the form as is set forth in Exhibit "F", attached hereto and made a part hereof.

2. The approximate location of the railroad spur to be constructed by PWC that will be subject to the easement as set forth in this Agreement is indicated as Points AC on Exhibit "C", attached hereto and made a part hereof. It is presently intended that Point C shall exist at the common boundary of the parties' respective real properties. However, the exact location of the railroad spur, and thus the easement and right of way, will solely be determined by PWC in its placement of the railroad spur.

3. Except as otherwise provided in this Agreement, the easements and right of ways herein declared are easements and right of ways appurtenant and shall run with the land, touch and concern the same and are intended to both benefit and burden the land subject thereto. Except as otherwise provided in the Agreement, the easements and right of ways herein declared shall continue perpetually without limitation, defeat, diminution, or discharge, by lapse of time, change of ownership of the parcels, change of use of any parcel, or increase in extent of use burden.

4. Unless otherwise stated in this Agreement, all notices or demands in this Agreement provided, to be given by either party hereto to the other, shall be deemed to have been fully given when made in writing and (1) personally delivered, or (2)

deposited in the United States Mail, registered or certified, and postage prepaid, and addressed as follows:

To PWC: PAN WESTERN CORPORATION  
Attn: Mitchell Truman  
4755 West University Avenue  
Las Vegas, Nevada 89103

To LVP: LAS VEGAS PAVING CORPORATION  
Attn: Robert Mendenhall  
4420 South Decatur Boulevard  
Las Vegas, Nevada 89103

The address to which any notice or demand may be given to any party, may be changed from time to time by written notice given by such party as above provided.

5. If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.

6. Time is of the essence of this Agreement, and of each and every covenant, term, condition, and provision hereof.

7. In the event any section, paragraph, sentence, or clause of this Agreement is held invalid or unenforceable for any reason, then such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement.

8. This Agreement may not be modified, amended, or changed, except by a writing specifying the modification, amendment, or change which is signed by all of the parties hereto.

9. This Agreement contains the entire understanding of the parties hereto, and there are no warranties, representations, or covenants other than those expressly set forth herein.

10. The parties hereto acknowledge ample opportunity and time to consult independent legal counsel in connection with the negotiation and execution of the Agreement.

11. This Agreement is governed by the laws of the State of Nevada.

12. The (a) waiver of any terms, covenant, or condition of this Agreement; or (b) waiver of any breach of any term, covenant, or condition contained therein; or (c) failure of either party to take action with respect to any breach of the other of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of such term, covenant, or condition, nor shall it be deemed a waiver of any subsequent default under the same or any other term, covenant, or condition, unless it is specified in writing and signed by the waiving party.

13. This Agreement shall, subject to the provisions as to assignment and transfer, bind and inure to the respective assigns, successors, heirs and personal representatives of the parties hereto, and to all those who may now and hereafter claim either through or under them.

14. This Agreement has been mutually prepared by the parties hereto, and may be executed in duplicate originals, the same of which shall be signed by all parties hereto, each of which shall be deemed an original, but all of which shall constitute one instrument.

15. This Agreement shall be recorded.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date and year set below their respective names.

PAN WESTERN CORPORATION

By



RICHARD TRUMAN, PRESIDENT

Dated:

Feb 10, 1997

LAS VEGAS PAVING CORP.

By



ROBERT L. MENDENHALL,  
PRESIDENT

Dated:

March 2, 1997

## ACKNOWLEDGMENT

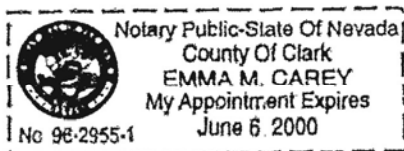
STATE OF NEVADA )

) SS.

COUNTY OF CLARK )

RICHARD

On the 10<sup>th</sup> day of February, 1997, personally appeared before me, the undersigned Notary Public, RICHARD L. TRUMAN, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing AGREEMENT TO CONVEY EASEMENT, who acknowledged to me that he executed the same in his capacity as President of PAN WESTERN CORPORATION.



Emma M. Carey  
Notary Public in and for Said County and State

## ACKNOWLEDGMENT

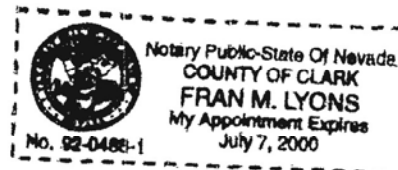
STATE OF NEVADA )

) SS.

COUNTY OF CLARK )

On the 4<sup>th</sup> day of March, 1997, personally appeared before me, the undersigned Notary Public, ROBERT L. MENDENHALL, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing AGREEMENT TO CONVEY EASEMENT, who acknowledged to me that he executed the same in his capacity as President of LAS VEGAS PAVING CORPORATION.

Fran M. Lyons  
Notary Public in and for Said County and State





## GRANT OF PERMANENT EASEMENT

PAN WESTERN CORPORATION, a Nevada Corporation, having its principal office at 4755 West University Avenue, Las Vegas, Nevada, hereinafter referred to as ("Grantor"), for and in consideration of the sum of Ten (\$10.00) Dollars, and other valuable consideration, receipt of which is acknowledged, does hereby grant to LAS VEGAS PAVING CORPORATION, a Nevada Corporation, having its principal office at 4420 South Decatur Boulevard, Las Vegas, Nevada, hereinafter referred to as ("Grantee"), a permanent easement to use as means of ingress and egress to and from Grantee's real property (legally described at Exhibit "A", attached hereto and made a part hereof and hereinafter referred to as ("Grantee's Property"), the same being APN: 520-530-016 and the Union Pacific Railroad main line, a certain portion of the railroad spur located on Grantor's real property (legally described at Exhibit "B", attached hereto and made a part hereof and hereinafter referred to as (Grantor's Property"), the same being APN: 520-520-002, the same being more particularly described as that portion of grantor's railroad spur designated as Points AC on Exhibit "C", attached hereto and made a part hereof.

This Grant of Permanent Easement is conditioned upon the following:

1. The term "means of ingress and egress" shall mean the ability of Grantee to transport railroad cars on and over that portion of grantor's railroad spur subject to this easement (the same being Points AC on Exhibit "C") to and from the main line of Union Pacific Railroad.

Unless otherwise provided herein, Grantee shall have no other right of ingress and egress over Grantor's Property, it being the clear intent and understanding of Grantor and Grantee hereto that in order for Grantee to effectively use the grant of easement, that Grantee will be required to connect to and continue from the end of Grantor's railroad spur (the same being Point C on Exhibit "C", which is the common boundary of the parties) their own spur on

Grantee's Property, in order to load and unload railroad cars. Grantee shall have no right to load or unload any railroad cars from Grantor's Property.

2. Grantee, or its assigns, shall in no way cause or allow, directly or indirectly, any third party to transport railroad cars over the easement created herein that have no direct relationship to the business affairs of Grantee, or its assigns.

3. The easement granted Grantee on the railroad spur as hereinabove described, shall not be an exclusive right to use the same. Grantee shall use said rights commonly with Grantor, and with due regard to the unencumbered rights of Grantor to use the same. Grantee shall not use the railroad spur in any way that will impair the rights of Grantor to use it, nor shall Grantor use the railroad spur in any way that will impair the rights of Grantee to use it, nor shall either obstruct, directly or indirectly, the other's passage thereon. Grantor shall maintain specific right to transport on or over the easement along Grantor's North property line.

4. Grantor and Grantee shall share one-half the costs and expenses of maintaining the above-described easement (including the switch at Point B on Exhibit "C" attached hereto) in good repair throughout the term of the easement. Grantor and Grantee, their successors and assigns, understand and agree that each shall be responsible to pay his proportionate share of any and all costs associated with the installation of a automated railroad crossing if and when requested to be installed by the Union Pacific Railroad.

5. Grantee shall in no way cause or allow the Easement to be used for any unlawful purpose, and shall comply with all city, county, state and/or federal laws, rules and/or regulations respecting its use and the materials to be transported on and over said railroad spur. Grantee shall not cause or allow directly or indirectly, any form of hazardous materials or waste to be transported on or over the easement, other than those which may be deemed necessary and essential to the general business enterprise of Grantee. Any form of spillage of any materials or waste whatsoever on, over or around the easement and/or Grantor's Property by Grantee (or its agents, employees, servants, visitors, invitees or otherwise), shall be the sole

responsibility of Grantee to clean up and to assume the same in total, holding grantor harmless therefrom, and to indemnify Grantor for any costs, expenses or loss accruing therefrom. Grantee shall have the right of ingress and egress over Grantor's Property, subject to Grantor's consent, to perform the promises, covenants and conditions set forth in the Paragraph 5.

6. Grantor shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Grantee or by any person whosoever that may, at any time, be using or occupying or visiting the easement and/or Grantor's Property, or be in or about the same, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of, any act, omission, or negligence of Grantee (its agents, employees, servants, visitors, invitees or otherwise), or of any occupant, subtenant, visitor, or user of any portion of the easement or Grantor's property, or shall result from or be caused by any other matter or thing, whether of the same kind or of a different kind, than the matters or things above set forth, and Grantee shall indemnify Grantor for and/or against all claims, liability, loss or damage whatsoever, on account of such loss, injury, death or damage. The preceding sentence shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of Grantor, its agents, employees or servants.

7. Grantee shall, at a minimum, and at all times maintain in effect throughout the term of the easement, personal injury liability insurance covering Grantor's property (its improvements and appurtenances thereto and thereon) within a distance of 50 feet each direction from the centerline of the easement, in the amount of One Million Dollars (\$1,000,000.00), for injury to, or the death of, any one person, and One Million Dollars (\$1,000,000.00), for injury to, or the death of, any number of persons in one occurrence, and property damage liability insurance in the amount of One Million Dollars (\$1,000,000.00). Such insurance shall specifically insure Grantee against all liability assumed by it hereunder, as well as liability imposed by law, and shall insure both Grantor and Grantee, but shall be so

endorsed as to create the same liability on the part of the insurer, as though separate policies had been written for Grantor and Grantee.

The policies of insurance referred to in this paragraph shall be written in a form satisfactory to Grantor and by insurance companies satisfactory to Grantor, such satisfaction not to be unreasonably withheld. Grantee shall pay all of the premiums therefor and deliver such policies, or certificates thereon, to Grantor, and in the event of failure of Grantee either to effect such insurance in the names herein called for, or to pay the premiums therefor or to deliver such policies, or certificates thereof, to Grantor, Grantor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable immediately to Grantor. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Grantor, that it will give to Grantor thirty (30) days written notice before the policy or policies in question shall be altered or canceled. Grantor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by Grantee.

In the event that either Grantor or Grantee shall at any time deem the limits of the personal injury or property damage, public liability insurance then carried to be either excessive or insufficient, the Grantor and Grantee shall endeavor to agree on the proper and reasonable limits for such insurance then to be carried and such insurance shall thereafter be carried with the limits thus agreed on.

8. Except as otherwise provided in this Grant of Permanent Easement, the easements and right of ways herein declared are easements and right of ways appurtenant and shall run with the land, touch and concern the same and are intended to both benefit and burden the land subject thereto.

9. Except as otherwise provided in this Grant of Permanent Easement, the easements and right of ways herein declared shall continue perpetually without limitation, defeat, diminution, or discharge, by lapse of time, change of ownership of the parcels, change of use of any parcel, or increase in extent of use burden.

10. Occurrence of any of the following events shall constitute a default hereunder:

- a. Delay in, nonperformance or failure of Grantee in keeping or performing any of the terms and conditions of this Grant of Permanent Easement;
- b. Failure in, or suspension of, business by Grantee for any reason; or
- c. Insolvency or bankruptcy of Grantee from any cause whatsoever.

11. A default on the part of Grantee as set forth in paragraph 10, for fifteen (15) days after notice from Grantor to Grantee, shall entitle Grantor, at Grantor's option, to declare, without further notice, this Grant of Permanent Easement, and all rights hereunder, terminated.

12. If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Grant of Permanent Easement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.

13. All remedies hereinbefore and hereafter conferred on Grantor shall be deemed cumulative, and no one is exclusive of the other or of any other remedy conferred by law.

14. Unless otherwise stated herein, all notice or demands in this Grant of Permanent Easement provided, to be given by either Grantor or Grantee to the other, shall be deemed to have been fully given when made in writing and (1) personally delivered, or (2) deposited in the United States Mail, registered or certified, and postage prepaid, and addressed as follows:

To Grantor: PAN WESTERN CORPORATION  
Attn: Richard Truman  
4755 West University Avenue  
Las Vegas, Nevada 89103

To Grantee: LAS VEGAS PAVING CORPORATION  
Attn: Robert L. Mendenhall  
4420 S. Decatur Boulevard  
Las Vegas, Nevada 89103

The address to which any notice or demand may be given to any party, may be changed from time to time by written notice given by such party as above provided.

15. The (a) waiver of any terms, covenant, or condition contained herein; or (b) waiver of any breach of any term, covenant, or condition contained herein; or (c) failure of either party to take action with respect to any breach of the other of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of such term, covenant, or condition, nor shall it be deemed a waiver of any subsequent default under the same or any other term, covenant, or condition, unless it is specified in writing and signed by the waiving party.

16. This Grant of Permanent Easement shall, subject to the provisions as to assignment and transfer, bind and inure to the respective assigns, successors, heirs and personal representative of Grantor and Grantee, and to all those who may now and hereafter claim either through or under them.

17. The rights hereunder granted are subject to any reservations, restrictions and conditions if any, rights of way, easements or other encumbrances of record or in any way existing on Grantor's Property.

WITNESS my hand this 10<sup>th</sup> day of February, 1997

PAN WESTERN CORPORATION

By Richard Truman

RICHARD TRUMAN, PRESIDENT

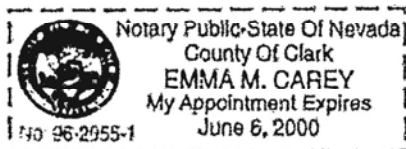


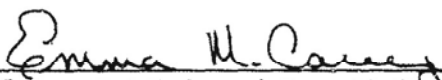
## ACKNOWLEDGMENT

STATE OF NEVADA )  
 ) SS.  
 COUNTY OF CLARK )



On the 10th day of February, 1997, personally appeared before me, the undersigned Notary Public, ~~ME~~ TRUMAN, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing GRANT OF PERMANENT EASEMENT, who acknowledged to me that he executed the same in his capacity as President of PAN WESTERN CORPORATION.



  
 Notary Public in and for said County and State

## WHEN RECORDED MAIL TO:

LAS VEGAS PAVING CORPORATION  
 4420 South Decatur Boulevard  
 Las Vegas, Nevada 89103

CLARK COUNTY, NEVADA  
 JUDITH A. VANDEVER, RECORDER  
 RECORDED AT REQUEST OF:

LAS VEGAS PAVING CORPORATION

03-06-97 15:21 CPD  
 OFFICIAL RECORDS

BOOK: 970306 INST: 01677

FEE: 19.00 RPTT: 178

13

.00



*Debbie Conway*  
**RECORDER**

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

**Instrument Number: 199703060001677**

# EXHIBIT 21

**Licensing Agreement**

**THIS LICENSING AGREEMENT (the "Agreement") dated this 6th day of March, 2008**

**BETWEEN:**

Las Vegas Paving Corporaton of 4420 S Decatur Blvd, Las Vegas, NV 89103  
(the "Licensor")

**OF THE FIRST PART**

- AND -

Tonopah & Tidewater Railroad Company of 4755 Donovan Way, North Las Vegas,  
NV 89081 (the "Licensee")

**OF THE SECOND PART**

(individually the "Party" and collectively the "Parties")

**IN CONSIDERATION OF** the Licensee paying the License Fee to the Licensor, the receipt and sufficiency of which consideration is hereby acknowledged, the Licensor grants the License to the Licensee on the following terms:

**Licensed Intellectual Property**

1. The Licensor owns and is granting to the Licensee the right to use the following licensed property (the "Property"): Railroad right of way across described property with a APN of 123-31-302-001.

**Grant of License**

2. The Licensor grants to the Licensee an exclusive license to use the Property (the "License"), from March 6th , 2008 until one of the Parties provides to the other Party 60 days' written notice to terminate the Agreement (such period, the "Term").

**Permitted Use**

3. The Licensee is permitted to use the Property in the following way: Operate a industrial railroad on the property.

4. The Licensee may not modify or change the Property in any way.

**License Fee**

5. The Licensee will pay the Licenser a license fee (the "License Fee") composed of:
  - a. California Portland Cement will pay Las Vegas, Paving \$50,000.00 (Fifty Thousand Dollars) every month for rent on behalf of Tonopah & Tidewater Railroad company..

**Payment Details**

6. The License Fee will be paid by check.

**Assignment**

7. The Licensee shall not allow others to use the Property and shall not use the Property in a way that allows others to use the Property except in accordance with this Agreement.
8. The Licensee may not assign or transfer the Agreement or any rights granted within without the prior written consent of the Licenser, and any attempted assignment or delegation without such consent will be void.

**Sublicensing**

9. The Licensee may not sublicense the Property or any rights granted in this Agreement without the prior written consent of the Licenser, and any attempted sublicense without such consent will be void.

**Warranties**

10. The Property is provided "as is" to the Licensee. The Licenser, and its officers, employees, agents and suppliers, do not provide any warranty, whether express or implied, as to the Property.

**Liability & Indemnity**

11. The Licenser will not be liable for any third party claims, losses, damages, liabilities, penalties, punitive damages, expenses, legal fees or costs of any kind or amount whatsoever resulting from the Licensee's use of the Property.
12. The Licensee agrees to defend, indemnify and hold harmless the Licenser and its officers, employees, agents and suppliers against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or

amount whatsoever resulting from or arising out of the use of the Property by the Licensee, or its officers, employees, agents or suppliers, or the Licensee's breach of this Agreement.

**Termination**

13. This Licensor shall have the option to terminate the Agreement immediately upon the failure of the Licensee to comply with the terms and conditions herein.
14. The Licensor reserves the right to cancel this Agreement immediately:
  - a. if the Licensee fails to make a payment when due; or
  - b. in the event of the Licensee's insolvency or bankruptcy.
15. The Licensor reserves the right to discontinue the License and terminate the Agreement immediately, as well as to commence legal proceedings, if any copyright infringement has taken place due to the Licensee's unauthorized use of the Property.
16. Upon expiry or termination of this Agreement, the Licensee shall immediately discontinue the use of the Property and, where applicable, shall return all Property, as per the instructions of the Licensor.

**Default**

17. Notwithstanding anything to the contrary in this Agreement, if the Licensee defaults in the performance of any obligation under this Agreement, then the Licensor may declare the entire amount owing under this Agreement calculated at the time of default to be immediately due and payable.

**Property Rights**

18. The Licensor retains ownership of the Property.
19. The Property shall not be copied, published, or used in any way except as provided for in this Agreement.
20. The Licensee shall not falsely represent that they are the original creator of the Property.

**Confidentiality**



21. Any Confidential Information exchanged between the Parties will not be shared or disclosed to any person except with prior, written consent of the other Party, or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.
22. Confidential information refers to any data or information relating to the Party, whether business or personal, which would reasonably be considered to be private or proprietary to the Party and that is not generally known and where the release of that confidential information could reasonably be expected to cause harm to the Party, and includes trade secrets, moral rights, goodwill, copyrights, patents, trademarks, know-how, research, drawings, plans, designs, standards, specifications, and methods ("Confidential Information").
23. Confidential Information does not include: information that is available to the public other than through the Licensee's actions or inactions; information that is rightfully received from a third party, legally in possession of it; and information that is independently developed by the Licensee without the use of the Confidential Information.

#### **General Provisions**

24. If there is a conflict between any provision of this Agreement and the applicable legislation of the United States (the "Act"), the Act will prevail and such provision of the Agreement will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement.
25. If any terms or provisions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected and each unaffected term and provision will remain in full force and effect.
26. This Agreement will be governed by and construed in accordance with the laws of the State of Nevada, without regard to the jurisdiction in which any action may be instituted. The Licensee agrees to submit to the jurisdiction of the courts of Nevada to bring any action or for the enforcement of this Agreement. Notwithstanding, the Licensor reserves the right to commence legal action to obtain injunctive relief in any court of competent jurisdiction.
27. The Agreement will inure to the benefit and be binding upon the Licensor and the Licensee and their respective successors and assigns.

28. This Agreement constitutes the entire agreement between the Licensor and the Licensee with respect to the subject matter hereof and there are no further items or provisions, either oral or otherwise.
29. The provisions contained in this Agreement cannot be changed except by the signed and delivered written consent of both Parties.
30. Headings are inserted for convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
31. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
32. All monetary amounts in this Agreement refer to the United States dollar (USD), and all payments required to be paid under this Agreement will be paid in USD unless the Parties agree otherwise in writing.
33. Time is of the essence in this Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Licensing Agreement on this 6th day of March 2008.

Connie Smith  
(Witness)

Las Vegas Paving Corporation (Licensor)

By [Signature]

Connie Smith  
(Witness)

Tonopah & Tidewater Railroad Company  
(Licensee)

By Mr. [Signature]



# EXHIBIT 22

**Purchase Agreement**

**THIS PURCHASE AGREEMENT (the "Agreement") dated this 10th day of October, 2010**

**BETWEEN:**

Pan Western Corporation of 4910 Donovan Way, North Las Vegas, NV 89081, USA  
( the "Seller")

OF THE FIRST PART

- AND -

Tonopah & Tidewater of 4910 Donovan Way, North Las Vegas, NV 89081, USA  
( the "Buyer")

OF THE SECOND PART

**IN CONSIDERATION OF THE COVENANTS and agreements contained in this Purchase Agreement the parties to this Agreement agree as follows:**

**Sale of Goods**

1. The Seller will sell, transfer and deliver to the Buyer the following goods on or before October 15, 2010 (the "Goods"):
  - 28,090 feet of 135 pound rail, 2,340 #1 railroad ties, 4,680 tie plates, 18,726 spikes, 14 spring loaded switches, and 12 #2 frogs,

**Purchase Price**

2. The Buyer will accept the Goods and pay for the Goods with the sum of \$750,000.00 (USD) (the "Purchase Price"), paid by intercompany transfer as required in clause 5 of this Agreement.
3. The Seller and the Buyer both acknowledge the sufficiency of this consideration. In addition to the Purchase Price specified in this Agreement, the amount of any present or future use, excise, or similar tax applicable to the sale of the Goods will be paid by the Buyer, or alternatively, the Buyer will provide the Seller with a tax exemption certificate acceptable to the applicable taxing authorities.

4. The Purchase Price is inclusive of sales tax, and is payable by the Buyer unless the Buyer provides the Seller with a tax exemption certificate acceptable to the applicable taxing authorities, in which case the amount of sales tax will be subtracted from the Purchase Price payable by the Buyer.

**Payment**

5. The Buyer will make payment for the Goods at the time when, and at the place where, the Goods are received by the Buyer or, in the alternative, when any document of title or registrable bill of sale, bearing any necessary endorsement, is tendered to the Buyer.

**Delivery of Goods**

6. The Goods will be delivered to Items to be left on site. The Seller agrees to furnish the facilities and at its cost to load the Goods on trucks furnished by the Buyer. The method of shipment will be within the discretion of the Buyer. However, the Seller will only be responsible for the lesser of truck freight or rail freight to the Buyer.

**Risk of Loss**

7. Risk of loss will be on the Buyer from the time of delivery to the carrier. The Buyer will provide, at its expense, insurance on the Goods insuring the Seller's and the Buyer's interest as they appear, until payment in full to the Seller.

**Warranties**

8. THE GOODS ARE SOLD 'AS IS' AND THE SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Seller does not assume, or authorize any other person to assume on the behalf of the Seller, any liability in connection with the sale of the Goods. The Seller's above disclaimer of warranties does not, in any way, affect the terms of any applicable warranties from the manufacturer of the Goods.
9. The Buyer has been given the opportunity to inspect the Goods or to have it inspected and the Buyer has accepted the Goods in its existing condition. Further, the Seller disclaims any warranty as to the condition of the Goods.

**Title**

10. Title to the Goods will remain with the Seller until delivery and actual receipt of the Goods by the Buyer or, in the alternative, the Seller delivers a document of title or registrable bill of sale of the Goods, bearing any necessary endorsement, to the Buyer.



**Security Interest**

11. The Seller retains a security interest in the Goods until paid in full.

**Inspection**

12. Inspection will be made by the Buyer at the time and place of delivery.
13. Any refund will not include costs of delivery or installation/de-installation. Those costs will be borne by the Buyer.

**Claims**

14. The Buyer's failure to give notice of any claim within 10 days from the date of delivery will constitute an unqualified acceptance of the Goods and a waiver by the Buyer of all claims with respect to the Goods.

**Excuse for Delay or Failure to Perform**

15. The Seller will not be liable in any way for any delay, non-delivery or default in shipment due to labor disputes, transportation shortage, delays in receipt of material, priorities, fires, accidents and other causes beyond the control of the Seller or its suppliers. If the Seller, in its sole judgment, will be prevented directly or indirectly, on account of any cause beyond its control, from delivering the Goods at the time specified or within one month after the date of this Agreement, then the Seller will have the right to terminate this Agreement by notice in writing to the Buyer, which notice will be accompanied by full refund of all sums paid by the Buyer pursuant to this Agreement. In all other cases, if the Seller fails to deliver the Goods to the Buyer within the time and manner specified in this Agreement, the Buyer may provide written notice of the default to the Seller. If within seven (7) days of the notice being received, or within such other time period as agreed to by the parties, the default is not corrected, the Buyer may immediately terminate this Agreement.

**Remedies**

16. The Buyer's exclusive remedy and the Seller's limit of liability for any and all losses or damages resulting from defective goods or from any other cause will be for the Purchase Price of the particular delivery with respect to which losses or damages are claimed, plus any transportation charges actually paid by the Buyer.

**Cancellation**

17. The Seller reserves the right to cancel this Agreement:

- a. if the Buyer fails to pay for any shipment when due;
- b. in the event of the Buyer's insolvency or bankruptcy; or
- c. if the Seller deems that its prospect of payment is impaired.

**Notices**

18. Any notice to be given or document to be delivered to either the Seller or Buyer pursuant to this Agreement will be sufficient if delivered personally or sent by prepaid registered mail to the address specified below. Any written notice or delivery of documents will have been given, made and received on the day of delivery if delivered personally, or on the third (3rd) consecutive business day next following the date of mailing if sent by prepaid registered mail:

**SELLER:**

- Pan Western Corporation of 4910 Donovan Way, North Las Vegas, NV 89081, USA

**BUYER:**

- Tonopah & Tidewater of 4910 Donovan Way, North Las Vegas, NV 89081, USA

**General Provisions**

19. Headings are inserted for convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
20. All representations and warranties of the Seller contained in this Agreement will survive the closing of this Agreement.
21. Either party to this Agreement may assign its rights under this Agreement, but the assignment will not change the duty of either party, increase the burden or risk involved, or impair the chances of obtaining the performance of the Agreement. However, no obligation for performance imposed on either party by this Agreement may be delegated to any other person without the prior written consent of the other party. Each party has a substantial interest in having the other party perform or control the acts required by this Agreement.

22. This Agreement cannot be modified in any way except in writing signed by all the parties to this Agreement.
23. This Agreement will be governed by and construed in accordance with the laws of the State of Nevada, including the Nevada Uniform Commercial Code and the Seller and the Buyer hereby attorn to the jurisdiction of the Courts of the State of Nevada.
24. Except where otherwise stated in this Agreement, all terms employed in this Agreement will have the same definition as set forth in the Uniform Commercial Code in effect in the State of Nevada on the date of execution of this Agreement.
25. If any clause of this Agreement is held unconscionable by any court of competent jurisdiction, arbitration panel or other official finder of fact, the clause will be deleted from this Agreement and the balance of this Agreement will remain in full force and effect.
26. This Agreement will inure to the benefit of and be binding upon the Seller and the Buyer and their respective successors and assigns.
27. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
28. Time is of the essence in this Agreement.
29. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise. The Buyer acknowledges that it has not relied upon any representations of the Seller as to prospective performance of the Goods, but has relied upon its own inspection and investigation of the subject matter.

**IN WITNESS WHEREOF** the parties have executed this Purchase Agreement on this 10th day of October , 2010

Connie Smith  
(Witness)

K. Human  
Tonopah & Tidewater (Buyer)

Connie Smith  
(Witness)

M. J. Jensen  
Pan Western Corporation (Seller)

# EXHIBIT 23





# EXHIBIT 24

HAZARDOUS MATERIALS TRANSPORTATION

# SECURITY

REQUIREMENTS



U.S. Department of Transportation  
Pipeline and Hazardous Materials  
Safety Administration

## Enhanced Security Requirements

The Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for the safe and secure transportation of hazardous materials (hazmat). Hazmat is essential to the economy of the United States and the well-being of its people. Hazmat fuels our cars and trucks and heats and cools our homes and offices.

Hazmat is used in farming and medical applications as well as manufacturing, mining, and other industries. Every day millions of tons of hazmat are safely transported by air, train, truck, or vessel in quantities ranging from several ounces to thousands of gallons. In the wrong hands, however, hazmat can pose a significant security threat, particularly those that can be used as weapons of mass destruction. Addressing this security threat is vital to the safety of our citizens and security of our economy.

PHMSA, in consultation with the Transportation Security Administration of the Department of Homeland Security, published final rule HM-232F, titled *Risk-Based Adjustment of Transportation Security Plan Requirements* on March 9, 2010. This final rule modified the security plan requirements applicable to the commercial transportation of hazmat. Based on an evaluation of the security threats associated with specific types and quantities of hazmat considered to be "high consequence" if stolen and used for pernicious reasons, this final rule, effective 1 October 2010, narrows the list of materials subject to security plan requirements, thus reducing associated regulatory costs and paperwork.

This final rule also clarifies certain requirements related to security planning, training, and documentation. This information will assist you in managing the potential security risks associated with the transportation of hazmat in commerce, as well as identifying and understanding the recent changes to security plan requirements.



## Security Plans

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You *must* develop and implement a security plan if you offer for transportation or transport the following types or quantities of hazmat. “Large bulk quantity” refers to a quantity greater than 3,000 kg., (6,614 lbs.,) for solids or 3,000 liters (792 gal.,) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container:

- Any quantity of a Division 1.1, 1.2, or 1.3 material;
- A quantity of a Division 1.4, 1.5, or 1.6 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;
- A large bulk quantity of Division 2.1 material;
- A large bulk quantity of Division 2.2 material with a subsidiary hazard of 5.1;
- Any quantity of a material poisonous by inhalation as defined in §171.8 of this subchapter;
- A large bulk quantity of a Class 3 material meeting the criteria for Packing Group I or II;
- A quantity of a desensitized explosive meeting the definition of a Division 4.1 or Class 3 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;
- A large bulk quantity of a Division 4.2 material meeting the criteria for Packing Group I or II;
- A quantity of a Division 4.3 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;



- A large bulk quantity of a Division 5.1 material in Packing Groups I and II: perchlorates; or ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions, suspensions, or gels;
- Any quantity of organic peroxide, Type B, liquid or solid, temperature controlled;
- A large bulk quantity of Division 6.1 material (for a material poisonous by inhalation see above);
- A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR Part 73 or the U.S. Department of Agriculture under 9 CFR Part 121;
- A quantity of uranium hexafluoride requiring placarding under §172.505(b);
- International Atomic Energy Agency (IAEA) Code of Conduct Category 1 and 2 materials including Highway Route Controlled quantities as defined in 49 CFR 173.403 or known as radionuclides in forms listed as RAM-QC by the Nuclear Regulatory Commission; and
- A large bulk quantity of Class 8 material meeting the criteria for Packing Group I.

At a minimum, your security plan *must* address *personnel security, unauthorized access, and en route security*, as well as include the following elements:

- An assessment of transportation security risks for shipments of hazmat listed in §172.800, including site- or location-specific risks associated with facilities where hazmat is prepared for transportation, stored, or unloaded; and measures to address the assessed risks;
- Name/job title of senior official responsible for developing/implementing the security plan;



- Specific security duties for each position/department responsible for implementing the plan, or a portion thereof, and the process of notifying employees when specific elements must be implemented;
- A plan for training hazmat employees in accordance with §172.704(a)(4) and (5);
- The security plan, including the transportation security risk assessment, must be in writing and retained as long as in effect;
- The security plan must be reviewed at least annually, and revised and/or updated as necessary;
- The security plan must be available to responsible employees—consistent with security clearance/background investigation/need-to-know;
- When updated/revised, the most current copies of the security plan must be maintained, and responsible employees must be notified; and
- Persons responsible for developing/implementing a security plan must maintain copies, including electronic, that are accessible at/through their place of business, or make available, upon request, to authorized officials of DOT or the Department of Homeland Security.

The following table provides a comparison listing of previous versus newly revised threshold levels of hazmat requiring a Security Plan, and specific ruling changes:

## Training

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Each hazmat employee of a person/company required to have a security plan, who handles, performs a regulated function related to, or implements the security plan, *must* receive in-depth training that provides an awareness of the security risks associated with hazmat transportation and methods to enhance transportation security. This training should cover the following topics:



Hazard Class	Previous Threshold for Hazmat	
1.1	Any quantity	
1.2	Any quantity	
1.3	Any quantity	
1.4	A quantity requiring placarding	
1.5	A quantity requiring placarding	
1.6	A quantity requiring placarding	
2.1	A quantity requiring placarding	
2.2	A quantity requiring placarding	
2.3	Any quantity	
3	A quantity requiring placarding	
4.1	A quantity requiring placarding	
4.2	A quantity requiring placarding	
4.3	Any quantity	
5.1	A quantity requiring placarding	
5.2	Any quantity of organic peroxide, Type B, liquid or solid, temperature controlled, otherwise a placarded quantity	
6.1	Any quantity of PIH material otherwise a quantity requiring placarding	
6.2	Select agents	
7	Shipments requiring Yellow III label; highway route-controlled quantity	
8	A quantity requiring placarding	
9	Capacity >3,500 gallons for liquid/gas; volumetric capacity > 468 cubic feet for solids	

	New Threshold for Hazmat	Ruling Change
	Any quantity	None
	Any quantity	None
	Any quantity	None
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	A large bulk quantity	Security plan not required for less than 3,000 L (792 gallons)
	A large bulk quantity of materials with an oxidizer subsidiary	Security plan not required for less than 3,000 L (792 gallons) of materials with oxidizer subsidiary
	Any quantity	None
	PG I and II in a large bulk quantity; placarded quantity desensitized explosives	Security plan not required for PG III; or less than 3,000 L (792 gallons) PG I or II - except for desensitized explosives
	A quantity of desensitized explosives requiring placarding in accordance with Subpart F of this Part	Security plan not required except for desensitized explosives in a placarded quantity
	PG I and II in a large bulk quantity	Security plan not required for PG III, or less than 3,000 kg (6,614 lbs.) PG I or II
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	Large bulk quantity of Division 5.1 materials in PG I and II, and PG III perchlorates, ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions or suspensions or gels in a large bulk quantity	Security plan not required for most PG III materials and PG I and II materials in less than a large bulk quantity 3,000 L (792 gallons)
	Any quantity organic peroxide, Type B, liquid or solid, temperature controlled	Security plan only required for Type B, liquid or solid, temperature controlled, no longer required at placarded level for others
	Any quantity PIH or a large bulk quantity of a material that is not a PIH	Security plan not required for less than 3,000 L (792 gallons) of a non-PIH material
	Select agents	None
	IAEA Categories 1 & 2; HRCQ; known radionuclides in forms listed as RAM-QC by NRC; or a quantity of uranium hexafluoride requiring placarding under §172.505(b)	Security plan only required for Class 7 materials that pose transportation security risk
	PG I in a large bulk quantity	Security plan not required for PG II or III materials; and less than a large bulk quantity of a PG I
	Not subject	Security plan not required for Class 9 materials



- Company security objectives;
- Organizational security structure;
- Specific security procedures, duties, and responsibilities for each employee;
- Specifics on how to recognize and respond to possible security threats; and
- Specific actions to be taken by each employee in the event of a security breach.

For in-depth security training required under §172.704 (a)(5) and (c)(2), a hazmat employee must be trained at least once every three years or, if the security plan for which training is required is revised during the three-year recurrent training cycle, within 90 days of implementation of the revised plan.

The following guidance—while not required by the HMR—should assist you in developing a security plan appropriate to your industry and operations. You may want to review your current security program and make any necessary adjustments to improve it.

### **Begin with a Security Assessment**

To develop a security plan, you should begin with a security assessment. List the materials you handle, and identify those with the potential for use as a weapon or target of opportunity. Then, review your current activities and operations from a transportation security perspective. Ask yourself, *“What are we doing now? What could go wrong? What can we do differently?”* You can use a security-risk assessment model to identify risks and develop appropriate measures to reduce or eliminate them. The Risk Management Self-Evaluation Framework



Security Template found on PHMSA's hazmat safety homepage <http://phmsa.dot.gov/hazmat/risk/rmsef> utilizes the following steps:

- **Scoping** – determine the scope of operations that should be subject to security risk management. Identify the types of hazmat you handle and the modes of shipment used.
- **Knowledge of operations** – collect detailed information about your transportation operations: (1) quantities of material transported; (2) baseline security programs; (3) current security procedures; and (4) related safety programs and procedures.
- **Assessment** – analyze potential security threats and identify security risk control points. Risk control points are points in the transportation process where you can make an impact by improving procedures or operations.
- **Strategy** – rank or group security risks, prioritize opportunities for security risk reduction, and decide on preventative actions. Create a written document summarizing your decisions. This written document is your security plan.
- **Action** – implement your security plan.
- **Verification** – monitor implementation of your security plan.
- **Evaluation** – determine if goals are being met and compare your strategy and results with others in your field.



## Suggested Security Measures

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At a minimum, a security plan *must* include the following elements: *personnel security*, *unauthorized access*, and *en route security*. The following are suggestions on how to address these required elements—not detailed in the HMR—that you may want to consider for inclusion in your security plan.

### Personnel Security

Be aware of the possibility that someone you hire may pose a potential security risk. You may want to establish a process to confirm applicant information, and check with former and current employers and personal references. Such confirmation must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy. Conversely, your employees can be one of your most critical assets as you endeavor to improve the security of your shipping or transportation operations. Under the new PHMSA security requirements, you must ensure your employees are familiar with your security plan and are properly trained in its implementation. Training should include company security objectives, specific security procedures, employee responsibilities, and organizational security structure. In addition, consider taking one or more of the following actions:

- Encourage your employees to report suspicious incidents or events.
- Implement routine security inspections.
- Convene regular employee/management meetings on security measures and awareness.

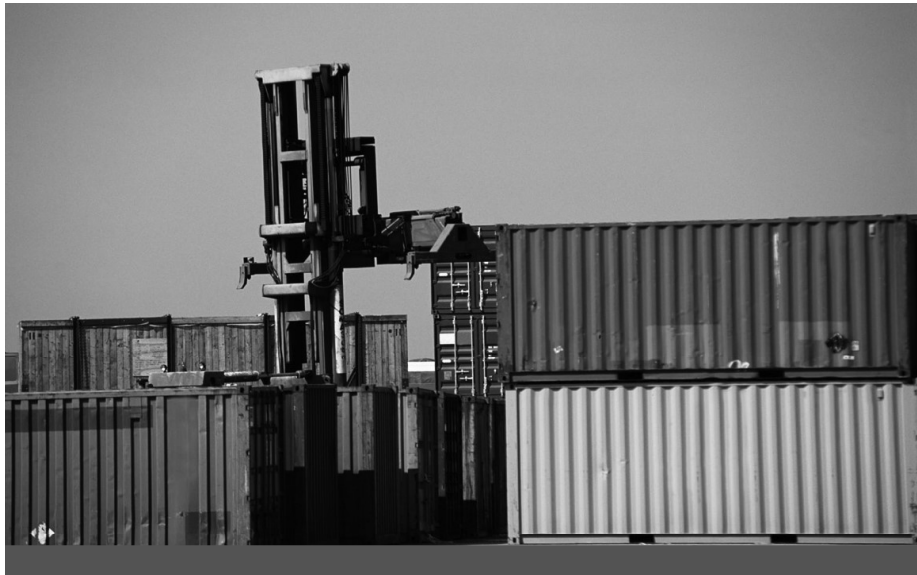


- Communicate with your staff using an *internal communication system* to provide information on facts, trends, and other security issues.

### **Unauthorized Access**

Another security concern that must be addressed is access to hazmat in transportation and at your facility. You may consider using one or more of the following security measures to prevent unauthorized access:

- Establish partnerships with local law enforcement officials, emergency responders, and other public safety agencies with jurisdiction over your facility. Through such relationships, you can exchange information about threats, trends, and unsuccessful security programs.
- Request a review of your facility and security program by local law enforcement and fire safety officials, as applicable.
- Restrict the availability of information related to your facility and the materials you handle. Encourage authorities in possession of information regarding your facility to limit its disclosure on a need-to-know basis.
- Add security guards and increase off-hour patrols by private security personnel. Request that law enforcement personnel increase off-hour patrols.
- Check the adequacy of locks and other protective equipment. Consider equipping access gates with timed closure devices. Conduct frequent inspections.



- Install additional lights, alarm systems, or surveillance cameras.
- Restrict access to a single entry or gate.
- Secure hazmat in locked buildings or fenced areas. Institute a sign-out system for keys.
- Secure valves, manways, and other fixtures on transportation equipment when not in use. Lock all vehicle and delivery trailer doors when not in use. Secure all rail, truck, and intermodal containers when stored at your location.
- Use tamper-resistant or tamper-evident seals and locks on cargo compartment openings.
- Periodically inventory the quantity of hazmat you have on site in order to recognize if a theft has occurred.
- Keep records of security incidents. Review records to identify trends and potential vulnerabilities.
- Report any suspicious incidents or individuals to your local Federal Bureau of Investigation (FBI) office, and local law enforcement officials.

### **En Route Security**

Shippers and carriers should work together to assure the security of hazmat shipments en route from origin to destination. Shippers must assess the security of transportation modes or combinations of modes available for transporting specific materials and select the most appropriate method of transportation to ensure their efficient and secure movement.

Transportation security is a shared function. Security functions performed by shippers and carriers often overlap. Shippers and carriers are encouraged to consider implementing one or more of the following measures:





- Use carrier safety ratings, assessments, safety surveys, or audits, and ask the carrier to provide information on security measures it has implemented.
- Verify the carrier has an appropriate employee hiring/review process, including background checks, and an on-going security training program.
- Verify the identity of the carrier and/or driver prior to loading hazmat.
- Ask the driver for photo identification and a commercial driver's license for comparison with information provided by the carrier.
- Ask the driver to tell you the name of the consignee and the destination for the material and confirm with your records before releasing shipments.
- Identify preferred and alternative routing, including acceptable deviations.
- Strive to minimize product exposures to communities or populated areas, including downtown areas; avoid tunnels and bridges where possible; and expedite transportation of the shipment to its final destination.
- Minimize stops en route; if you must stop, select locations with adequate lighting on well-traveled roads, and check your vehicle after each stop to make sure nothing has been tampered with.
- Consider using two drivers or driver relays to minimize stops during the trip. Avoid layovers, particularly for high-hazard materials.
- Shippers and rail carriers should cooperate to assure the security of rail cars stored temporarily on leased tracks.



- If materials must be stored during transportation, make sure they are stored in secure facilities.
- Train drivers on how to avoid hijacking or stolen cargo; keep vehicles locked when parked and avoid casual conversations with strangers about cargo and routes.
- Consider whether a guard or escort for a specific shipment of hazmat is appropriate.
- Consider using advanced technology to track or protect shipments en route to their destinations. For example, you may wish to install tractor and trailer anti-theft devices or use satellite tracking or surveillance systems.
- Install tamper-proof seals on all valves, package, or container openings.
- Establish a communication system with transport vehicles and operators, including a crisis communication system with primary and back-up means of communication among the shipper, carrier, law enforcement, and emergency response officials.
- Implement a system for a customer to alert the shipper if a hazmat shipment is not received when expected.
- When products are delivered, check the carrier's identity with shipping documents provided by the shipper.
- Get to know your customers and their hazmat programs. If you suspect you have shipped or delivered hazmat to someone who may intend to use it for a criminal purpose, notify local law enforcement officials or your local FBI office.



- Report any suspicious incidents or individuals to local law enforcement officials or your local FBI office.

### **Additional Information**

Up-to-date information is a key element of any security plan. You should consider methods to:

- Gather as much data as you can about your own operations and those of other businesses with similar product lines and transportation patterns;
- Develop a communications network to share best practices and lessons learned;
- Share information on security incidents to determine if there is a pattern of activities that, when considered in isolation are not significant, but when taken as a whole generate concern; and
- Revise your security plans as necessary to take into account changing circumstances and new information.

Any other person who has knowledge of the theft or loss of any explosive materials shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll-free number) and in writing to the nearest ATF office. Theft or loss shall be reported to appropriate local authorities.

## Federal Agencies

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### Pipeline and Hazardous Materials Safety Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Hazardous Materials Info-Line: 800-467-4922

### Publications and Reports

Fax: 202-366-7342;  
Telephone: 202-366-4900  
E-Mail: [training@dot.gov](mailto:training@dot.gov)  
<http://hazmat.dot.gov>

### Federal Aviation Administration

U.S. Department of Transportation  
800 Independence Avenue, SW., Washington, DC 20591  
Telephone: 1-866-TELL-FAA (1-866-835-5322)  
<http://www.faa.gov>

### Federal Motor Carrier Safety Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Telephone: 800-832-5660  
<http://www.fmcsa.dot.gov>

### Federal Railroad Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Telephone: 202-493-6024  
<http://www.fra.dot.gov>

### Bureau of Alcohol, Tobacco, Firearms and Explosives

Explosives Industry Programs Branch  
99 New York Avenue, NE, Room 6N-672  
Washington, DC 20226  
202-648-7120  
E-Mail: [EIPB@atf.gov](mailto:EIPB@atf.gov)  
<http://www.atf.gov/>

### Bureau of Alcohol, Tobacco, Firearms and Explosives

U.S. Bomb Data Center  
99 New York Avenue, NE, Room 8S-295  
Washington, DC 20226  
800-461-8841  
E-Mail: [USBDC@atf.gov](mailto:USBDC@atf.gov)  
<http://www.atf.gov/>



### **Transportation Security Administration**

601 South 12th Street  
Arlington, VA 20598  
Telephone: 866-289-9673  
<http://www.tsa.gov>

### **United States Coast Guard**

2100 Second Street, SW., STOP 7000  
Washington, DC 20593  
Telephone: 202-493-1713  
<http://www.uscg.mil>

## **Industry Associations/Organizations**

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### **American Chemistry Council**

700 Second Street, NE.  
Washington, DC 20002  
Telephone: 202-249-7000  
<http://www.americanchemistry.com>

### **American Petroleum Institute**

1220 L Street, NW.  
Washington, DC 20005  
Telephone: 202-682-8000  
<http://www.api.org>

### **American Society for Industrial Security**

1625 Prince Street  
Alexandria, VA, 22314  
Telephone: 703-519-6200  
<http://www.asisonline.org>

### **American Trucking Association**

950 North Glebe Road, Suite 210  
Arlington, VA 22203  
Telephone: 703-838-1700  
<http://www.truckline.com>

### **Association of American Railroads**

425 Third Street, SW.  
Washington, DC 20024  
Telephone: 202-639-2100  
<http://www.aar.org>

### **Center for Chemical Process Safety American Institute of Chemical Engineers**

3 Park Avenue  
New York, N.Y. 10016-5991  
Telephone: 212-591-7319  
<http://www.aiche.org/ccp>

### **Chlorine Institute**

1300 Wilson Blvd, Suite 525  
Arlington, VA 22209  
Telephone: 703-894-4140  
<http://www.chlorineinstitute.org>

### **Compressed Gas Association**

4221 Walney Road, 5th Floor  
Chantilly, VA 20151  
Telephone: 703-788-2700  
<http://www.cganet.com>

### **The Fertilizer Institute**

425 Third Street SW, Suite 950  
Washington, DC 20024  
Telephone: 202-962-0490  
<http://www.tfi.org>

### **Institute of Makers of Explosives**

1120 19th Street, Suite 310, NW.  
Washington, DC 20036  
Telephone: 202-429-9280  
<http://www.ime.org>

### **National Association of Chemical Distributors**

1555 Wilson Blvd, Suite 700  
Arlington, VA 22209  
Telephone: 703-527-6223  
<http://www.nacd.com>

### **National Propane Gas Association**

1899 L Street NW, Suite 350,  
Washington, DC 20036  
Teléfono: 202-466-7200  
<http://www.npga.org>

### **National Tank Truck Carriers**

950 North Glebe Road, Suite #520  
Arlington, Virginia 22203-4183  
Telephone: 703-838-1960  
<http://www.tanktransport.com>

### **Security Industry Association**

635 Slaters Lane  
Alexandria, Virginia 22314  
Telephone: 866-817-8888  
<http://www.siaonline.org>

### **Synthetic Organic Chemical Manufacturers Association**

1850 M Street, NW, Suite 700  
Washington, DC 20036  
Telephone: 202-721-4100  
<http://www.socma.com>

## **Additional Security Requirement Resources**

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### **TSA Security Requirements**

[http://www.tsa.gov/travelers/airtravel/acceptable\\_documents.shtm](http://www.tsa.gov/travelers/airtravel/acceptable_documents.shtm)  
[http://www.tsa.gov/assets/pdf/cargo\\_final\\_rule\\_5-26-06.pdf](http://www.tsa.gov/assets/pdf/cargo_final_rule_5-26-06.pdf)

### **NRC Security Requirements:**

<http://www.nrc.gov/security/byproduct/orders.html>

### **NNSA Security:**

<http://nnsa.energy.gov/>

### **PHMSA Security:**

<http://www.phmsa.dot.gov/hazmat/security>

### **USCG Facility Requirements:**

<http://www.uscg.mil/hq/cg5/cg522/cg5222/>



U.S. Department  
of Transportation  
Pipeline and  
Hazardous Materials  
Safety Administration



1200 New Jersey Avenue, SE, PHH-50  
Washington, DC 20590-0001

# EXHIBIT 25

# Tonopah & Tidewater Railroad

## SECURITY PLAN

### **PURPOSE:**

The purpose of this security plan is to ensure the safe and secure transfer of hazardous materials from the point of origin to the final destination.

### **SCOPE:**

The requirements of this rule requires all shippers and carriers subject to the Hazardous Materials Registration requirements found in 49 CFR Part 107 provide for:

- security vulnerability assessment (SVA)
- countermeasures with appropriate actions to address identified vulnerabilities
- security awareness training
- in-depth security training
- measures to confirm information on job applicants
- measures to address the risks of unauthorized access
- measures to address the risks of en route security

### **STATEMENT OF COMPANY POLICY:**

It is the policy of this company to comply with the requirements of 49 CFR 172 (HM-232) as it specifically pertains to the security requirements for shippers and carriers of hazardous materials. Our company is committed to ensuring the safety of all employees, the public and to prevent all security-related opportunities for theft or misuse of hazardous materials.

### **SECURITY ASSESSMENT**

Our company utilized the Asmark Security Vulnerability Assessment (ASVA) tool may be utilized to assess potential facility and transportation security risks for shipments of hazardous materials.

### **SECURITY TRAINING**

Security awareness training will be provided primarily through .....

In-depth security training will be conducted for all HazMat employees by providing each person with access to our written security plan. Training will be conducted by company management (or their appointed representative) and consist of the following:

- a review of the written plan,

- presentation of the security objectives of the company,
- presentation of the security procedures of the company,
- employee responsibilities,
- emergency actions and organizational structure

The Emergency Response Plan for this facility is updated at least annually and may be used to satisfy and document many of the requirements associated with the in-depth training.

### **RESPONSIBILITIES:**

The management of this company will ensure that all employees are provided with thorough security training. All employees will be trained and are expected to be familiar with the company's security plans and procedures.

List of general employee security responsibilities:

- Employees are responsible for adhering and conforming to all security-related work activities, processes, and procedures. In addition, employees are encouraged to provide feedback and suggestions on ways to improve the organization's security program.
- All employees are expected to understand and adhere to the following corporate suspicious activity reporting procedures. They are intended for all employees to follow in the event any unusual or suspicious activity that poses a threat to the safety of our employees and the security of our equipment, facilities, or hazardous materials cargo, is observed.
- The company will provide a work environment that is reasonably free of hazards and threats of violence which may cause damage to property or harm to people. It is also the company's policy to establish an effective and continuous safety and security program that incorporates educational and monitoring procedures. All supervisors and managers are responsible for ensuring that their employees are trained in appropriate security and suspicious activity reporting procedures.
- All employees have a responsibility to themselves and to the company to observe and report any suspicious or unusual activity that threatens safety or security.
- Employees are expected to use common sense and good judgment when assessing the threat potential of any suspicious activity. Depending on the given situation, employees will be expected to report any observed suspicious activity to their immediate supervisor, next level manager, the corporate safety director, or the local law enforcement official or fire department.

Suspicious activity is defined to include (but not limited to) any of the following situations:

- Unidentified person(s) attempting to gain access to property, equipment, or facilities.
- Unidentified person(s) in any area of the company, office, yard or parking lot.
- An employee, unescorted vendor, or supplier visiting a part of the company for no known reason.
- Fake ID Look for ID on Badge
- Any unescorted or unaccompanied visitor anywhere in the building or wondering around the yard or parking lot.

- Any person (employee or otherwise) who appears to be hiding something or is acting nervous, anxious, or secretive.
- Any employee or visitor making unusual or repeated requests for sensitive or important company documents or information.
- Any person asking an employee to make unauthorized movement (pick-up and delivery) for cash (motor carrier specific).
- Any person or group loitering outside a company facility or premises.
- Any person claiming to be a representative of a utility (gas, water, electric) but cannot produce valid company identification.
- Any person carrying a weapon such as a gun or a knife.
- After hours, any vehicle driving by a company facility with the lights off.
- Any occupied vehicle parked outside a company facility especially if the vehicle has been sitting for a long period or after normal work hours.
- An unfamiliar vehicle that appears to be abandoned near a company building or parking lot.

The above list is not all inclusive, but rather is meant to provide possible examples of suspicious activities. Once, and if, a suspicious activity is identified, the next step is to act. Employees not only need to be able to identify suspicious activity, they also need to know what to do about it.

#### **MEASURES TO CONFIRM INFORMATION ON JOB APPLICANTS:**

All applicants applying for any position involving access to, handling, storing, preparing for transport, and/or transport of hazardous materials for the company shall submit an accurate, complete, signed and dated application for employment. The hiring and screening process requires the information provided by the applicant on the application be verified as true and accurate.

An inquiry into the previous employment history shall be made for every hazmat employee applicant. Hazmat employee applicants shall provide accurate and complete previous and current employer information upon request, including but not limited to:

- Names and addresses of previous employers;
- Names and titles of previous supervisors;
- Phone numbers or other contact information for both of the above.

All hazmat employee applicants applying for positions with our company shall be given an personal interview by the appropriate responsible company personnel. Personal interviews will be used to determine fit for both the applicant and the company. In addition, the personal interview should be used to verify any gap(s) in employment, reason(s) for job or career changes, or any other important or unexplained behavior or history.

All applicants applying for any position involving the handling, storing, preparing for transport, and/or transport of hazardous materials for the company shall be required to provide either proof of U.S. citizenship or proof of their legal right to work in the United States.

The company's driver qualification and hiring procedures shall be in compliance with applicable state and federal regulations, and meet the security standards as established for this facility.

Applicants shall not be considered for employment as drivers by our company unless they meet the following requirements. Persons applying for the position of driver must:

- Meet the company's minimum age and experience requirements.
- Have a driving record that is in line with the company's safety standards.
- Be able to read and speak English sufficiently as required by subsection 391.11(b)(2).
- Be physically qualified to drive a company vehicle.
- Possess a current and valid commercial driver's license of the correct type and with the proper endorsements.
- Not be disqualified to drive a commercial motor vehicle under the rules set forth in subsection 391.15.

An inquiry into the driving record during the preceding 3 years (10 years for positions requiring a CDL) shall be made for every driver applicant. The inquiry shall be made to the appropriate agency of the state in which the applicant holds a motor vehicle operator's license or permit.

An investigation into the employment record during the preceding 3 years (10 years for positions requiring a CDL) shall be made for every driver applicant. Driver applicants shall provide accurate and complete previous and current employer information upon request, including but not limited to:

- Names and addresses of previous employers;
- Names and titles of previous supervisors and dispatchers;
- Phone numbers or other contact information for both of the above.

An investigation into the drug and alcohol history with regard to previous employers shall be made for every driver applicant per subsection 40.25. The driver qualification and hiring process shall not be finalized until drug and alcohol information from previous employees for the preceding 2 years has been obtained and verified.

All applicants applying for the position of CDL driver with the company shall submit to a pre-employment drug screen as required by subsection 382.301, and no driver applicant shall perform any work or activity for our company until a verified negative test result has been obtained for the applicant.

All applicants applying for the position of driver must be medically examined and certified as physically qualified (or present a current Medical Examiner's Certificate) to operate a commercial motor vehicle by a licensed medical examiner.

### **MEASURES TO ADDRESS THE RISKS OF UNAUTHORIZED ACCESS:**

The company will continue to establish a working relationship with local law enforcement officials, emergency responders, and other public safety and security agencies. These partnerships will include the sharing of the operation, work processes, and hazardous materials stored on site or transported. Information regarding its hazmat operation, locations, and potential threats will be shared as appropriate with these agencies.

Local law enforcement officials, emergency responders, and other public safety and security agencies will be periodically invited on-site to discuss and evaluate potential security risks, vulnerabilities, and to assist in the development or enhancement of security program.

All suspicious activities or apparent criminal acts affecting the safety or security will be reported immediately to the proper law enforcement agencies and appropriate company officials. In addition, documentation should be recorded of any security-related incident.

A complete listing of emergency telephone numbers (found in the emergency plan) shall be provided to all dispatchers, supervisors, and managers. This list shall include the numbers for local police and fire departments, regional state police offices, the FBI, and all company managers and executives.

The company may also elect to request an increase in off-hours law enforcement patrols to coincide with increases in national security threat/risk levels.

All information (electronic and hard copy) relating to the storage and/or transporting of hazardous material shall be restricted to employees on a need-to-know basis. All hazmat-related paperwork and other documentation shall be maintained and retained in a secure area with limited and controlled access.

All work/load assignment sheets involving the transportation of hazardous materials shall be maintained in a secure location. Access to hazardous materials load information shall be limited to operations personnel only, including dispatchers, the operation manager, and other designated employees. Dispatch personnel are responsible for the security and proper issuance of all hazardous materials load-related work assignment documents. When providing load information to drivers, dispatchers must review the load information to ensure that it is complete and accurate. For security purposes, it is extremely important that:

- Loadout paperwork (invoices, shipping tickets, etc.) are checked and verified;
- Spreader or trailer numbers on all load assignments are verified; and
- Load assignment numbers are clearly communicated.

Drivers failing to abide by any of the procedures in this plan are subject to disciplinary action.

#### **MEASURES TO ADDRESS THE RISKS OF EN ROUTE SECURITY:**

The following guidelines and procedures apply to all shipments of hazardous materials. All company personnel will be expected to be knowledgeable of, and adhere to, these guidelines and procedures when performing any hazardous material-related activity.

Before using any motor carrier for the purposes of transporting hazardous materials, each carrier should satisfy themselves the motor carrier has a satisfactory rating and uses safe and qualified drivers and equipment.

Before loading any hazardous material onto a commercial carrier, the identity of the driver and motor carrier shall be verified. Drivers may be asked to produce photo identification and current operator's or commercial driver's license (CDL), and the carrier shall be contacted to verify the:

- Driver's name and license number; and
- Tractor/trailer number.

After loading any hazardous materials cargo onto a commercial carrier has been completed, the company should ensure the trailer is sealed with a company-issued barrier-type seal. All seal numbers, along with the date and time, shall be recorded in the presence of the driver on all shipping documents.

When all loading activity has been completed, drivers are responsible for making sure the cargo is secure and to check the bill of lading or the delivery manifest to ensure cargo count is accurate. Once drivers are satisfied that the cargo matches the shipping papers, they should:



1. Close the trailer doors and witness the shipper sealing of the trailer;
2. Record the seal number(s) on the shipping papers; and
3. Have the shipping papers signed by the responsible shipping personnel before leaving.
4. Contact their supervisor/dispatch to verify all pertinent load-related information and the loading process has been completed.

If a discrepancy is found between the cargo and bill of lading or shipping manifest, drivers shall contact their supervisor immediately for instructions.

In the event the shipper fails to supply a seal, drivers are required to use a company-issued seal. Seals can be obtained from any reputable source.

Before leaving any shipper, drivers must make a thorough visual observation of their immediate surroundings and report any unusual or suspicious activity to their supervisor immediately. Drivers, together with their supervisor/dispatcher, shall prepare and execute trip plans for all hazardous materials movements that list:

1. Routing schedules that avoid highly populated areas, bridges and tunnels when possible;
2. Fueling and break locations;
3. Dates and times of daily/routine check calls; and
4. Estimated times of arrival to stop offs and final destination.

These trip plans shall also include potential alternate routes and acceptable deviations.

For all hazardous materials movements, drivers shall minimize stops en route. Proper execution of thorough trip plans will help reduce the need for unnecessary or unplanned stops.

In the event a load containing hazardous materials need to be staged at a company terminal or facility while en route, it shall be stored in a secured location with limited and controlled access.

When deemed necessary for high hazard materials, the company will consider either the use of a team driver operation, escort service or an additional person to ensure security.

While in transit, drivers are prohibited from discussing information related to their load, route, or delivery schedule with any person(s) other than authorized company officials. Drivers are to report any suspicious activity such as load-related inquiries from strangers, to their supervisors immediately.

Drivers are expected to take all reasonable and responsible precautions to prevent damage to company vehicles and theft of hazardous material(s) cargo while in transit.

For personal protection and safety, and the security of the cargo, drivers are expected to park in safe, well lit parking locations only. In all cases, drivers are required to inspect their vehicle and trailer for evidence of tampering after each stop.

Drivers should lock their vehicles and have all windows in the closed position at all times while in transit] especially during all time spent in urban areas, and parked at truck stops and rest areas.

When possible, dispatch shall contact receivers for the purpose of arranging secure overnight or after hours parking for drivers who can safely and legally arrive at their destinations ahead of schedule.

Drivers are prohibited from taking their equipment (loaded or empty) to or through home, or parking in any unsecured area.

Drivers are expected to maintain regular communications with the company while in transit. Any incident of drivers failing to check in when required shall be assumed by the company to be suspicious and highly irregular. Immediate action shall be taken in such situations. Drivers are expected to fully understand this procedure and make every effort to maintain regular contact and communication with dispatch.

In the event of an attempted vehicle hijacking or cargo theft situation while the vehicle is in motion, the company has adopted a NO STOP policy. Drivers who believe a vehicle hijacking is, or may be, in progress, are instructed to keep the vehicle moving as safely and responsibly as possible until the attempt has ceased and/or the authorities have been notified. However, in any hijack situation, drivers should use their own judgment (whether to stop or keep moving) based on the degree to which they feel their personal safety is at risk. Nothing our drivers do is worth getting hurt over.

Drivers who do fall victim to vehicle hijackers or cargo thieves are instructed to notify police as soon as possible. Once the proper authorities have been notified, drivers are required to contact an appropriate company official and follow all subsequent instructions.

Drivers are prohibited from picking up and transporting any unauthorized person.

Drivers failing to abide by any of the procedures in this plan are subject to disciplinary action.

# EXHIBIT 26

26

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
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[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF WILLIARD  
STICKLER IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

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I, Willard Stickler, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.
2. I was a security guard at the 2596 Stratford Ave, Las Vegas site on or about January 9th. I was in the security shack when I saw a white pickup with several people blowing by my security office and paid no attention to the posted sign that all visitors must sign in at the corner of the property entrance.

3. I called Moe Truman on the radio and let him know we had an active intruder on the property, and I was heading over. Moe told me he was closer, and I saw him intercept the intruder.

4. I watched him intercept the car and saw the people in the car get out and one used the company rest room and observed him talking to the car occupants. When I saw all the safe signs from Moe Truman I went back to my safety station.

Further, the Declarant saith naught.

DATED: September 16, 2024

  
\_\_\_\_\_  
Willard Stickler

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
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[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:  ETON TRANSPORTATION CORP.,  Respondent.	DCOP #57148  NOV #9994 and #10078  <b>DECLARATION OF WILLARD STRICKLER</b>
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I, Willard Strickler, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of Respondent's appeal in the above-referenced matter.
2. On March 20, 2025, at approximately midafternoon, I saw a vehicle follow truck #25 into our terminal located at 2596 Stratford Ave, Las Vegas, Nevada (the "Property"), once the gate was open.
3. The driver of the vehicle did not check in or ask permission to enter the Property.

4. I jogged towards the vehicle to check the ID of the driver of the vehicle and to learn why they were entering into the terminal.

5. As I approached the vehicle, the vehicle sped out of the Property, and I had to jump out of the way of the vehicle way to avoid being hit.

6. I did not get the plates, but I saw that it was a county vehicle. .

7. Similarly, on March 27, 2025, at approximately 1:58 P.M. , I saw a pickup on a walking trail that follows I-11 from Sahara Road to the Flamingo Wash.

8. A man was standing in the pickup taking photos of the Property. Once he saw me, the man got down in his pickup and drove down the walking path. When he closed his door, I saw an Air Quality logo on his door.

DATED: March 28, 2025

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Willard Strickler



# EXHIBIT 27

Matthew L. Johnson (6004)  
 Russell G. Gubler (10889)  
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 8831 West Sahara Avenue  
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*Attorneys for Respondent*

### AIR POLLUTION CONTROL HEARING OFFICER MEETING

<p>In the matter of:</p> <p>ETON TRANSPORTATION CORP.,</p> <p>Respondent.</p>	<p>NOV #10078</p> <p>Hearing Officer: Holly Fic</p> <p><b>DECLARATION OF CRYSTAL THORNE IN SUPPORT OF RESPONSE TO NOTICE OF VIOLATION #10078</b></p> <p>Date of Hearing: September 19, 2024</p> <p>Time of Hearing: 9:00 a.m.</p>
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I, Crystal Thorne, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.


2. I was a security guard on duty at the 2596 Stratford Ave, Las Vagas site on or about January 8th. I tried to flag down a white sedan that breached the security perimeter of the site and paid no heed to the sign that was posted to check in before

entering the site and would not stop for me to check her identification. The car had one female occupant. I contacted Moe Truman to let him know we had an intruder on property.

3. I then witnessed Moe Truman rush out to the car to identify the intruder, he gave me directions to call the police for backup if I observed the pre-arranged sign to call for police help.
4. I witnessed what looked like a verbal exchange between the car's occupant and Mr. Truman and then I observed the car leave the property.

Further, the Declarant saith naught.

DATED: September 16, 2024

  
Crystal Thorne

# EXHIBIT 28

28











## Moe Truman

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**From:** Amazon.com <auto-confirm@amazon.com>  
**Sent:** Monday, November 13, 2023 2:45 PM  
**To:** Moe Truman  
**Subject:** Your Amazon.com order of "Office Neon Sign".



### Order Confirmation

Hello m,

Thank you for shopping with us. We'll send a confirmation when your item ships.

#### Details

Order #113-9298595-6697807

Arriving:  
**November 27 -**  
**Tuesday, November 28**

Ship to:  
**eton**  
**LAS VEGAS, NV**

**Order Total: \$391.78**

[View or manage order](#)

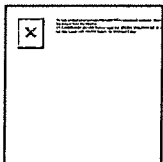


Office Neon Sign  
Qty : 1

We hope to see you again soon.

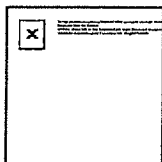
**Amazon.com**

#### Top picks for you



CT CAPETRONIX 12v  
LED Interior Light...

\$23.99



OYMSAE 25Feet SAE  
to SAE Extension...

\$17.99



The payment for your invoice is processed by Amazon Payments, Inc. P.O. Box 81226 Seattle, Washington 98108-1226. If you need more information, please contact (866) 216-1075

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## Moe Truman

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**From:** Everything Neon <sales@everythingneon.com>  
**Sent:** Wednesday, November 15, 2023 7:32 AM  
**To:** Moe Truman  
**Subject:** 18252-1: Your Order has entered our Manufacturing System



**Call Us At:** 512-765-4470  
**Email:** sales@everythingneon.com

### Sign Order Status

Dear moe truman,

We are pleased to inform you that the following order has been entered in our System.

**Order Number:** 18252-1

**Shipping Address:** 2596 STRATFORD AVE  
LAS VEGAS, NV 89121

**Shipping Method:** FedEx

**Expected Ship Date:** 11/25/2023

Item	Qty	Item Description
N105-3394	2	Office With Arrow LED Neon Sign    Color:Red and White  Backing Material : Black Backing Outdoor : No Thanks Size : 13 x 32 inches

Upon receipt of this email, please check to make sure the shipping address and items are correct.

**Thank you**  
**Everything Neon**

# EXHIBIT 29

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
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*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:  ETON TRANSPORTATION CORP.,  Respondent.	DCOP #57148  NOV #9994 and #10078  <b>DECLARATION OF FRANKIE NEVAREZ</b>
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I, Francisco Nevarez, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of Respondent's appeal in the above-referenced matter.
2. On March 20, 2025 at 2:40 P.M. PST, a Clark County vehicle followed me into 2596 Stratford Ave, Las Vegas, Nevada (the "Property"), when I opened the gate.
3. The occupant of the vehicle did not check in or ask permission to enter the Property.
4. I observed them taking pictures of the Property.
5. One of my co-workers, William Strickler, jogged towards the vehicle.

6. When the occupant of the vehicle noticed William Strickler approaching, the occupant of the vehicle drove out of the Property at a high rate of speed, almost running over William Strickler.

DATED: March 27, 2025

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Francisco Nevarez

# EXHIBIT 30

1                   BEFORE THE AIR POLLUTION CONTROL HEARING OFFICER  
2                   CLARK COUNTY, NEVADA  
3  
4           IN THE MATTER OF THE NOTICE OF           )  
5           VIOLATION ISSUED TO ETON                   )  
6           TRANSPORTATION CORP.,                   )                   NOV#9994  
7           ENVIRONMENTAL TRANSPORTATION OFVs   )                   DCOP#57148  
8           NEVADA, LLC D/B/A ETON, AND MOE           )  
9           TRUMAN, ,                                    )  
10                   Respondent.                            )  
11                   \_\_\_\_\_ )

12  
13  
14  
15           DATE:                                   October 29th, 2024

16  
17           BEFORE:                               Hearing Officer Holly Fic

18  
19   APPEARANCES:

20   RUSSELL G. GUBLER, ESQUIRE

21   Johnson & Gubler, P.C.

22   8831 W. Sahara Avenue

23   Las Vegas, Nevada 89117

24   (702) 471-0065





<p>1 PROCEEDINGS</p> <p>2 ***</p> <p>3 THE CLERK: This is the Air</p> <p>4 Pollution Control Hearing Officer Meeting, 8:00 a.m.,</p> <p>5 October 29th, 2024. Holly Fic presiding.</p> <p>6 HEARING OFFICER: 8:06. Again, my</p> <p>7 apologies for being late. We're going to call this</p> <p>8 meeting to order. This is the Air Pollution Control</p> <p>9 Hearing Officer Meeting. This is a specialized</p> <p>10 meeting for two -- three cases, actually, I believe,</p> <p>11 that we've carried over. I am Holly Fic, your hearing</p> <p>12 officer today, here to assure you that the parties are</p> <p>13 afford an opportunity to present evidence and</p> <p>14 arguments at the hearing in affair and impartial</p> <p>15 manner.</p> <p>16 Air Pollution Control hearings are</p> <p>17 conducted in accordance with Nevada by statutes and</p> <p>18 the Clark County Department of Air Quality Regulations</p> <p>19 and Clark County Code. Evidence must be relevant and</p> <p>20 material admissible, probative to the issues in each</p> <p>21 matter and helpful determine the outcome. Decisions</p> <p>22 will be made in accordance with the preponderance of</p> <p>23 the evidence. And I may take judicial notice or</p> <p>24 official notice of certain facts. And just please</p> <p>Page 2</p>	<p>1 Transportation Corporation, NOV9994.</p> <p>2 And please come forward. Good</p> <p>3 morning.</p> <p>4 MR. GUBLER: Good morning.</p> <p>5 HEARING OFFICER: Okay. And please</p> <p>6 state your name, sir.</p> <p>7 THE CLERK: You just need to turn</p> <p>8 the button on so it's red.</p> <p>9 MR. GUBLER: Great. Thank you. Good</p> <p>10 morning.</p> <p>11 HEARING OFFICER: Good morning.</p> <p>12 MR. GUBLER: My name is Russ Gubler. I</p> <p>13 represent the respondents --</p> <p>14 HEARING OFFICER: Okay, great.</p> <p>15 MR. GUBLER: -- in this matter. And</p> <p>16 with me is Mitchell Truman.</p> <p>17 HEARING OFFICER: Okay. And he is in</p> <p>18 what capacity in relation to ETON Transportation Corp?</p> <p>19 MR. GUBLER: He's going to be the</p> <p>20 client's representative.</p> <p>21 HEARING OFFICER: Okay.</p> <p>22 Representative. So I need to swear him. And is he</p> <p>23 going to be giving testimony?</p> <p>24 MR. GUBLER: Correct.</p> <p>Page 4</p>
<p>1 make sure you have silenced your phones and we will</p> <p>2 call to order with the first case.</p> <p>3 We had a status check for Nevada</p> <p>4 System of Higher Education, NOB10018. Where are we at</p> <p>5 on that? I believe we were waiting on a settlement</p> <p>6 agreement.</p> <p>7 MS. SUTOWSKA: Yes, Madam Hearing</p> <p>8 Officer, my name is Anna Sutowska, Air Quality</p> <p>9 supervisor for the department of Environment and</p> <p>10 Sustainability, Division of Air Quality. The</p> <p>11 settlement agreement has been drafted, comments have</p> <p>12 been submitted and reviewed. So we're at the final</p> <p>13 stages of hopefully getting it signed. So we should</p> <p>14 have it signed one by the November hearing.</p> <p>15 HEARING OFFICER: Okay. So I was going</p> <p>16 to say we'll continue this to the November hearing</p> <p>17 first status check to make sure we're -- hopefully we</p> <p>18 have it signed before then. And if it comes in early</p> <p>19 to -- earlier to me, I can look at that, but we'll</p> <p>20 keep it on for November.</p> <p>21 MS. SUTOWSKA: Okay. Sounds good.</p> <p>22 Thank you so much.</p> <p>23 HEARING OFFICER: Okay. Thank you.</p> <p>24 And then we are ready to start with number 1, ETON</p> <p>Page 3</p>	<p>1 HEARING OFFICER: Okay. Let's raise</p> <p>2 your right hand. Do you swear to tell the whole</p> <p>3 truth, and nothing but the truth, so help you God?</p> <p>4 THE WITNESS: Yes.</p> <p>5 (WITNESS SWORN).</p> <p>6 HEARING OFFICER: Okay. Thank you.</p> <p>7 Okay. And then do you want to make opening</p> <p>8 statements? How do you want to go about that? Or do</p> <p>9 you want to save that to the end and just present your</p> <p>10 case? How do you want to move forward?</p> <p>11 MR. GUBLER: I would like to discuss a</p> <p>12 preliminary matter.</p> <p>13 HEARING OFFICER: Okay.</p> <p>14 MR. GUBLER: To make sure that that was</p> <p>15 on the record.</p> <p>16 HEARING OFFICER: Okay.</p> <p>17 MR. GUBLER: First of all.</p> <p>18 HEARING OFFICER: Housekeeping type</p> <p>19 items?</p> <p>20 MR. GUBLER: Well, it -- it's a</p> <p>21 jurisdictional matter that I wanted to present. Okay.</p> <p>22 Madam Counsel, are you okay with that?</p> <p>23 MS. JORGENSEN: No. And for the</p> <p>24 record, Catherine Jorgenson for Department of</p> <p>Page 5</p>



<p>1 Environmental Sustainability, Division of Air Quality.</p> <p>2 HEARING OFFICER: Okay.</p> <p>3 MS. JORGENSEN: And, no, I don't have</p> <p>4 an issue with that.</p> <p>5 HEARING OFFICER: Okay.</p> <p>6 So, you may proceed.</p> <p>7 MR. GUBLER: Thank you so much. So,</p> <p>8 the hearing officer considers cases and determines</p> <p>9 number 1, if a violation of the Air Quality regulation</p> <p>10 exists. And number two, the extent of penalties, if</p> <p>11 any. We, the respondents, of course, respectfully,</p> <p>12 under the -- respectfully, we're arguing that this is</p> <p>13 not the proper form -- proper jurisdiction for this.</p> <p>14 Because what we're doing is we're</p> <p>15 asking for much more than that determination. In</p> <p>16 order to get to that determination, we're asking you,</p> <p>17 Madam Hearing Officer to make -- that there would be</p> <p>18 other determinations that had to be -- that have to be</p> <p>19 made. Under an old case, Marbury versus Madison 1803.</p> <p>20 Right.</p> <p>21 HEARING OFFICER: I liked them in law</p> <p>22 school.</p> <p>23 MR. GUBLER: Right? That's right.</p> <p>24 That is the power -- the cons -- that is for the</p> <p>Page 6</p>	<p>1 And that's our argument. Our -- we're submitting that</p> <p>2 that did not happen here.</p> <p>3 We're also -- and it -- and it's more</p> <p>4 than just that. We're asking -- we're asking the</p> <p>5 trial of fact, really, to also -- and the court to</p> <p>6 make constitutional issue determinations due process,</p> <p>7 whether AQR is preempted by federal law, whether this</p> <p>8 unreasonably interferes with interstate commerce,</p> <p>9 discrimination, Fourth Amendment, unreasonable</p> <p>10 searches and seizures, HM-232 security under PHMSA, it</p> <p>11 must be applied first, despite permits, whether that</p> <p>12 applies first, it's a federal law and separation</p> <p>13 powers as well.</p> <p>14 We're also asking, that the proper</p> <p>15 form to interpret unrelated state statutes, such as</p> <p>16 whether -- there's an argument back and forth whether</p> <p>17 my client is a railroad company or works for a</p> <p>18 railroad company. And quite frankly, we're not sure</p> <p>19 that that actually even applies. If not, the STB</p> <p>20 still requires railroads or trucking companies, both,</p> <p>21 they still regulate those. Still interstate commerce</p> <p>22 issues.</p> <p>23 And whether this is the form to</p> <p>24 determine if Tonopah and Tidewater meets the state</p> <p>Page 8</p>
<p>1 proposition of the power of the court to declare this</p> <p>2 legislative or executive act in violation of the</p> <p>3 constitution. And so what we have is the respondents</p> <p>4 submit that we need to know whether the -- there was a</p> <p>5 -- whether the EPA approved statewide plans under the</p> <p>6 Clean Air Act.</p> <p>7 Now, we read, which is cited in our --</p> <p>8 in our briefing, the Association American Railroads</p> <p>9 versus Southern Coast Air Quality, that's the 2010/19</p> <p>10 9th Circuit case, does require approved statewide</p> <p>11 plans. And then in the recent cases this year of the</p> <p>12 Supreme Court in the Loper Bright and the Corner Post</p> <p>13 cases, the interpretation -- and I think this goes</p> <p>14 with Marbury versus Madison, but in both of those</p> <p>15 cases, those recent ones, the interpretation of a</p> <p>16 statute is less -- is less for the courts, not for an</p> <p>17 administration.</p> <p>18 And here it's specifically -- this --</p> <p>19 one of the issues specifically is related to the EP --</p> <p>20 the Clean Air Act and what the EPA did. So, here, I</p> <p>21 don't think that the -- we're disputing that the EPA</p> <p>22 approved countywide plans in 2000. But again, the</p> <p>23 Associate American Railroads case later on, 10 years</p> <p>24 later in 2010, talks about statewide approved plans.</p> <p>Page 7</p>	<p>1 requirement or the respondents of reasonably available</p> <p>2 methods as opposed to best available control measures.</p> <p>3 And so I wanted to put that on record and ask Madam</p> <p>4 Hearing Officer to -- well, what we -- what we don't</p> <p>5 think that this is a proper form. And so again,</p> <p>6 respectfully, truly, we would ask that the case be</p> <p>7 dismissed so they can be filed where all those things</p> <p>8 can be considered.</p> <p>9 HEARING OFFICER: You do have the</p> <p>10 option to appeal to. I mean, that's what I would</p> <p>11 think would be the proper channel. Because what I'm</p> <p>12 -- I understand you're making constitutional</p> <p>13 arguments. I can hear the reasons, I obviously, but</p> <p>14 under the Air Quality Reg -- Air Quality Regulations,</p> <p>15 I can make a determination and you can appeal that</p> <p>16 matter. That's how I see that.</p> <p>17 But, Counsel, you want to respond.</p> <p>18 MS. JORGENSEN: Thank you. In this</p> <p>19 administrative process, it goes first to the hearing</p> <p>20 officer. If either party is dissatisfied with the</p> <p>21 hearing officer's decision, then they can appeal to</p> <p>22 the hearing board-- the Air Pollution Control Hearing</p> <p>23 Board. In front of the Air Pollution Control Hearing</p> <p>24 Board, it is a de novo hearing, which means all the</p> <p>Page 9</p>



<p>1 facts would be heard again. It's -- they wouldn't be</p> <p>2 taking, in this case, your decision and making a</p> <p>3 determination about whether or not it was arbitrary</p> <p>4 and capricious. They would actually just hear</p> <p>5 everything again.</p> <p>6 The -- I believe there's a case law</p> <p>7 that supports two different ways of approaching this.</p> <p>8 One is the respondent in this case could make whatever</p> <p>9 constitutional arguments, preserving them for the</p> <p>10 future. I've also seen case law that indicates that,</p> <p>11 because generally administrative proceedings don't</p> <p>12 make determinations on constitutional issues, that</p> <p>13 they don't actually need to preserve them. They can</p> <p>14 bring them up when and if this ever gets to a court.</p> <p>15 So, from the hearing board level, if</p> <p>16 either party is dissatisfied, then the next step would</p> <p>17 be judicial review. In that situation on judicial</p> <p>18 review, the facts would be based on or would -- the</p> <p>19 court would look at the facts that had been</p> <p>20 established and accepted by the hearing board at the</p> <p>21 time of that hearing, and those would not be</p> <p>22 overturned unless they were arbitrary and capricious.</p> <p>23 However, any questions of law would be</p> <p>24 all heard de novo in front of a court. So, in my</p> <p>Page 10</p>	<p>1 everybody's saying.</p> <p>2 HEARING OFFICER: Uh-huh.</p> <p>3 MR. GUBLER: But the Supreme Court</p> <p>4 cases in the Loper Bright and Corner Post cases, say,</p> <p>5 because everything that's been presented that goes to</p> <p>6 another administrative hearing, they're all</p> <p>7 administrative hearing. And that says the courts have</p> <p>8 the right to interpret those statutes, not the</p> <p>9 administrative body. And so that's what we're asking</p> <p>10 for.</p> <p>11 MS. JORGENSEN: If I may. In this</p> <p>12 case, the administrative body that they're talking</p> <p>13 about is a -- for instance, a state department -- I</p> <p>14 mean a federal department. I don't believe that that</p> <p>15 case represents or deals with an administrative</p> <p>16 quasi-judicial process. Again, but to the extent it</p> <p>17 does, this is the process in place, and response can</p> <p>18 preserve these issues and make sure that they -- if</p> <p>19 they're dissatisfied with the outcome of they're</p> <p>20 either this or a hearing board proceeding, they can</p> <p>21 always present these things in front of a court.</p> <p>22 HEARING OFFICER: Anything further?</p> <p>23 MR. GUBLER: No, I don't think that</p> <p>24 changes the argument.</p> <p>Page 12</p>
<p>1 view, this is an air of -- alleged violation of Air</p> <p>2 Quality Regulations. This is the forum based on state</p> <p>3 law as well as what's been what? EPA has accepted as</p> <p>4 part of the state implementation plan, so under the</p> <p>5 Clean Air Act as well.</p> <p>6 We -- I -- in my position -- in my --</p> <p>7 it's my position that we should just move forward, and</p> <p>8 whatever arguments or constitutional issues or</p> <p>9 anything that respondent believes is appropriate in</p> <p>10 front of a different forum, they can preserve those</p> <p>11 issues and we can proceed accordingly.</p> <p>12 HEARING OFFICER: I tend to agree. I</p> <p>13 mean, this is -- this is the administrative process</p> <p>14 that was set up. It's not like you're stuck with my</p> <p>15 decision, and you can bring it up to the hearing board</p> <p>16 de novo, and then you still have the judicial review.</p> <p>17 So there is a certain processes to go through. So, I</p> <p>18 am --</p> <p>19 MR. GUBLER: May I make a quick --</p> <p>20 HEARING OFFICER: Oh, sure. You can</p> <p>21 respond to that. Go ahead.</p> <p>22 MR. GUBLER: Thank you so much.</p> <p>23 HEARING OFFICER: Sure.</p> <p>24 MR. GUBLER: I understand what</p> <p>Page 11</p>	<p>1 HEARING OFFICER: Okay.</p> <p>2 MR. GUBLER: It -- it's the Clean Air</p> <p>3 Act, which is a federal statute. It's whether the EPA</p> <p>4 properly acted. That's a federal administrative body.</p> <p>5 And that's part of our argument along with the</p> <p>6 constitutional issues.</p> <p>7 HEARING OFFICER: And I appreciate</p> <p>8 that. It -- but this is Step 1 of the process. And</p> <p>9 it's -- you are not precluded. It's not going to --</p> <p>10 it's not going to harm this in any manner. And this</p> <p>11 is in Step 1. So I'm going to proceed forward. So,</p> <p>12 in response to dismissal, I'm not going to dismiss it.</p> <p>13 You can put on your case and we can -- and that's</p> <p>14 fine.</p> <p>15 I understand you're making the federal</p> <p>16 arguments. I understand what your arguments are. But</p> <p>17 at this, this is Step 1 of the process that the state</p> <p>18 has approved, and this is how we go forward. And you</p> <p>19 have the right to appeal the decision and move forward</p> <p>20 with the hearing board and then go to judicial review.</p> <p>21 But I am not going to dis -- I'm going to deny the</p> <p>22 request to dismiss and we'll proceed forward.</p> <p>23 MR. GUBLER: Thank you.</p> <p>24 HEARING OFFICER: Thank you. And do we</p> <p>Page 13</p>



<p>1 want to start with you presenting the evidence and</p> <p>2 then responding?</p> <p>3 MS. JORGENSEN: We can see what the</p> <p>4 best approach would be. The -- that would be my</p> <p>5 preference. There are two notices of violation, 9994</p> <p>6 and 10078. They both involve the same -- these are</p> <p>7 both related to or involve Section 94, the Air Quality</p> <p>8 Regulation that deals with construction.</p> <p>9 And the first one is the events</p> <p>10 essentially take place in January of 2024. The second</p> <p>11 one, the events take place in July and August of 2024.</p> <p>12 When I say events, those are the days of the alleged</p> <p>13 violations.</p> <p>14 HEARING OFFICER: Okay.</p> <p>15 MS. JORGENSEN: And so I'm comfortable</p> <p>16 with just moving forward with calling my first</p> <p>17 witness. Although I don't know if respondent would</p> <p>18 like to proceed with opening statements or -- I'm</p> <p>19 flexible. Yeah. How would you like to go about that?</p> <p>20 And that's fine. That's why it's an informal process.</p> <p>21 MR. GUBLER: I don't think that opening</p> <p>22 statements are necessary. I'd like to reserve the</p> <p>23 closing.</p> <p>24 HEARING OFFICER: Okay. Thank you.</p> <p>Page 14</p>	<p>1 <b>the recommended penalties, overseeing dust controlled</b></p> <p>2 <b>permit processes, overseeing the complaint line in our</b></p> <p>3 <b>asbestos program.</b></p> <p>4 Q. And how long have you been with Air</p> <p>5 quality?</p> <p>6 <b>A. Ten years.</b></p> <p>7 Q. And how long have you been in this</p> <p>8 current position?</p> <p>9 <b>A. Seven years.</b></p> <p>10 Q. Are you familiar with Moe's Violation</p> <p>11 9994?</p> <p>12 <b>A. I am.</b></p> <p>13 Q. And to whom was it issued?</p> <p>14 <b>A. It was issued to ETON Transportation</b></p> <p>15 <b>Corporation.</b></p> <p>16 Q. And in January, 2024, did ETON have a</p> <p>17 Dust Control Operating Permit for the construction</p> <p>18 site that is the subject of NOV 9994?</p> <p>19 <b>A. They did.</b></p> <p>20 Q. And where is that located?</p> <p>21 <b>A. The site?</b></p> <p>22 Q. Yes?</p> <p>23 <b>A. It's located on Stratford Avenue.</b></p> <p>24 MS. JORGENSEN: Okay. Could we go to a</p> <p>Page 16</p>
<p>1 You can call your first witness.</p> <p>2 MS. JORGENSEN: Thank you. I'd like to</p> <p>3 call Anna Sutowska.</p> <p>4 HEARING OFFICER: Raise your right hand</p> <p>5 so I -- do you solemnly swear that you'll tell the</p> <p>6 truth, the whole truth, and nothing but the truth, so</p> <p>7 help you God?</p> <p>8 THE WITNESS: I do.</p> <p>9 (WITNESS SWORN).</p> <p>10 HEARING OFFICER: Thank you.</p> <p>11 EXAMINATION.</p> <p>12 BY MS. JORGENSEN:</p> <p>13 Q. Mr. Sutowska, would you please state</p> <p>14 your full name?</p> <p>15 <b>A. Anna Sutowska.</b></p> <p>16 Q. And what are -- what position do you</p> <p>17 hold with the Division of Air Quality?</p> <p>18 <b>A. I'm an air quality supervisor in the</b></p> <p>19 <b>compliance and enforcement section of the Division of</b></p> <p>20 <b>Air Quality.</b></p> <p>21 Q. And what are your job duties?</p> <p>22 <b>A. So, I have a staff of 11 and they do</b></p> <p>23 <b>various things. My duties include reviewing the</b></p> <p>24 <b>notices of violation that have been drafted, reviewing</b></p> <p>Page 15</p>	<p>1 copy of the Dust Control Operating Permit? It's</p> <p>2 Version 0. It's attached to Air Quality's reply. I</p> <p>3 don't know if these have been Bates stamps. I'm not</p> <p>4 sure. Okay. Well, you've got it. Can you make that</p> <p>5 smaller.</p> <p>6 THE CLERK: Smaller?</p> <p>7 MS. JORGENSEN: So you can see a little</p> <p>8 bit more on the page?</p> <p>9 BY MS. JORGENSEN:</p> <p>10 Q. Okay. Ms. Sutowska, what is -- what</p> <p>11 is this document?</p> <p>12 <b>A. That is the Dust Control Operating</b></p> <p>13 <b>Permit for construction activities.</b></p> <p>14 Q. Okay. And I'm just going to ask you</p> <p>15 some questions related to that. Who is the permittee?</p> <p>16 <b>A. The permittee is ETON.</b></p> <p>17 Q. And who's the designated onsite</p> <p>18 representative?</p> <p>19 <b>A. Moe Truman.</b></p> <p>20 Q. And what does a designated onsite</p> <p>21 representative do?</p> <p>22 <b>A. Well, they should be onsite at all</b></p> <p>23 <b>times that construction activities are occurring so</b></p> <p>24 <b>that they can ensure that dust control is being</b></p> <p>Page 17</p>



<p>1 <b>maintained.</b></p> <p>2 Q. Okay. And when was this permit</p> <p>3 originally issued?</p> <p>4 <b>A. August 30th, 2023.</b></p> <p>5 Q. Okay. And then who is the responsible</p> <p>6 official?</p> <p>7 <b>A. Mr. Moe Truman.</b></p> <p>8 Q. And what is the responsibilities of</p> <p>9 the responsible official?</p> <p>10 <b>A. So, the responsible official is</b></p> <p>11 <b>required to ensure that the permit application has</b></p> <p>12 <b>been submitted completely and accurately. They sign</b></p> <p>13 <b>all documents related to the project, including the</b></p> <p>14 <b>permit application. They ensure compliance of Air</b></p> <p>15 <b>Quality Regulations on site. They implement long-term</b></p> <p>16 <b>stabilization at the project closure or once the</b></p> <p>17 <b>project has been completed. And then they do submit a</b></p> <p>18 <b>-- they are required to submit a permit closure form.</b></p> <p>19 Q. Okay. And going back to the</p> <p>20 designated onsite representative, is that individual</p> <p>21 required to have a dust card?</p> <p>22 <b>A. Yes, they are.</b></p> <p>23 Q. And what is the dust card?</p> <p>24 <b>A. Well, a dust card, they are required</b></p> <p style="text-align: right;">Page 18</p>	<p>1 <b>class in February, 2024.</b></p> <p>2 Q. Okay. Is it a condition of the Dust</p> <p>3 Control Operating Permit that the permittee agrees to</p> <p>4 permit the inspection by Air Quality staff during</p> <p>5 permittees hours of operation without prior notice?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And is that indicated on this first</p> <p>8 page?</p> <p>9 <b>A. It is.</b></p> <p>10 Q. Is there any other place where it's</p> <p>11 indicated on the permit?</p> <p>12 <b>A. Yes. It's also on page 3.</b></p> <p>13 Q. Could we go to page 3? Okay. And</p> <p>14 where are you looking? I don't know if you have a</p> <p>15 point. Or you have a pointer?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. Okay?</p> <p>18 <b>A. So, right here, so, when the</b></p> <p>19 <b>responsible official submits their permit application</b></p> <p>20 <b>online, this is a condition that they affirm in the</b></p> <p>21 <b>permit application. And it states, in accordance with</b></p> <p>22 <b>the DCOP and AQRs, The applicant and the permittee</b></p> <p>23 <b>shall consent to inspection of the site during normal</b></p> <p>24 <b>hours of operation by Division of Air Quality staff,</b></p> <p style="text-align: right;">Page 20</p>
<p>1 <b>to attend our dust control class. It's a class we</b></p> <p>2 <b>offer twice a month. It goes through all of the best</b></p> <p>3 <b>management practices for construction sites, how to</b></p> <p>4 <b>maintain dust control, what's required for permits,</b></p> <p>5 <b>and they do also discuss long term stabilization once</b></p> <p>6 <b>you close your project.</b></p> <p>7 Q. And if someone applies for a permit,</p> <p>8 and does -- and there is that onsite representative</p> <p>9 does not have a dust card, is there any leeway?</p> <p>10 <b>A. Yes. There are --</b></p> <p>11 Q. Go ahead?</p> <p>12 <b>A. I'm sorry. They're supposed to sign</b></p> <p>13 <b>up for and attend the dust class within 30 days of the</b></p> <p>14 <b>permit issuance.</b></p> <p>15 Q. And in this case, did Mr. Truman sign</p> <p>16 up for a dust class?</p> <p>17 <b>A. He did. He signed up for the October</b></p> <p>18 <b>10th, 2023 class.</b></p> <p>19 Q. And did he attend that class?</p> <p>20 <b>A. He did not.</b></p> <p>21 Q. To the best of your knowledge, did Mr.</p> <p>22 Truman ever attend a dust class during the period of</p> <p>23 the -- when the dust permit was in place?</p> <p>24 <b>A. Yes, he did -- he did attend the dust</b></p> <p style="text-align: right;">Page 19</p>	<p>1 <b>without prior notice, to determine compliance with the</b></p> <p>2 <b>terms and conditions of the DCOP and AQRs.</b></p> <p>3 Q. Okay. So by submitting this</p> <p>4 application on behalf of ETON, Mr. Truman acknowledged</p> <p>5 that the permittee had consented to this permit</p> <p>6 condition; is that correct?</p> <p>7 <b>A. That's correct.</b></p> <p>8 Q. And one of the few other questions</p> <p>9 about this Version 0, what type of construction did</p> <p>10 the -- did this version of the Dust Control Operating</p> <p>11 Permit authorize?</p> <p>12 <b>A. So, it was submitted to grub the site</b></p> <p>13 <b>because they wanted to perform a survey to determine a</b></p> <p>14 <b>grading plan.</b></p> <p>15 Q. Okay. And if I could, which page is</p> <p>16 this of the permit?</p> <p>17 <b>A. This is the second page. Well, this</b></p> <p>18 <b>is page 1 after the face plate.</b></p> <p>19 Q. Okay. So, it says additional project</p> <p>20 information. So, grub site, cleared survey. Okay.</p> <p>21 And then there was demolition was authorized.</p> <p>22 Anything else that you can tell from this?</p> <p>23 <b>A. Nothing else, no.</b></p> <p>24 Q. Okay. And what was the amount of</p> <p style="text-align: right;">Page 21</p>





1 acreage, this dust control permit, the first version  
2 originally covered?  
3 **A. 3.19 acres was the size of the parcel.**  
4 Q. Okay. Can we go to a map? Is there a  
5 map in the dust control proof property sent?  
6 **A. There is. It's page 4.**  
7 MS. JORGENSEN: Go to page 4.  
8 BY MS. JORGENSEN:  
9 Q. Okay. So, can you indicate where the  
10 -- what the site is?  
11 **A. So the parcel is outlined in this pink**  
12 **purple boundary, and this is the parcel that was**  
13 **permitted.**  
14 Q. Okay. And is this a -- to the best of  
15 your knowledge, an aerial that was provided by the  
16 permittee or the applicant?  
17 **A. That's correct.**  
18 Q. And does -- at the time, do you -- can  
19 we tell from this when -- what date this aerial photo  
20 was?  
21 **A. We cannot tell from this aerial.**  
22 Q. Okay. But it does appear that at the  
23 time this was submitted, there's no --  
24 **A. Yes.**

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1 Q. -- buildings on this or --  
2 **A. That's correct. It appears to be an**  
3 **undisturbed parcel with vegetation growing on it.**  
4 Q. Okay. Was the dust control permit  
5 ever revised?  
6 **A. It was.**  
7 MS. JORGENSEN: And if we could go to  
8 Version 1 of the Dust Control Operating Permit. This  
9 is Exhibit B of Air Quality's reply.  
10 BY MS. JORGENSEN:  
11 Q. Ms. Sutowska, could you please  
12 identify what this document is?  
13 **A. So this is a Modification 1 to the**  
14 **Dust Control Operating Permit for construction**  
15 **activities.**  
16 Q. Okay. And what is the revision date?  
17 **A. It's February 8th, 2024.**  
18 Q. Where does it say that?  
19 **A. Here.**  
20 Q. There, thank you. And what is the  
21 project acreage now?  
22 **A. 4.99 acres.**  
23 Q. So it just under two acres?  
24 **A. That's correct.**

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1 Q. And who is the designated onsite  
2 representative?  
3 **A. Mr. Moe Truman.**  
4 Q. And I believe you stated that he did  
5 obtain a dust card. When was that, again, did he  
6 attend the class?  
7 **A. He did attend the February 27th class**  
8 **after this permit was issued.**  
9 Q. Okay. And who's the responsible  
10 official?  
11 **A. Mr. Moe Truman.**  
12 Q. And does this version of the Dust  
13 Control Operating Permit also require that the  
14 permittee allow inspections during normal business  
15 hours without notice by Air Quality staff?  
16 **A. Yes, it does.**  
17 Q. What type of construction did this  
18 version authorize?  
19 **A. So in this version, Mr. Truman**  
20 **submitted that he was adding acreage and was also**  
21 **going to pave the areas with hot mix asphalt.**  
22 MS. JORGENSEN: Okay. And could you go  
23 to the end of this permit document?  
24 BY MS. JORGENSEN:

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1 Q. Okay. Ms. Sutowska, what are those --  
2 if you could go to the e-mails that are at the end of  
3 it, what are these, Ms. Sutowska?  
4 **A. So, whenever a permit application is**  
5 **reviewed by our permit reviewer, they do require any**  
6 **changes in writing. The permit reviewer requested**  
7 **clarification about any -- Mr. Truman had indicated in**  
8 **the application he was removing acreage, which in fact**  
9 **was not. Before the permit was issued, I asked Mr.**  
10 **Truman if he can clarify that he was going to be**  
11 **paving the area with permanent asphalt pavement and**  
12 **not an alternative such as recycled asphalt.**  
13 **Mr. Truman confirmed that, correct,**  
14 **three inches of hot mix would be applied.**  
15 MS. JORGENSEN: Okay. I don't have any  
16 further questions right now for Ms. Sutowska.  
17 HEARING OFFICER: Okay. Thank you.  
18 Counsel, do you have any questions.  
19 MR. GUBLER: I have no questions for  
20 Ms. Sutowska.  
21 HEARING OFFICER: Okay.  
22 MS. JORGENSEN: I'd like to call Candy  
23 Rowsell.  
24 HEARING OFFICER: If you raise your

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1 right hand. Do you solemnly swear that you will tell  
2 the truth, the whole truth, and nothing but the truth  
3 so help you God?  
4 THE WITNESS: I do.  
5 (WITNESS SWORN).  
6 HEARING OFFICER: Okay. You may  
7 proceed.  
8 EXAMINATION.  
9 BY MS. JORGENSEN:  
10 Q. Ms. Rowsell, do you please state your  
11 name for the record?  
12 A. **Canduella Rowsell.**  
13 Q. And Candy is a shortened version?  
14 A. **Yes, it's my nickname.**  
15 Q. Okay. And what is your job title?  
16 A. **Air Quality Specialist too.**  
17 Q. And what are your duties?  
18 A. **My duties are to go to dust control**  
19 **sites and to do an inspection to verify that they're**  
20 **following with the AQRs.**  
21 Q. And how long have you been with Air  
22 Quality?  
23 A. **Two years and three months.**  
24 Q. And how long have you been in your

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1 current position?  
2 A. **Two years and three months.**  
3 Q. Okay. On January 8th, 2024, did you  
4 visit the ETON construction site that is the subject  
5 of this notice of violation 9994?  
6 A. **Yes.**  
7 Q. And what was the purpose of your  
8 visit?  
9 A. **Just a normal routine inspection.**  
10 Q. And during your inspection, what did  
11 you observe?  
12 A. **Unstable soils and a trucking yard**  
13 **being active on the site.**  
14 MS. JORGENSEN: Could we go to Photos 1  
15 and 2, Exhibit C?  
16 BY MS. JORGENSEN:  
17 Q. Ms. Rowsell, could you describe what  
18 these two photographs are?  
19 A. **It's a view of the unstable and dry,**  
20 **loose, powdery, soils caused by vehicular travel on**  
21 **the site.**  
22 Q. And is that true for both Photograph 1  
23 and Photograph 2?  
24 A. **Correct.**

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1 Q. And did you take these photographs?  
2 A. **I did.**  
3 Q. And where did you take them from?  
4 A. **From -- on the site.**  
5 Q. And were you in your vehicle or  
6 outside your vehicle?  
7 A. **I was sitting in my vehicle.**  
8 Q. Okay. And did these photographs  
9 fairly and accurately represent what you observed on  
10 that day?  
11 A. **Yes.**  
12 Q. Okay. Did you document -- I'm sorry,  
13 did you speak with the responsible official, Mr.  
14 Truman?  
15 A. **Yes, I spoke with Mr. Truman.**  
16 Q. Would you please describe your  
17 interaction with him?  
18 A. **Yes. I was sitting in my truck**  
19 **looking at my computer, and all of a sudden someone**  
20 **tried to yank open my truck door, which I keep locked**  
21 **for security reasons. And I turned and saw Mr.**  
22 **Truman, and I rolled my window down about three inches**  
23 **and asked who he was.**  
24 Q. So at the time when you said you

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1 turned and saw -- looked at him, you didn't know who  
2 he was?  
3 A. **I did not know who he was.**  
4 Q. Okay. Please go ahead?  
5 A. **And then I asked him who he was and he**  
6 **said his name was Mitchell Truman -- Moe Truman. And**  
7 **he said, what are you doing here? And I informed him**  
8 **that I was -- I was here to do an inspection. He told**  
9 **me I wasn't allowed to be on the site. I need to**  
10 **check in. And I stated that there's no signs stating**  
11 **that I need to check in. And he said, you have to**  
12 **check in. And I told him, all my other sites I go to,**  
13 **they have signs posted when we have to check in. And**  
14 **then he stated that he had hazardous materials on the**  
15 **site. And I said, there's no signs. And he stated**  
16 **that he doesn't have to have signs. And I stated, you**  
17 **have to have signs, stating what you have on your**  
18 **site, or you have to say check in at the office so**  
19 **that nobody comes out.**  
20 **And he said, I don't know who you are,**  
21 **if you're with Clark County, federal, state, whoever,**  
22 **I don't know who you are, when clearly it states on my**  
23 **truck that -- who I am. And I handed him my business**  
24 **card. And he said, are you done? And I said, no, I**

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1 needed to complete my inspection. And he said, okay.  
2 And he walked away.  
3 Q. Okay. Did you document your  
4 inspection by preparing construction site inspection  
5 report?  
6 A. Yes.  
7 MS. JORGENSEN: Could we go to Exhibit  
8 B? Can you -- I don't know if you can make that go up  
9 there. Okay. Could you go back to the top of that,  
10 Ms. Thompson?  
11 BY MS. JORGENSEN:  
12 Q. Ms. Rowsell, what is this document?  
13 A. This is the form that we fill out  
14 after we do an inspection on a site.  
15 Q. So is this the form that you filled  
16 out after your inspection on January 8th, 2024?  
17 A. Yes.  
18 Q. Does the report note your observations  
19 that the site soils were unstable?  
20 A. Yes.  
21 Q. And did you also note that there was  
22 no track out control device?  
23 A. Yes.  
24 MS. JORGENSEN: Could we go back to the  
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1 Dust Control Operating Permit Version 1, the copy of  
2 the map? It's Exhibit B of the reply -- of Air  
3 Quality's reply.  
4 THE CLERK: The revision?  
5 MS. JORGENSEN: That one. Yes. Thank  
6 you.  
7 BY MS. JORGENSEN:  
8 Q. Ms. Rowsell, what is this?  
9 A. This is the map of the site. And then  
10 the areas in the green are the area that he's  
11 disturbed that is not on his permit.  
12 Q. Okay. And this is in back on January  
13 8th, 2024?  
14 A. Correct.  
15 Q. Because eventually those sites, that  
16 area was permitted?  
17 A. Correct.  
18 Q. Okay. Can you -- I don't -- do you  
19 have a pointer? Can you show where a dust control  
20 track out device was needed?  
21 A. Right here and right here.  
22 Q. So the top, and that was your  
23 understanding that that's where vehicles were going in  
24 and out of?  
Page 31

1 A. I observed semis going in and out of  
2 here while I was on site. And this is the entrance  
3 that I came in, and a couple semis came in --  
4 Q. Okay?  
5 A. -- and then I followed along.  
6 Q. And then can you show -- so is it your  
7 -- and based on your observations, your understanding  
8 the people -- that vehicles would come in at the top  
9 of the site?  
10 A. They were coming in at both locations.  
11 Q. Oh, they were coming in both. Were  
12 they exiting both?  
13 A. Yes.  
14 Q. Okay. And when you took your  
15 pictures, where were you located?  
16 A. I was sitting right here. Truck -- I  
17 parked out of the way of the trucks because I didn't  
18 want to get run over.  
19 Q. Okay?  
20 A. Or being their way.  
21 Q. Okay?  
22 MS. JORGENSEN: Could we go back to  
23 Exhibit B of the notice of violation?  
24 BY MS. JORGENSEN:  
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1 Q. Okay. Did you include any inspector  
2 notes in the report?  
3 A. I did.  
4 Q. Would you please read them?  
5 A. Yes. I conducted a routine  
6 inspection. I observed approximately 1.58 acres of  
7 dry loose powdery site soils, along with multiple  
8 semi-trailers parked throughout the project, along  
9 with multiple semi tractors and semis entering and  
10 exiting the project. While I was filling out my  
11 inspection on site, a man tried to yank open my  
12 driver's side door that I keep locked for safety  
13 purposes.  
14 When I asked him who he was, he stated  
15 that his name was Mitchell Truman or Moe Truman. I  
16 spoke with Moe Truman, responsible official on site,  
17 and he asked me, who gave me permission to access the  
18 project. I stated to Mr. Truman that since there was  
19 a dust control permit on this site, that I had  
20 authority to access the site.  
21 Mr. Truman stated that I had to get  
22 permission to be on site as there were hazardous  
23 materials on site, and that he was sure I wouldn't  
24 know anything about -- know about that. I informed  
Page 33



<p>1 <b>Mr. Truman that I did understand about hazardous</b></p> <p>2 <b>materials, and I understood his concern for his</b></p> <p>3 <b>property. I informed Mr. Truman that he did not have</b></p> <p>4 <b>a sign posted at the entrance warning about hazardous</b></p> <p>5 <b>materials on site or any sign posted to check in.</b></p> <p>6 <b>Mr. Truman stated that the federal</b></p> <p>7 <b>government doesn't require a sign, and that the feds,</b></p> <p>8 <b>Trump, the state, or county or whomever I work for. I</b></p> <p>9 <b>informed Mr. Truman that all my other sites that</b></p> <p>10 <b>require check-in have a sign posted at the entrance.</b></p> <p>11 <b>Mr. Truman stated that he would have the sign up by</b></p> <p>12 <b>tomorrow. Mr. Truman asked me if I was done, I stated</b></p> <p>13 <b>that I needed to complete my inspection. Mr. Truman</b></p> <p>14 <b>walked away, and I left the site.</b></p> <p>15 Q. Keep going?</p> <p>16 A. I'm sorry. Immediately and informed</p> <p>17 my senior about the inspection and that I needed a</p> <p>18 follow up. My senior stated he would go with David</p> <p>19 Dean and complete the follow up inspection tomorrow.</p> <p>20 Q. Okay. Did you return to the site</p> <p>21 again?</p> <p>22 A. I did.</p> <p>23 Q. And did you re -- in this -- in your</p> <p>24 notes you indicated that you -- that someone was going</p> <p style="text-align: right;">Page 34</p>	<p>1 <b>powdery site soils observed in the central portion of</b></p> <p>2 <b>the project. And then view of dry, loose, powdery</b></p> <p>3 <b>site soils absorbed -- I'm sorry, observed in the</b></p> <p>4 <b>central portion of the project again in a different</b></p> <p>5 <b>area.</b></p> <p>6 Q. And then what about 13?</p> <p>7 A. And 13 was view of dry, loose, powdery</p> <p>8 soils observed on the western edge of the project.</p> <p>9 Q. When you went there on January 17th,</p> <p>10 did you go with anybody else from Air Quality?</p> <p>11 A. Yes, I went with Air Quality senior,</p> <p>12 Andrew Kirk.</p> <p>13 Q. Okay. And when you took these</p> <p>14 photographs -- oh, let me ask you this, did you take</p> <p>15 these photographs?</p> <p>16 A. I took all the photographs.</p> <p>17 Q. And did these photographs accurately</p> <p>18 represent what you observed?</p> <p>19 A. Yes.</p> <p>20 Q. And did you take these photographs</p> <p>21 inside your vehicle, outside your vehicle, or both?</p> <p>22 A. Outside my vehicle.</p> <p>23 Q. Okay?</p> <p>24 A. I walked the side.</p> <p style="text-align: right;">Page 36</p>
<p>1 to return on January 9th. Did you return on January</p> <p>2 9th?</p> <p>3 A. I did not.</p> <p>4 Q. When did you return?</p> <p>5 A. On January 17th.</p> <p>6 Q. And on the 17th, did you perform in</p> <p>7 site inspection?</p> <p>8 A. I did.</p> <p>9 Q. And did you take any photographs of</p> <p>10 what you observed?</p> <p>11 A. I did.</p> <p>12 MS. JORGENSEN: Could we go to Exhibit</p> <p>13 C, Photographs 9 through 13.</p> <p>14 BY MS. JORGENSEN:</p> <p>15 Q. Ms. Rowsell, could you go through --</p> <p>16 let's -- if we could go through Photographs 9 through</p> <p>17 13, if you could describe what they depict?</p> <p>18 A. It's a view of dry, loose, powdery</p> <p>19 site soils observed on the northeastern portion on the</p> <p>20 project, number 9. Number 10 is more dry, loose,</p> <p>21 powdery site soils observed on the northern portion of</p> <p>22 the project.</p> <p>23 Q. Photograph 11?</p> <p>24 A. I'm sorry. View of dry, loose,</p> <p style="text-align: right;">Page 35</p>	<p>1 Q. Okay. And when you arrived on January</p> <p>2 17th, do you recall whether or not there was any signs</p> <p>3 posted about hazard -- hazardous chemicals or checking</p> <p>4 at the office?</p> <p>5 A. There was not.</p> <p>6 Q. Okay. To the best of your</p> <p>7 recollection, did you speak with Mr. Truman on January</p> <p>8 17th while on site?</p> <p>9 A. Can I see my CSI.</p> <p>10 MS. JORGENSEN: If we could go to</p> <p>11 Exhibit -- make sure I have this right. Yeah, Exhibit</p> <p>12 H.</p> <p>13 THE WITNESS: No, I did not speak with</p> <p>14 Mr. Truman. This is the one where I e-mailed him.</p> <p>15 BY MS. JORGENSEN:</p> <p>16 Q. So, if I could just back up real</p> <p>17 quick. What is this document we're looking at?</p> <p>18 A. This is my construction site</p> <p>19 inspection report for January 17th that I fill out</p> <p>20 when I'm done with my inspection.</p> <p>21 Q. Okay. And so based on -- you don't</p> <p>22 have a specific recollection whether or not you spoke</p> <p>23 to Mr. Truman?</p> <p>24 A. No.</p> <p style="text-align: right;">Page 37</p>



1 Q. But this indicates that you did not?  
2 **A. This does indicate that I sent him an**  
3 **e-mail. That I did not speak with him.**  
4 Q. Okay. Thank you. On this  
5 construction site report, did you document the  
6 observations that you made?  
7 **A. I did.**  
8 Q. And did you document that there was  
9 unstable soil?  
10 **A. Yes.**  
11 Q. And what about track out control  
12 device, had that been installed?  
13 **A. Not yet.**  
14 Q. And what was -- sorry, go ahead?  
15 **A. I said no. It was needed though.**  
16 Q. Okay. And when you were there on  
17 January 8th, I believe that the observed instability  
18 was 1.58 acres?  
19 **A. Correct.**  
20 Q. Was this less?  
21 **A. Yes.**  
22 Q. So, did it appear to you that some  
23 actions had been taken?  
24 **A. Yes.**

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1 Q. Okay. Because it was something less?  
2 **A. Yes, it was one and a half acres less.**  
3 Q. Okay?  
4 **A. Almost.**  
5 Q. Did you include any inspector notes in  
6 your report?  
7 **A. I did.**  
8 Q. And would you please read them?  
9 **A. Yes. I conducted a follow up**  
10 **inspection and observed approximately 0.26 acres of**  
11 **dry, loose, powdery site soils throughout the project.**  
12 **I e-mailed Moe Truman, responsible official, informing**  
13 **him that this is yet another day of non-compliance**  
14 **with a possible notice of violation, for failure to**  
15 **maintain disability in installing a track out control**  
16 **device at all exit points.**  
17 **I informed Mr. Truman to immediately**  
18 **stabilize all site soils and maintaining a moisture**  
19 **crystal condition 24/7, and install a track out**  
20 **control device as required on the non sent by Katrinka**  
21 **Byers on January 10th, 2024.**  
22 Q. And what is a non?  
23 **A. A notice of non-compliance is when we**  
24 **go to a site and they're not in compliance with AQRs,**

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1 **we issue a notice of non-compliance with a possible**  
2 **notice of violation.**  
3 Q. Okay. And so based on these notes, it  
4 was your understanding that Ms. Byers had provided the  
5 permittee with a notice of non-compliance?  
6 **A. Correct.**  
7 Q. Okay. Did you notice by Mr. Truman of  
8 your observations on -- from your inspection on  
9 January 17th?  
10 **A. Yes, I sent him an e-mail.**  
11 MS. JORGENSEN: Okay. Could we go to  
12 Exhibit J?  
13 BY MS. JORGENSEN:  
14 Q. Okay. Ms. Rowsell, could you describe  
15 what this is?  
16 **A. This is the e-mail that I sent Mr.**  
17 **Truman informing him that it's another day of notice**  
18 **of non-compliance.**  
19 Q. Okay. And then after the 17th, did  
20 you return to the site again on February 1st, 2024?  
21 **A. Yes.**  
22 Q. And on February 1st, 2024, what were  
23 the site conditions?  
24 **A. Can I look at my report, please?**

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1 Q. Sure. If we can go to Exhibit K?  
2 **A. There we go.**  
3 Q. Could you, Ms. Roswell, describe what  
4 this document is?  
5 **A. It's my inspection that I fill out**  
6 **after I complete my inspect -- it's my inspection form**  
7 **I fill out after I complete my inspection.**  
8 Q. And when you went there on February  
9 1st, did you go with anybody else from Air Quality?  
10 **A. Yes. Senior Air Quality specialist,**  
11 **Andrew Kirk.**  
12 Q. Okay. And on February 1st, what were  
13 the site conditions?  
14 **A. The site was stable and there was no**  
15 **action taken. He had installed the track out control**  
16 **device as directed and everything was fine.**  
17 Q. And did he install track out control  
18 devices on both of those points or just one of them?  
19 **A. I believe both of them.**  
20 Q. If you recall Okay.  
21 **A. For sure on the north, but I believe**  
22 **both of them, yes.**  
23 Q. Okay. And do you -- was the -- was  
24 there any signs posted about hazardous chemicals,

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<p>1 hazardous materials?</p> <p>2 <b>A. There was no hazardous sign.</b></p> <p>3 Q. And what about a sign posted to check</p> <p>4 in, if you recall?</p> <p>5 <b>A. I don't recall.</b></p> <p>6 Q. Did you speak with Mr. Truman while on</p> <p>7 site?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And do you have any recollection of</p> <p>10 that conversation?</p> <p>11 <b>A. No, just that he was back in</b></p> <p>12 <b>compliance.</b></p> <p>13 Q. Okay. And then did you include any</p> <p>14 inspector notes on this report?</p> <p>15 <b>A. I did.</b></p> <p>16 Q. Would you please read them?</p> <p>17 <b>A. I conducted a follow up inspection and</b></p> <p>18 <b>observed the signing compliance at this time. The</b></p> <p>19 <b>track out pad has been installed on both entrances,</b></p> <p>20 <b>the soils are stable, and the permit modification has</b></p> <p>21 <b>been received to include the areas for paving on the</b></p> <p>22 <b>northern site.</b></p> <p>23 Q. Okay. So, we've heard previous</p> <p>24 testimony that the permit was revised at one point.</p> <p style="text-align: right;">Page 42</p>	<p>1 <b>door.</b></p> <p>2 Q. Okay. And what did you say?</p> <p>3 <b>A. I gave him my business card, and I</b></p> <p>4 <b>stated that I work for Air Quality and I have the</b></p> <p>5 <b>right to be there.</b></p> <p>6 Q. Okay. Do you have a copy of that</p> <p>7 business card here today?</p> <p>8 <b>A. I don't. I can get one in the break.</b></p> <p>9 Q. Okay. And will you describe to me</p> <p>10 what that business card says?</p> <p>11 <b>A. It says my name, my -- it says Air</b></p> <p>12 <b>Quality, it says I'm an inspector, and my phone</b></p> <p>13 <b>number, my e-mail.</b></p> <p>14 Q. And where did you have that card made?</p> <p>15 <b>A. Clark County makes them for us.</b></p> <p>16 Q. And so, I'd like to look at Exhibit 8</p> <p>17 of our -- of our exhibits. And go to page 2, please.</p> <p>18 So this will come out later in my client's testimony,</p> <p>19 but this is something as far as credentials go, that</p> <p>20 my client is looking for when -- before my client lets</p> <p>21 somebody onto their property. Usually with the</p> <p>22 government official, they present some type of</p> <p>23 credentials. Looking at this as an example, a set of</p> <p>24 credential, does your business card have a picture on</p> <p style="text-align: right;">Page 44</p>
<p>1 And so it's your understanding that at the -- at the</p> <p>2 time when you were there on February 1st, the revision</p> <p>3 to the permit had already been submitted?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Okay. And that would be the revision</p> <p>6 that would include those additional acreage?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. Okay?</p> <p>9 MS. JORGENSEN: I don't have any</p> <p>10 further questions for Ms. Roswell.</p> <p>11 HEARING OFFICER: Okay.</p> <p>12 Counsel.</p> <p>13 MR. GUBLER: Yes, I do.</p> <p>14 EXAMINATION.</p> <p>15 BY MR. GUBLER:</p> <p>16 Q. Ms. Roswell, I understand based on</p> <p>17 your testimony, that you went out onto the property</p> <p>18 site on the January 8th and the 17th, as well as</p> <p>19 February 1st; is that right?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And let -- let's just take these one</p> <p>22 by one. On January 8th, did you -- did you introduce</p> <p>23 yourself?</p> <p>24 <b>A. I did after he tried to open my car</b></p> <p style="text-align: right;">Page 43</p>	<p>1 it?</p> <p>2 <b>A. No, but my badge that I wear around my</b></p> <p>3 <b>neck does.</b></p> <p>4 Q. Okay. Does that -- but you -- but you</p> <p>5 gave him your business card, correct?</p> <p>6 <b>A. I handed him my business card when I</b></p> <p>7 <b>introduced myself.</b></p> <p>8 Q. Okay. Did -- does it have -- does</p> <p>9 your business card have an expiration date?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Does it have some type of a seal from</p> <p>12 Air Quality?</p> <p>13 <b>A. It has our logo. Is that what you're</b></p> <p>14 <b>talking about?</b></p> <p>15 Q. It has a logo. Please describe that</p> <p>16 for me?</p> <p>17 <b>A. It says Clark County.</b></p> <p>18 Q. Okay. And it says --</p> <p>19 <b>A. Air Quality.</b></p> <p>20 Q. Air quality. Does it have any type of</p> <p>21 a logo?</p> <p>22 <b>A. Yes, it does.</b></p> <p>23 Q. And what's that logo, please describe</p> <p>24 that for me?</p> <p style="text-align: right;">Page 45</p>



1 **A. It looks like this.**  
2 Q. As a Clark County with a --  
3 **A. It says Air Quality.**  
4 Q. And Air Quality. So it's the Clark  
5 County. Okay. If -- does it have any type of a chip?  
6 **A. No.**  
7 Q. Okay?  
8 MR. GUBLER: If you could go down to  
9 the next page, please. It might be even the next page  
10 after that.  
11 BY MR. GUBLER:  
12 Q. Does it have any type of certification  
13 on it?  
14 **A. It says Air Quality Specialist.**  
15 Q. Does it have any type of statement  
16 such as this person is authorized to conduct  
17 inspections, anything like that?  
18 **A. No.**  
19 Q. Okay. Is it signed by you?  
20 **A. No.**  
21 Q. Is it -- is it signed by any person  
22 having authority with Clark County?  
23 **A. No.**  
24 Q. Does it have any credential number on

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1 it?  
2 **A. No.**  
3 Q. Does it have an expiration date?  
4 **A. No.**  
5 Q. Okay. Now, when you -- did you -- did  
6 you present any type of credential that even resembles  
7 something like this, that's part of our Exhibit 8?  
8 **A. I had my badge around my neck, but I**  
9 **did not present it to him, and neither did he ask for**  
10 **it.**  
11 Q. Okay. Did you ask to enter the  
12 property?  
13 **A. No, I don't have to ask to enter the**  
14 **property when I have a dust control permit, unless**  
15 **there's a sign posted, which there was not.**  
16 Q. Are you -- you're there under the  
17 auspices of the regulations, Air Quality regulations,  
18 aren't you?  
19 **A. Correct.**  
20 Q. Okay. Did -- so you didn't present  
21 the credentials and you didn't ask them to enter the  
22 property; is that right? How about on the 17th?  
23 Let's ask those questions. Did you -- did you ask him  
24 to enter the property and did you present credentials

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1 there?  
2 **A. No, I did not have to ask to enter the**  
3 **property.**  
4 Q. That's not what I asked. I asked you,  
5 did you?  
6 **A. No, I did not.**  
7 Q. How about February 1st, let's go with  
8 that. Did you -- did you ask him to enter the  
9 property? And did you present appropriate  
10 credentials?  
11 **A. No.**  
12 Q. Do you have any hazmat training?  
13 **A. No, I do not.**  
14 Q. Did you drive past a guard check when  
15 you were on the property?  
16 **A. There's no guard check on the**  
17 **property. It's clearly labeled a guard check.**  
18 **There's a lot of buildings around the build property.**  
19 Q. Okay. So you're saying that there's  
20 no guard check on the property; is that right?  
21 **A. Not one that I saw that's clearly**  
22 **labeled guard check.**  
23 Q. Did you perform a drop ball test?  
24 **A. I did not.**

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1 Q. Okay. What is a drop ball test?  
2 **A. A drop ball test is a steel ball that**  
3 **we drop from a foot high to measure the unstable**  
4 **soils. But in my training, if the soils are deep**  
5 **enough where we would lose our drop ball, we do not**  
6 **have to do that.**  
7 MR. GUBLER: Okay. Could you -- I  
8 believe it was their Exhibit K on February 1st. Can  
9 we go back to that?  
10 BY MR. GUBLER:  
11 Q. Okay. So, you see where it says  
12 emission compliance right there?  
13 **A. Yes.**  
14 Q. What was the plume length?  
15 **A. It says it's in compliance, so there**  
16 **was no plume length.**  
17 Q. Okay. So you didn't have to have  
18 anything like that there. You didn't have any plume  
19 length on February 1st; is that right?  
20 **A. No, because they're in compliance.**  
21 **There was no plume length.**  
22 Q. Okay. Did you ever do a steel ball  
23 test at the property?  
24 **A. No, I did not. Did I believe --**

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1 Q. Now, just to reiterate, you didn't  
2 have any hazmat training; is that right?  
3 **A. No, I do not.**  
4 Q. Okay. So, what knowledge do you have  
5 of what's supposed to be displayed if there's hazard  
6 materials on the property?  
7 **A. My husband is a radiation safety**  
8 **officer, so I listened to all of his training when**  
9 **he's doing his training. So I know that the NRC makes**  
10 **you have signs posted.**  
11 Q. And did you get a certification in  
12 that training?  
13 **A. I did not.**  
14 Q. I have no other questions?  
15 HEARING OFFICER: Okay.  
16 MS. JORGENSEN: Just a couple --  
17 HEARING OFFICER: Go ahead.  
18 MS. JORGENSEN: Redirect.  
19 EXAMINATION.  
20 BY MS. JORGENSEN:  
21 Q. Ms. Rowsell, to the best of your  
22 knowledge, does notice of Violation 9994 allege that  
23 the respondents denied access to the Air Quality  
24 inspectors?

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1 **A. No.**  
2 Q. When you were there on site and  
3 speaking to Mr. Truman on January 8th, were you in  
4 your vehicle?  
5 **A. Yes.**  
6 Q. What does -- is that a vehicle from  
7 Clark County?  
8 **A. Yes.**  
9 Q. And what does -- how do you know it's  
10 a vehicle from Clark County?  
11 **A. It has our Clark County logo on the**  
12 **door and it says Clark County Air Quality all along**  
13 **the bed of the truck. It's clearly labeled. It's a**  
14 **Clark County vehicle. And it has EX plates as well.**  
15 Q. Ex? What are EX plates?  
16 **A. Government plates. They're exempt.**  
17 Q. Okay. And then you stated that you  
18 provided a business card to Mr. Truman?  
19 **A. I did.**  
20 Q. And you also had your badge around  
21 your neck?  
22 **A. Yes, always.**  
23 Q. Okay?  
24 **A. And I had a Clark County logo shirt on**

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1 **as well.**  
2 Q. Oh, Clark County logo shirt. Okay.  
3 And then when you were there on February 1st, I  
4 believe you stated that I -- your -- the Exhibit K  
5 indicates that you spoke with Mr. Truman but if I  
6 remember correctly, you didn't -- you don't have any  
7 specific knowledge of that? You don't remember?  
8 **A. No, because the site was in**  
9 **compliance.**  
10 Q. And at the time when you were there on  
11 February 1st, would you have been in your Clark County  
12 vehicle?  
13 **A. Yes.**  
14 Q. Were you wearing your logo shirt?  
15 **A. Yes.**  
16 Q. Would you have had your badge around  
17 your neck?  
18 **A. Yes.**  
19 Q. And -- okay. Nothing further?  
20 HEARING OFFICER: Counsel, anything?  
21 Any further questioning?  
22 MR. GUBLER: No.  
23 HEARING OFFICER: Okay. Thank you.  
24 MS. JORGENSEN: No further questions

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1 for Ms. Roswell.  
2 HEARING OFFICER: Okay. Call your next  
3 witness.  
4 MS. JORGENSEN: Would like to call Ms.  
5 Katrinka Byers.  
6 HEARING OFFICER: Please raise your  
7 right hand. Do you solemnly swear that you'll tell  
8 the truth, the whole truth, and nothing but the truth,  
9 so help you God?  
10 THE WITNESS: Yes.  
11 (WITNESS SWORN).  
12 HEARING OFFICER: Okay. You may  
13 continue.  
14 MS. JORGENSEN: Thank you.  
15 EXAMINATION.  
16 BY MS. JORGENSEN:  
17 Q. Ms. Byers, would you state your name  
18 for the record?  
19 **A. Katrinka Byers.**  
20 Q. And what is your job title?  
21 **A. Senior Air Quality specialist.**  
22 Q. And what are your duties?  
23 **A. I am a senior for the southern portion**  
24 **of the Clark County Valley. I oversee approximately**

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<p>1 <b>half of the staff. I review their work and assist</b></p> <p>2 <b>with job sites that are different and difficult at</b></p> <p>3 <b>times.</b></p> <p>4 Q. And so, as a senior, do you inspect as</p> <p>5 many sites as Air Quality Specialists 1 or 2?</p> <p>6 <b>A. No.</b></p> <p>7 Q. And how many Air Quality specialists</p> <p>8 do you supervise approximately?</p> <p>9 <b>A. Four at this time.</b></p> <p>10 Q. Okay. And do you recall how many you</p> <p>11 supervised back in January of 2024?</p> <p>12 <b>A. I believe it was the same -- around</b></p> <p>13 <b>the same, three or four.</b></p> <p>14 Q. Okay. On January 9th, 2024, did you</p> <p>15 visit the construction site that is a subject to the</p> <p>16 notice violation?</p> <p>17 <b>A. Yes.</b></p> <p>18 MS. JORGENSEN: And could we go to</p> <p>19 Exhibit E?</p> <p>20 BY MS. JORGENSEN:</p> <p>21 Q. While you were on site, were you there</p> <p>22 with anyone else from Air Quality?</p> <p>23 <b>A. Yes, I was there with my supervisor,</b></p> <p>24 <b>David Dean and the other senior Air Quality</b></p> <p style="text-align: right;">Page 54</p>	<p>1 what you saw?</p> <p>2 <b>A. Yes.</b></p> <p>3 MS. JORGENSEN: Could we go to Exhibit</p> <p>4 C? Photographs 3 through 8.</p> <p>5 BY MS. JORGENSEN:</p> <p>6 Q. Ms. Byers, could you go through these</p> <p>7 photographs and describe what they depict?</p> <p>8 <b>A. So, Photograph 3, that's -- I'm</b></p> <p>9 <b>looking northeast at dry, loose, and powdery site</b></p> <p>10 <b>soils observed around the center of the project.</b></p> <p>11 Q. And Photograph 4?</p> <p>12 <b>A. Photograph 4 is more of a close view</b></p> <p>13 <b>of the dry, loose, and powdery site soils showing</b></p> <p>14 <b>there's absolutely no moisture in the site soils.</b></p> <p>15 Q. And how about five?</p> <p>16 <b>A. And five again is looking at west now</b></p> <p>17 <b>at dry, loose, powdery site soils observed and, again,</b></p> <p>18 <b>the center of the project.</b></p> <p>19 Q. And six?</p> <p>20 <b>A. I'm looking -- I'm looking again at</b></p> <p>21 <b>dry, loose, powdery site soils more in the central</b></p> <p>22 <b>portion of the project. We were parked as soon we</b></p> <p>23 <b>pulled in, worked -- we tried to find the check-in</b></p> <p>24 <b>area and there was nothing that said that, so this is</b></p> <p style="text-align: right;">Page 56</p>
<p>1 <b>specialist, Andrew Kirk.</b></p> <p>2 Q. Okay. And could you tell me what this</p> <p>3 Exhibit E is?</p> <p>4 <b>A. This is the construction site</b></p> <p>5 <b>inspection documenting the findings that we observed</b></p> <p>6 <b>that day.</b></p> <p>7 Q. And what did you observe that day?</p> <p>8 <b>A. We observed approximately 1.58 acres</b></p> <p>9 <b>of dry, loose, and powdery site soils. We observed</b></p> <p>10 <b>what appeared to be a trucking freight yard. It was</b></p> <p>11 <b>-- it was not represented on the desk control</b></p> <p>12 <b>operating permit, and I believe no fire control</b></p> <p>13 <b>device.</b></p> <p>14 Q. Okay. Did you observe -- or how did</p> <p>15 you get into the site?</p> <p>16 <b>A. We drove onto the site.</b></p> <p>17 Q. Was there any signs posted about</p> <p>18 checking in that you recall?</p> <p>19 <b>A. No, there were no signs.</b></p> <p>20 Q. And what about any signs related to</p> <p>21 hazardous materials being present?</p> <p>22 <b>A. No, we saw no hazardous signed</b></p> <p>23 <b>materials or presence of that.</b></p> <p>24 Q. Okay. Did you take any photographs of</p> <p style="text-align: right;">Page 55</p>	<p>1 <b>where I took the photos.</b></p> <p>2 Q. Okay. And seven?</p> <p>3 <b>A. Seven is a view of, again, of just a</b></p> <p>4 <b>close view of dry, loose, powdery site soils. No</b></p> <p>5 <b>moisture on site. No water truck available.</b></p> <p>6 Q. Okay. And what about eight?</p> <p>7 <b>A. Again, looking south now at dry,</b></p> <p>8 <b>loose, and powdery site soils as well. So we're</b></p> <p>9 <b>outside the permit area, it's on the right of way,</b></p> <p>10 <b>which is also still in the permit boundaries on the</b></p> <p>11 <b>western edge of the project.</b></p> <p>12 Q. So this site had an active Dust</p> <p>13 Control Operating Permit; is that correct?</p> <p>14 <b>A. That's correct.</b></p> <p>15 Q. And when you go to inspect a site with</p> <p>16 a Dust Control Operating Permit active, what do you</p> <p>17 look for?</p> <p>18 <b>A. We look for soil stability, we look</b></p> <p>19 <b>for the dust control permit sign, we look to see if</b></p> <p>20 <b>they have any kind of way to -- best available control</b></p> <p>21 <b>measures on site to mitigate any dry, loose, powdery</b></p> <p>22 <b>site soils, we try to speak with the site sweeper or</b></p> <p>23 <b>responsible official. We find the person located on</b></p> <p>24 <b>site with operating valid dust card. We also verify</b></p> <p style="text-align: right;">Page 57</p>





1 **if the water truck operator has a valid dust card.**  
2 Q. And if they had completed  
3 construction, what would you be looking for?  
4 **A. That they were landscape paved and**  
5 **built out. And if any parts of the project were not,**  
6 **we would make sure they met BMP 11 control measures**  
7 **and they were stabilized under those control measures**  
8 **for final stabilization for long term.**  
9 Q. And what does BMP stand for?  
10 **A. Best Management Practices. BMP is**  
11 **best management practices.**  
12 Q. And when you reference BMP 11, you're  
13 talking about something at Section 94?  
14 **A. Yes, Section 94. It's also on their**  
15 **-- within their dust control permit.**  
16 Q. Okay. If we could go back to Exhibit  
17 E. Did you -- while you were on site, did you speak  
18 with Mr. Truman?  
19 **A. Yes, we -- after speaking with Candy,**  
20 **we were trying to find the check-in area and we pulled**  
21 **in, parked, and Mr. Truman approached us once we were**  
22 **parked.**  
23 Q. Okay. And what did you discuss with  
24 him?

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1 **A. Well, we wanted to find out why he was**  
2 **so confrontational with our inspector. He was very**  
3 **argumentative as well. My supervisor took the lead on**  
4 **that and Andrew and I stood back and listened.**  
5 Q. When you say your supervisor, you're  
6 referring to David Dean?  
7 **A. Yes, he -- David Dean was the one that**  
8 **spoke with him.**  
9 Q. Okay?  
10 **A. We did -- first of all, we showed Mr.**  
11 **Truman all of us had our badges with us. So we did**  
12 **present credentials right away. And then Mr. Truman**  
13 **basically just told us that he was with the -- up**  
14 **there with the federal EPA and that we were dog shit.**  
15 Q. And did you all come in one vehicle?  
16 **A. Yes, we did.**  
17 Q. And was that a vehicle -- county  
18 vehicle for Air Quality?  
19 **A. Yes, it was.**  
20 Q. And were you wearing a shirt that had  
21 your logo on it -- Air Quality logo on it? Do you  
22 recall?  
23 **A. Yes. We all had our air quality logo**  
24 **shirts on. Okay.**

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1 Q. And, if we could -- did you note your  
2 observations of unstable soil and no track out control  
3 device in exhibit -- in the report from January 9th?  
4 **A. Yes, I listed the unstable soils under**  
5 **BNP compliance. You can see 1.58 acres was unstable.**  
6 **I also noted there was over acreage. I don't remember**  
7 **exactly how much, but I also indicated that in the**  
8 **report as well.**  
9 Q. Okay. If you go to, it looks like,  
10 let's see, five boxes down, it says admin compliance?  
11 **A. Correct.**  
12 Q. Does that indicate how much acreage  
13 was permitted?  
14 **A. Yes. Originally it was 3.19 acres**  
15 **permitted by Mr. Truman. And we observed 4.95 acres**  
16 **--**  
17 Q. Okay?  
18 **A. -- utilized.**  
19 Q. So about an additional 1.75 acres was  
20 being used that wasn't permitted?  
21 **A. That's correct.**  
22 Q. Okay. All right. Did you take -- did  
23 you include any inspector notes in the report?  
24 **A. Yes, I did.**

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1 Q. Could you please read them? If not  
2 you can -- I have it on here too, if it's easier to  
3 readOkay.  
4 **A. My supervisor, David Dean, senior Air**  
5 **Quality specialist, Andrew Kirk, and I conducted a**  
6 **follow-up inspection and observed dry, loose, and**  
7 **powdery site soils with no available BACM.**  
8 Q. What's BACM?  
9 **A. BACM stands for Best Available Control**  
10 **Measures.**  
11 Q. Okay?  
12 **A. No track control device at the exit**  
13 **point. Approximately 1.76 acres of disturbed soil**  
14 **outside the permit boundary with no -- with trucks,**  
15 **cars, and equipment stored on the lots. And both the**  
16 **responsible official, Mr. Moe Truman, and the water**  
17 **truck operator not to hold a valid dust card. We**  
18 **spoke with Mr. Truman on site regarding the prior**  
19 **inspection conducted by a QS 2 Canduella Rowsell,**  
20 **regarding possible hazardous waste material store**  
21 **without proper notification to the public.**  
22 **Mr. Truman was very argumentative and**  
23 **said Ms. Rowsell should have checked in prior to**  
24 **conducting an inspection due to hazardous waste on**

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<p>1 site. Mr. Dean pointed out that the site did not have</p> <p>2 any signs indicating dangerous or hazardous waste on</p> <p>3 site, nor did the site have any signs requiring a</p> <p>4 mandatory check-in prior to conducting an inspection.</p> <p>5 We explained the waste on site. We</p> <p>6 explained the dust permit. Project description was</p> <p>7 issued for grubbing the site to survey for crews to</p> <p>8 start gathering data points. However, we observed</p> <p>9 three large maintenance tents for repairing equipment,</p> <p>10 approximately 10 to 15 semi haul trucks, and various</p> <p>11 equipment stored over the 5.66 acres of disturbed</p> <p>12 soil.</p> <p>13 Mr. Truman was very argumentative</p> <p>14 regarding the status of the permit, and when</p> <p>15 instructed to comply with BMP-11 and remove all</p> <p>16 equipment onsite or paid the lot to close out the</p> <p>17 permit, he said he would notify his attorney to handle</p> <p>18 all matters. Mr. Dean, Andy, and I took photos of the</p> <p>19 site and document our findings.</p> <p>20 A notice of compliance -- notice of</p> <p>21 non-compliance with a possible notice of violation to</p> <p>22 be issued to Mr. Truman via e-mail to save by site</p> <p>23 soil immediately, install tracker control device,</p> <p>24 which is two inch to three inch rock minimum six</p> <p>Page 62</p>	<p>1 A. I e-mailed this to Mr. Truman, I</p> <p>2 believe actually the next day on January 10th.</p> <p>3 MS. JORGENSEN: Could you scroll down</p> <p>4 to the next page? Okay.</p> <p>5 BY MS. JORGENSEN:</p> <p>6 Q. And, Ms. Byers, is this the e-mail</p> <p>7 that you were just speaking of?</p> <p>8 A. Yes, this is an e-mail I sent to Mr.</p> <p>9 Truman and the attached notice of non-compliance was</p> <p>10 with it.</p> <p>11 MS. JORGENSEN: Okay. I don't have any</p> <p>12 further questions for Ms. Byers.</p> <p>13 HEARING OFFICER: Thank you.</p> <p>14 Counsel?</p> <p>15 EXAMINATION.</p> <p>16 BY MR. GUBLER:</p> <p>17 Q. Ms. Byers, what days did you say that</p> <p>18 you were at the property?</p> <p>19 A. I was on site on January 9th, which</p> <p>20 was, I believe a Tuesday.</p> <p>21 Q. And you said that you were there with</p> <p>22 two supervisors; is that right?</p> <p>23 A. I was there with my supervisor, David</p> <p>24 Dean, yes, and the other senior Air quality</p> <p>Page 64</p>
<p>1 inches deep as long as -- along as haul truck, at the</p> <p>2 exit point onto Stafford Avenue by the close of</p> <p>3 distance Friday, 1/10/2024, and register both himself</p> <p>4 and the water truck operator for the next available</p> <p>5 dust class by the close of business Thursday,</p> <p>6 1/11/2024.</p> <p>7 The over acreage with stored material</p> <p>8 outside the front boundary will be addressed with a</p> <p>9 separate notice of non-compliance under Section 92.</p> <p>10 Q. Thank you. Did you issue that -- a</p> <p>11 notice of non-compliance?</p> <p>12 A. Yes, we did.</p> <p>13 MS. JORGENSEN: Could you go to Exhibit</p> <p>14 2, please?</p> <p>15 BY MS. JORGENSEN:</p> <p>16 Q. Ms. Byers, could you describe what</p> <p>17 this document is?</p> <p>18 A. This is a notice non-compliance and it</p> <p>19 lists the non-compliance issues that we observed</p> <p>20 during our inspection at the time on January 9th.</p> <p>21 Q. And did you provide this notice</p> <p>22 non-compliance to Mr. Truman?</p> <p>23 A. Yes.</p> <p>24 Q. And when did you do that?</p> <p>Page 63</p>	<p>1 specialist, Andrew Kirk.</p> <p>2 Q. You said that you spoke with Mr.</p> <p>3 Truman, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And did you introduce yourself?</p> <p>6 A. Yes, we did.</p> <p>7 Q. And what -- how did you introduce</p> <p>8 yourself?</p> <p>9 A. We usually start by introducing</p> <p>10 ourselves with our name and who we're with, Clark</p> <p>11 County Air Quality, and the reason for our -- you</p> <p>12 know, we're there to re-inspect, and we also showed</p> <p>13 Mr. Truman our badges.</p> <p>14 Q. Okay. What badges are you talking</p> <p>15 about?</p> <p>16 A. Every one of us wear a badge around</p> <p>17 our neck which has our name, where we work, and our</p> <p>18 title of our job, and our signature.</p> <p>19 Q. And is that to get you into the</p> <p>20 building in Clark County?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Did it -- did it have -- does</p> <p>23 it have an expiration date on it?</p> <p>24 A. It does not.</p> <p>Page 65</p>



1 Q. Does it have any type of chip with it?  
2 **A. It does. It's inside the actual**  
3 **badge.**  
4 Q. Okay. And that's to get into the area  
5 -- the Clark County Building; is that right?  
6 **A. I believe that's what it's for, yes.**  
7 Q. Does it have certification on it  
8 saying this person is authorized to conduct  
9 inspections?  
10 **A. It says this badge is a property of**  
11 **Clark County, Nevada, and must be visibly displayed or**  
12 **available for presentation upon demand at all times**  
13 **while on duty or on county premises.**  
14 Q. So, please listen to my question  
15 carefully. Does it say this person is authorized to  
16 conduct an inspection?  
17 **A. No, it's not.**  
18 Q. Does it have a conventional number on  
19 it?  
20 **A. No, it does not.**  
21 Q. Does it have an expiration on it?  
22 **A. No, it does not.**  
23 Q. So, but that's -- but that's the badge  
24 that you presented; is that right?

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1 **A. That's correct.**  
2 Q. Okay. Did you ask to enter the  
3 property for inspection specifically?  
4 **A. I'm sorry, did I ask to what?**  
5 Q. Did you ask to enter the property for  
6 inspection specifically?  
7 **A. Yes. We pulled in and told Mr. Truman**  
8 **we were going to be doing inspection -- a**  
9 **re-inspection.**  
10 Q. Okay. Did you ask, I said?  
11 **A. We did not pull up and ask him if we**  
12 **could, no.**  
13 Q. So, while you were there, did your  
14 supervisor say that he had clearance to get into the  
15 Nevada Test Site?  
16 **A. I don't recall that.**  
17 Q. Did he say that he could drive right  
18 into the Nevada Test Site?  
19 **A. I don't recall that.**  
20 Q. I don't have any other questions?  
21 HEARING OFFICER: Okay. Thank you.  
22 MS. JORGENSEN: Just a couple of follow  
23 up.  
24 EXAMINATION.

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1 BY MS. JORGENSEN:  
2 Q. Ms. Byers, does the Dust Control  
3 Operating Permit that was in place for this site on  
4 January 8th -- I'm sorry, January 9th, when you  
5 visited the site, does it require the permittee to --  
6 or that the -- does it state that the permittee agrees  
7 to allow -- to allow inspections without notice during  
8 business hours?  
9 **A. Yes, it does.**  
10 MS. JORGENSEN: I have nothing further.  
11 HEARING OFFICER: Okay. Thank you.  
12 MR. GUBLER: No further questions.  
13 HEARING OFFICER: Okay. Let's call in  
14 our next witness.  
15 MS. JORGENSEN: I would like to call  
16 David Dean.  
17 HEARING OFFICER: Good morning, Mr.  
18 Dean.  
19 MR. DEAN: Good morning.  
20 HEARING OFFICER: Please raise your  
21 right hand. Do you solemnly swear that you'll tell  
22 the truth, the whole truth, and nothing but the truth,  
23 so help you God?  
24 THE WITNESS: I do.

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1 (WITNESS SWORN).  
2 HEARING OFFICER: Okay. Thank you.  
3 You may proceed.  
4 MS. JORGENSEN: Thank you.  
5 EXAMINATION.  
6 BY MS. JORGENSEN:  
7 Q. Mr. Dean, would you please state your  
8 name for the record?  
9 **A. David Dean.**  
10 Q. And what is your job title?  
11 **A. I am a compliance supervisor for Clark**  
12 **County Air Quality.**  
13 Q. And what are your duties?  
14 **A. My duties are to oversee the**  
15 **enforcement and compliance of dust control permits on**  
16 **construction sites, vacant land, on paved storage**  
17 **yards, and I oversee a team of approximately 10 or 11**  
18 **personnel that go out every day and conduct those**  
19 **inspections.**  
20 Q. And how long have you been with Air  
21 Quality?  
22 **A. Twenty-two years.**  
23 Q. And how long have you been in your  
24 current position?

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<p>1 <b>A. Seven years.</b></p> <p>2 Q. Okay. And did you visit the site that</p> <p>3 is the subject of the Notice Violation 9994 on January</p> <p>4 9th, 2024?</p> <p>5 <b>A. I did.</b></p> <p>6 Q. And were you there with Ms. Byers and</p> <p>7 Mr. Andrew Kirk?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And what was the purpose of your</p> <p>10 visit?</p> <p>11 <b>A. I wanted to visit the site because one</b></p> <p>12 <b>of my inspectors, Canduella, had went the day prior or</b></p> <p>13 <b>a few days prior. I don't remember exactly how many</b></p> <p>14 <b>days in between. But she informed me that she was go</b></p> <p>15 <b>on the site to conduct an inspection and was</b></p> <p>16 <b>confronted by somebody that tried to open her truck</b></p> <p>17 <b>door without getting her attention or anything like</b></p> <p>18 <b>that. Just walked up and tried to open her door,</b></p> <p>19 <b>scared her a little bit. So -- and then was kind of</b></p> <p>20 <b>disruptive with her and combative.</b></p> <p>21 <b>So I wanted to make sure anytime that</b></p> <p>22 <b>happens on a job site, I want to go to the site and</b></p> <p>23 <b>assess the site to see what the safety situation is.</b></p> <p>24 <b>So I wanted to go look at the site, see who was being</b></p> <p style="text-align: right;">Page 70</p>	<p>1 <b>the site is permitted, and the sign is up, they're</b></p> <p>2 <b>working within their permitted boundaries. The soil</b></p> <p>3 <b>stabilization is -- the soil is stable, there's a</b></p> <p>4 <b>track out control device. The site superintendent has</b></p> <p>5 <b>a dust control card. The water truck operators have</b></p> <p>6 <b>dust cards, and that they're actually implementing</b></p> <p>7 <b>soil control sometimes.</b></p> <p>8 Q. Okay. And when you were on the site</p> <p>9 on January 9th, 2024, was there any signs posted</p> <p>10 saying that a -- that somebody would need to check in</p> <p>11 at a particular building or check in somewhere that</p> <p>12 you recall?</p> <p>13 <b>A. No, nothing that I recall.</b></p> <p>14 Q. And do you recall seeing anything, any</p> <p>15 signs posted regarding hazardous materials?</p> <p>16 <b>A. No, nothing at all.</b></p> <p>17 Q. Do -- generally, do construction sites</p> <p>18 have those sorts of signs posted?</p> <p>19 <b>A. They don't. The construction sites,</b></p> <p>20 <b>we don't normally have that where somebody would say,</b></p> <p>21 <b>Hey, I'm drawing a dust control permit, and, oh, by</b></p> <p>22 <b>the way, I'm having hazardous materials on site. You</b></p> <p>23 <b>might see that at a stationary source site that has a</b></p> <p>24 <b>stationary source permit, and they have some</b></p> <p style="text-align: right;">Page 72</p>
<p>1 <b>combative with her, and assess it for safety and</b></p> <p>2 <b>inspect the site myself.</b></p> <p>3 Q. So, at the time of your visit on</p> <p>4 January 9th, did this site have a dust control</p> <p>5 operating permit?</p> <p>6 <b>A. It did.</b></p> <p>7 Q. And when you just generally go and its</p> <p>8 -- oh, well, let me ask you this?</p> <p>9 As a supervisor, how often do you</p> <p>10 conduct site inspections yourself?</p> <p>11 <b>A. I go out. I don't conduct site</b></p> <p>12 <b>inspections at all. I just go when there's a --</b></p> <p>13 <b>there's an issue or maybe I need to be involved in a</b></p> <p>14 <b>meeting on site to resolve a situation.</b></p> <p>15 Q. And so prior to your being in the</p> <p>16 position you're currently at in as supervisor, what --</p> <p>17 were you more regularly going on-site inspections?</p> <p>18 <b>A. Absolutely. I've done thousands of</b></p> <p>19 <b>inspections.</b></p> <p>20 Q. Okay. And when someone goes on site</p> <p>21 to do a site inspection of a -- of a site that has a</p> <p>22 dust control operating permit, what are the sorts of</p> <p>23 things that you're looking for?</p> <p>24 <b>A. So, we're -- first we make sure that</b></p> <p style="text-align: right;">Page 71</p>	<p>1 <b>conditions about entering the sites. But a</b></p> <p>2 <b>construction site itself, I can't recall anybody ever</b></p> <p>3 <b>having something like that or requiring us to report</b></p> <p>4 <b>to the office before we conduct a site inspection.</b></p> <p>5 Q. If something like that had been</p> <p>6 posted, would you have reported to the office to --</p> <p>7 before conducting the site inspection?</p> <p>8 <b>A. Absolutely.</b></p> <p>9 Q. And do you -- when you were there on</p> <p>10 January 9th, did the site appear to you to be at -- a</p> <p>11 construction site?</p> <p>12 <b>A. Yes, actually it was a full blown</b></p> <p>13 <b>trucking yard. An unpaved trucking yard. I didn't</b></p> <p>14 <b>really see any construction going on. They'd already</b></p> <p>15 <b>graded off all the foliage and there was probably 20</b></p> <p>16 <b>or 30, 18 wheeler hauler trucks there. And there was</b></p> <p>17 <b>really no construction activity. It was -- it was</b></p> <p>18 <b>already an operating truck. So it was an unpaved</b></p> <p>19 <b>yard.</b></p> <p>20 Q. And if -- because it appeared to be</p> <p>21 like finished with whatever the construction permit</p> <p>22 had been pulled for, what would've been the steps to</p> <p>23 have closed out that permit?</p> <p>24 <b>A. So, he would've closed out -- he -- we</b></p> <p style="text-align: right;">Page 73</p>



<p>1 <b>don't -- Clark County does not require -- does not</b></p> <p>2 <b>authorize unpaved parking or storage yards in</b></p> <p>3 <b>hydrographic basins 212, 216 and 217. So --</b></p> <p>4 Q. Sorry. Hydrographic area is 216 --</p> <p>5 say it again?</p> <p>6 <b>A. 217 and 212.</b></p> <p>7 Q. Can you describe what that general</p> <p>8 area is?</p> <p>9 <b>A. So, it's really the Las Vegas Valley</b></p> <p>10 <b>area and Apex.</b></p> <p>11 Q. And why is that? Why do we -- why --</p> <p>12 if you know, why are there rules regarding</p> <p>13 specifically hydrographic basins 212, 216, and 217?</p> <p>14 <b>A. When the federal EPA Clark County work</b></p> <p>15 <b>together or are working together to resolve the Air</b></p> <p>16 <b>Quality issues in the Valley, they determined that</b></p> <p>17 <b>these three areas were the highest potential for</b></p> <p>18 <b>creating dust issues and unstable soil. So that's why</b></p> <p>19 <b>they're targeted with stricter regulations.</b></p> <p>20 Q. So, when you talk about dust, what</p> <p>21 type of NAAQS or National Ambient Air Quality Standard</p> <p>22 is implicated when it comes to dust in this case?</p> <p>23 <b>A. Well, we enforce PM10 requirements for</b></p> <p>24 <b>dust control.</b></p> <p style="text-align: right;">Page 74</p>	<p>1 <b>many pieces of tractor equipment there and we would</b></p> <p>2 <b>work with the permittee to determine, okay, how many do</b></p> <p>3 <b>you have? What areas do you need to move it? And</b></p> <p>4 <b>things like that. So, there would not be an all out</b></p> <p>5 <b>exemption, like, okay, you have one -- in this case,</b></p> <p>6 <b>you have one track vehicle on the whole site. We'll</b></p> <p>7 <b>just exempt you for the whole site. That wouldn't be</b></p> <p>8 <b>the case.</b></p> <p>9 Q. Okay. And if there is track</p> <p>10 equipment, why would there be an exception regarding</p> <p>11 paving the entire site, if there were track equipment?</p> <p>12 <b>A. Because tracked vehicles, especially</b></p> <p>13 <b>the one he has on site, I believe is a D10 dozer, it</b></p> <p>14 <b>will tear up the asphalt. And we recognize that would</b></p> <p>15 <b>be just a waste of money.</b></p> <p>16 Q. Okay. And in this case, has there</p> <p>17 been an opportunity to go to the site to determine</p> <p>18 what the track equipment is, where it's being used,</p> <p>19 and to determine where would be the appropriate site</p> <p>20 or appropriate amount of paving to accommodate this</p> <p>21 track equipment?</p> <p>22 <b>A. No. After our first few inspections</b></p> <p>23 <b>on the site, January, February, Mr. Truman stopped</b></p> <p>24 <b>authorizing us to come in. He's built up areas around</b></p> <p style="text-align: right;">Page 76</p>
<p>1 Q. Okay?</p> <p>2 <b>A. And part of that is, anything that's</b></p> <p>3 <b>-- anything that's new and it's -- especially in this</b></p> <p>4 <b>case where they went in and they graded off all the</b></p> <p>5 <b>natural foliage and created an unpaved parking lot,</b></p> <p>6 <b>we're not -- we don't allow that after January 1st,</b></p> <p>7 <b>2002, I believe. And anything new can't be created</b></p> <p>8 <b>like that in those hydrographic basins.</b></p> <p>9 <b>And this is clearly one of those</b></p> <p>10 <b>cases. So, to close out this site, he would be</b></p> <p>11 <b>required to pave, unless he met a certain exemption.</b></p> <p>12 <b>And what I determined on the site, there were very</b></p> <p>13 <b>limited areas that we would exempt.</b></p> <p>14 Q. Okay. But in terms of just generally</p> <p>15 speaking, if someone, you know, is not grandfathered</p> <p>16 in after January 1st, 2002 or 2003, whichever the</p> <p>17 right date is, but sometime early 2000s, would -- how</p> <p>18 would you determine where -- would you -- let me say</p> <p>19 it this way, would there be a requirement no matter</p> <p>20 what to pave the entire surface?</p> <p>21 <b>A. Yes, there -- at least most of it.</b></p> <p>22 Q. Okay. Let's say that in, for</p> <p>23 instance, let's say there's a track equipment?</p> <p>24 <b>A. We would -- we would determine how</b></p> <p style="text-align: right;">Page 75</p>	<p>1 <b>the facility that -- and put gates up so you can't</b></p> <p>2 <b>drive onto the site. You can't drive in to check in</b></p> <p>3 <b>the office because you can't even get through the --</b></p> <p>4 <b>through the gates or barricades that are there. So,</b></p> <p>5 <b>there's been no opportunity for us to assess the site.</b></p> <p>6 <b>And Mr. Truman has not asked us to meet on site or</b></p> <p>7 <b>anything like that to determine like, hey, I want to</b></p> <p>8 <b>close my site out, what do I need to do?</b></p> <p>9 Q. Okay. And going back to January 9th,</p> <p>10 2024, when you were on site, do you remember speaking</p> <p>11 with Mr. Truman?</p> <p>12 <b>A. I do.</b></p> <p>13 Q. And what did you discuss?</p> <p>14 <b>A. I was asking him how come he was so</b></p> <p>15 <b>aggressive with the -- with the inspector on site and</b></p> <p>16 <b>that why would he -- why would he walk up and pull on</b></p> <p>17 <b>her door like that? It concerned me because of the</b></p> <p>18 <b>safety issues. We don't normally have that kind of</b></p> <p>19 <b>behavior because it's kind of strange. And so he said</b></p> <p>20 <b>because he wanted to know who it was. And I -- and</b></p> <p>21 <b>told him, well, maybe in the future you should just</b></p> <p>22 <b>get her attention and then she will talk with you</b></p> <p>23 <b>about who she is and what she's doing there.</b></p> <p>24 <b>I also wanted to make sure he</b></p> <p style="text-align: right;">Page 77</p>





<p>1 understood that we were authorized to come on the site</p> <p>2 and inspect it as often as we wanted to. And it was</p> <p>3 documented in his permit and that he understood by</p> <p>4 requesting a permit from us he was going to comply</p> <p>5 with the permit conditions.</p> <p>6 Q. Do you recall any other -- did you</p> <p>7 discuss hazardous materials?</p> <p>8 A. I -- it was so long ago. I don't</p> <p>9 remember all of it. I know we talked about it and I</p> <p>10 -- he was talking about having authorization to come</p> <p>11 on sites or a secret security clearance or something</p> <p>12 like that. And I think I told him that I had a top</p> <p>13 secret security clearance from my military time. And</p> <p>14 that -- and maybe we discussed other sites, the test</p> <p>15 site or something like this, that this is not the test</p> <p>16 site that authorized -- that requires something like</p> <p>17 that.</p> <p>18 And that, you know, our authorization</p> <p>19 is the dust permit that he drew, and that we can come</p> <p>20 on the site when we want. And he informed me that he</p> <p>21 was -- he operated within federal guidelines and that</p> <p>22 we were with Clark County and we were dog shit, and</p> <p>23 that he didn't have to comply.</p> <p>24 Q. Okay. I have no further questions?</p> <p>Page 78</p>	<p>1 the Nevada Test Site?</p> <p>2 A. No.</p> <p>3 Q. You didn't say that?</p> <p>4 A. I don't believe so, no.</p> <p>5 Q. So, we talked about, you know, track</p> <p>6 equipment, correct? And was there track equipment on</p> <p>7 the property when you were there?</p> <p>8 A. There was one piece, if I remember</p> <p>9 correctly.</p> <p>10 Q. And what was it?</p> <p>11 A. I think it's a Caterpillar D10 dozer.</p> <p>12 Q. Okay. How big is that?</p> <p>13 A. It's big.</p> <p>14 Q. How big?</p> <p>15 A. I don't know, 15 feet tall by 20 feet</p> <p>16 long.</p> <p>17 Q. Okay?</p> <p>18 A. Probably weighs, I don't know, 10,000</p> <p>19 pounds, 20,000 pounds.</p> <p>20 Q. And at that, so, kind of give us an</p> <p>21 idea, how much of this room would it occupy?</p> <p>22 A. Maybe from this -- the edge of this</p> <p>23 table to that wall. From the American flag to that</p> <p>24 wall.</p> <p>Page 80</p>
<p>1 HEARING OFFICER: Counsel.</p> <p>2 EXAMINATION.</p> <p>3 BY MR. GUBLER:</p> <p>4 Q. Mr. Dean --</p> <p>5 MR. GUBLER: Thank you for getting</p> <p>6 that.</p> <p>7 HEARING OFFICER: Okay.</p> <p>8 BY MR. GUBLER:</p> <p>9 Q. Mr. Dean, so if I understand right,</p> <p>10 you were there on January 9th, 2024; is that right?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Were you on the site at any other</p> <p>13 time?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Okay. So, while you were on there,</p> <p>16 just maybe going backwards from your testimony, did</p> <p>17 you say that you had clearance to get into the Nevada</p> <p>18 Test Site?</p> <p>19 A. I don't believe I had that. I might</p> <p>20 have said I worked at the Nevada Test Site.</p> <p>21 Q. You didn't say you had clearance to</p> <p>22 get into the Nevada Test Site?</p> <p>23 A. No.</p> <p>24 Q. And that you could drive right onto</p> <p>Page 79</p>	<p>1 Q. So it's big?</p> <p>2 A. It's fairly big.</p> <p>3 Q. And what -- are you aware of the</p> <p>4 concerns that track equipment would have on asphalt?</p> <p>5 A. Very.</p> <p>6 Q. Sorry, say that again?</p> <p>7 A. I'm very aware of it.</p> <p>8 Q. What are what are those? What would</p> <p>9 track equipment do to asphalt?</p> <p>10 A. Oh, it absolutely tear it up.</p> <p>11 Q. Okay. Would it make it look like rot</p> <p>12 mill?</p> <p>13 A. Well, no, but it could, depending on</p> <p>14 how they operate on it and the way they spin on it,</p> <p>15 they can drive across it. They -- it's possible to</p> <p>16 drive across it, but it could put grooves in the</p> <p>17 asphalt. It could, if they pivoted on the asphalt.</p> <p>18 Depends on how the operator operates on it.</p> <p>19 Q. Okay. But just driving across it</p> <p>20 would tear it up as well, wouldn't it?</p> <p>21 A. It could damage it.</p> <p>22 Q. Okay. So, would you agree that</p> <p>23 asphalt's pretty expensive, wouldn't you?</p> <p>24 A. Very.</p> <p>Page 81</p>



1 Q. Okay. So, now, you had mentioned that  
2 there were gates around this property; right?  
3 **A. There -- no, no I said that --**  
4 MS. JORGENSEN: Don't. That wasn't the  
5 testimony.  
6 THE WITNESS: No, I -- yeah, I -- what  
7 I said is that there's barricades and things around  
8 it. When I had there, there weren't gates blocking  
9 you from driving in the facility.  
10 BY MR. GUBLER:  
11 Q. So this was later on you're talking  
12 about; is that right?  
13 **A. Yes.**  
14 Q. Okay. So -- fair enough. So, these  
15 barricades, how tall are they?  
16 **A. Well, they have -- is it possible to**  
17 **look at the photographs that you have just so I can**  
18 **determine it off? Do you have some with conex boxes**  
19 **and things like that?**  
20 Q. I think that's perfectly fine?  
21 **A. Thank you.**  
22 MR. GUBLER: Do you remember,  
23 Catherine, what --  
24 MS. JORGENSEN: Exhibit C is one with

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1 photographs.  
2 MR. GUBLER: Probably --  
3 MS. JORGENSEN: You just try scroll  
4 through them and see.  
5 MR. GUBLER: -- the one with the --  
6 THE WITNESS: There's a frontal shot of  
7 the -- of the place where Katrinka was testifying  
8 about the right of way. Yeah, that one right there.  
9 So, those conex boxes are 10 feet tall, 12 feet tall,  
10 and they're -- and you're double stacked on there. So  
11 let's say 20 feet tall.  
12 BY MR. GUBLER:  
13 Q. Okay. So, what size of an area does  
14 that enclose?  
15 **A. Excuse me. One more time?**  
16 Q. These barricades, I think that's what  
17 you called them, what size -- what size of an area  
18 does that enclose?  
19 **A. When I was there, it covers the front**  
20 **of the property. So, 200 feet, 300 feet.**  
21 Q. Okay. Is it -- is it enclosed?  
22 **A. It -- it's -- the barricades blocked**  
23 **the front of it. But to the left -- just where that**  
24 **cone is, I believe you can enter there. And on the**

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1 **far end of the property, you could enter down there**  
2 **too as well.**  
3 Q. Are there barricades there?  
4 **A. I don't know what's there now. I know**  
5 **after we went through our inspection and Mr. Truman**  
6 **started refusing entry to the property, there's some**  
7 **type of barricaded or fence or something there.**  
8 Q. So, within the barricade, how big of  
9 an area is that?  
10 **A. I think it's -- according to the dust**  
11 **permit, it's 4.99 acres.**  
12 Q. Okay. And that's on -- that's on two  
13 pieces of property that are separate from the original  
14 three acres; is that right?  
15 **A. I'd have to see the site map. If you**  
16 **want to bring the site map up to -- do we have a**  
17 **better one than that.**  
18 MR. GUBLER: Do you have the one where  
19 the --  
20 MS. JORGENSEN: There might be one if  
21 you look at the dust permit, if you pull up probably  
22 the second one has a better distinction. So if you go  
23 to that B. Go to Exhibit B there. Right there.  
24 THE WITNESS: Okay.

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1 BY MR. GUBLER:  
2 Q. So, what area is the barricade enclose  
3 in?  
4 **A. So it's -- thank you. So, I believe**  
5 **it's right here. This --**  
6 MS. JORGENSEN: And I'm sorry. Can I  
7 clarify this is on January 9th, 2024.  
8 MR. GUBLER: I'm just asking about the  
9 barricade, which he said was later, right? That's all  
10 I care about right now since he's just use them as a  
11 witness right now.  
12 MS. JORGENSEN: Well, I'm just trying  
13 to figure out which date are you talking about.  
14 MR. GUBLER: Whenever the barricades  
15 were there. He said they were later.  
16 MS. JORGENSEN: I -- can I just for  
17 clarification, if he wasn't there -- if he was there  
18 on January 8th that he can testify -- or sorry,  
19 January 9th, he can testify about that.  
20 MR. GUBLER: He said he knew about the  
21 barricades. He just testified to it. So I'm asking  
22 him about it since he said he knew about it.  
23 BY MR. GUBLER:  
24 Q. So, what area does the barricade

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1 enclose?  
2 **A. So --**  
3 **HEARING OFFICER: How do you know about**  
4 **the barricades? I guess, I'm -- because I know he was**  
5 **on property on January 9th.**  
6 THE WITNESS: Correct. So, that's the  
7 only time I've been to the site. So --  
8 HEARING OFFICER: Testifying as to what  
9 he's seen on January 9th?  
10 THE WITNESS: Correct.  
11 BY MR. GUBLER:  
12 Q. How do you know about the barricades?  
13 **A. Well, because I saw him on January**  
14 **9th.**  
15 Q. Okay. So what area does that enclose?  
16 **A. It covers this area right here on the**  
17 **-- along the front of the street.**  
18 Q. Okay. All right. So, the purple  
19 area, that is approximately 3.19 acres; is that right?  
20 **A. I would've to look at the dust permit,**  
21 **but I could agree to that.**  
22 Q. Looking over to the left, see how it  
23 says MOE equals 3.19?  
24 **A. I see that.**

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1 Q. Okay. Is that -- is that an accurate  
2 assumption?  
3 **A. I could agree with that.**  
4 Q. Okay. So, we're -- we have this heavy  
5 equipment -- big track equipment for about 3.19 acres;  
6 is that right?  
7 **A. Well, that's -- I think it's five**  
8 **acres now.**  
9 Q. Okay. Does the respondents have  
10 access to the other sections? Do you know that?  
11 **A. So, when I was on the site, what we**  
12 **saw was Mr. Truman was working outside of his dust**  
13 **control permit, his permitted boundaries. And I**  
14 **believe it's the -- this site right here, this area**  
15 **right here, and this area right here were not**  
16 **permitted. I definitely remember this site, but**  
17 **please keep in mind it's been 10 months ago. And I**  
18 **would've to look at it.**  
19 **But I remember driving on and**  
20 **discussing the areas. Because we have a computer with**  
21 **a map overlay on it. We can tell what's permitted.**  
22 **And this right here was not permitted. I believe this**  
23 **area was not permitted. So, what we were trying to do**  
24 **to determine when we were there, after speaking with**

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1 **Mr. Truman, to educate him on our authorization to**  
2 **come on the site and conduct inspections, we also**  
3 **conducted an inspection and determined the site soils**  
4 **were unstable and these areas were not permitted. And**  
5 **I believe the dozer was parked in this area right**  
6 **here.**  
7 Q. So as far as when you went onto this  
8 site, again, did you ask to enter for inspection?  
9 **A. I'm confused by that question. We --**  
10 **there's nobody to ask. Like there's not a guard at a**  
11 **gate. So you drive in. Because my inspector from the**  
12 **day prior said that Mr. Truman wanted somebody to stop**  
13 **in at the office before conducting an inspection,**  
14 **that's what we did.**  
15 Q. So you stopped into the office, is  
16 that what you're telling me?  
17 **A. Yes.**  
18 Q. Okay. And did you present any  
19 credentials?  
20 **A. Yes.**  
21 Q. What did you present?  
22 **A. We presented our ID badges with our**  
23 **photographs on them, and our Clark County symbol, and**  
24 **it says Air Quality. We gave business cards. I**

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1 **believe Katrinka gave a business card. And we were in**  
2 **a Clark County -- we were on a county vehicle that was**  
3 **marked Clark County Air Quality.**  
4 Q. So you handed that to whom?  
5 **A. Mr. Truman.**  
6 Q. Okay. So -- and in that -- on those  
7 credentials that you're saying, does it have a  
8 credential number?  
9 **A. No.**  
10 Q. Does it have a statement saying the  
11 person is authorized to conduct the inspections?  
12 **A. Nope.**  
13 Q. Does it say that this certifies that  
14 -- I don't remember your first name, Mr. Dean is an  
15 employee of Air Quality Control?  
16 **A. It does.**  
17 Q. And then does it have an expiration  
18 date?  
19 **A. No expiration date.**  
20 Q. Okay. I don't have any other  
21 questions for you?  
22 HEARING OFFICER: Okay. Thank you.  
23 MS. JORGENSEN: Just one follow-up.  
24 EXAMINATION.

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1 BY MS. JORGENSEN:  
2 Q. Mr. Dean, I believe you indicated that  
3 you recall that -- the dozer?  
4 A. Yes.  
5 Q. Is that what you call it. Was in that  
6 second portion. If you could do the highlight of  
7 where it was. Right here?  
8 A. It was right there.  
9 Q. Okay. Do you specifically remember  
10 that or is that --  
11 A. I -- I'm almost positive it was right  
12 there.  
13 Q. Okay?  
14 A. Uh-huh.  
15 Q. Nothing further?  
16 HEARING OFFICER: Okay. Thank you.  
17 The next witness.  
18 MS. JORGENSEN: I'd like to -- I'd like  
19 to call Andrew Kirk.  
20 HEARING OFFICER: Okay. Mr. Kirk,  
21 raise your hand. Do you solemnly swear that you'll  
22 tell the truth, the whole truth, and nothing but the  
23 truth, so help you God?  
24 THE WITNESS: I do.

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1 (WITNESS SWORN).  
2 HEARING OFFICER: Okay. Thank you.  
3 You may proceed.  
4 MS. JORGENSEN: Thank you.  
5 DIRECT EXAMINATION.  
6 BY MS. JORGENSEN:  
7 Q. Mr. Kirk, would you please state your  
8 name for the record?  
9 A. I'm Andrew Kirk.  
10 Q. And what is your job title?  
11 A. I'm a senior Air Quality Specialist.  
12 Q. And what are your duties?  
13 A. So, I complete construction and  
14 inspections on the northern part of town on Northrop  
15 Charleston. I also have four inspectors that are  
16 under me. And I review all the documents that they  
17 fill out, including notice of violations, notice of  
18 non-compliances, construction site inspections, things  
19 like that.  
20 Q. How long have you been with Air  
21 Quality?  
22 A. Almost 11 years.  
23 Q. And how long have you been in your  
24 current position?

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1 A. About six.  
2 Q. And prior to that, what was your  
3 position?  
4 A. Air Quality Specialist 2.  
5 Q. Okay. During your career with Air  
6 Quality, have you always worked on construction site  
7 or done construction site inspections and other things  
8 related to construction sites or maybe even vacant  
9 land?  
10 A. Yes, I've been with the Dust  
11 Compliance Group the entire time I've worked for the  
12 Air Quality.  
13 Q. Okay. And did you visit the site that  
14 is the subject of notice of Violation 9994 on January  
15 9th, 2024?  
16 A. I did.  
17 Q. And do you recall having -- did you  
18 personally have any discussions with Mr. Truman while  
19 you were on site?  
20 A. I did not.  
21 Q. Okay. Do you -- were you present when  
22 Mr. Dean and Mr. Truman were speaking?  
23 A. Yes, I was.  
24 Q. Do you have any recollection of that

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1 conversation?  
2 A. Not other than Mr. Dean had stated.  
3 Like, it was about 10 months ago. I don't remember  
4 exactly what was discussed.  
5 Q. Okay. Do you have any recollection of  
6 seeing -- well, let me back up before I go to there?  
7 Did you all -- did you return to the  
8 site on January 17th as well as February 1st with Ms.  
9 Rowsell?  
10 A. I did.  
11 Q. And during those three dates that you  
12 were there, how did you enter the site?  
13 A. We drove through the northern section  
14 of the property on the west -- northwest corner of  
15 that map right there.  
16 Q. Could you point to it on the map? And  
17 --  
18 A. About in here.  
19 Q. -- was there a gate?  
20 A. There was a gate that's built there,  
21 but it was either broken. It was never -- I've never  
22 observed that closed. It was open.  
23 Q. And while you were there, were there  
24 any other vehicles coming onto the site?

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1 **A. There were, on the southern end.**  
2 **There's another gate that's entry here, and this is**  
3 **where the trucks -- 18 wheeler trucks come in and out.**  
4 Q. Okay. And when you say gate, was that  
5 blocked? Was it gated or was it -- I mean, if you  
6 remember, was it gated? Was it open? What was --  
7 **A. Both. It's closed and open. When**  
8 **trucks come in, they open it up.**  
9 Q. Okay?  
10 **A. And it stays open for a little bit and**  
11 **then closes.**  
12 Q. Oh, so it's like an automatic gate?  
13 **A. Yes.**  
14 Q. Okay?  
15 **A. This was always open. I believe**  
16 **there's a road up here and they --this is residential**  
17 **neighborhoods. I believe they share the same road or**  
18 **they used to. And they shared that. That's why that**  
19 **was never closed.**  
20 Q. Oh, okay. And -- let's see. When you  
21 were there on, and I don't know which day, but if you  
22 have any recollection when you were there on the ninth  
23 -- January 9th, January 17th, or February 1st, do you  
24 -- do you recall seeing a tracked vehicle, a dozer?

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1 **A. I do.**  
2 Q. And where do you recall seeing that?  
3 **A. I remember exactly where it was. It**  
4 **was in the top corner right here. It was buried**  
5 **behind a bunch of other storage containers and**  
6 **equipment. It didn't look like it had been used or**  
7 **moved for a while because it was buried pretty deep**  
8 **right in the corner here.**  
9 Q. And why do you recall having or was  
10 there anything that drew your attention to that dozer?  
11 **A. No. I mean, we -- when we see unpaid**  
12 **parking lots, we specifically look for tracked**  
13 **vehicles to determine whether or not that might be**  
14 **something we need to discuss down the road. So we**  
15 **were just kind of reviewing everything and kind of**  
16 **seeing what was being stored there. Like I said, we**  
17 **-- that's something that we look for.**  
18 Q. Did you recall -- was that on January  
19 9th that you saw the dozer or do you remember which  
20 day you saw it?  
21 **A. I do not remember.**  
22 Q. Okay. And do you recall seeing any  
23 other track vehicles on any of that close to five  
24 acres?

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1 **A. No, we looked pretty good. We --**  
2 **there was -- I don't recall seeing another one. Just**  
3 **that one.**  
4 Q. Okay. I have nothing further?  
5 HEARING OFFICER: Okay.  
6 Counsel, any questions?  
7 CROSS EXAMINATION.  
8 BY MR. GUBLER:  
9 Q. Mr. Kirk, did you speak with Mr.  
10 Truman while you were there?  
11 **A. So, on the ninth, Mr. Dean spoke to**  
12 **Mr. Truman, and on February 1st, as you -- we talked**  
13 **about earlier, and said on the construction site**  
14 **inspection form that Candy had filled out that we did**  
15 **speak to him. I don't recall exactly what was**  
16 **discussed at that point either.**  
17 Q. And were you on there any other days?  
18 **A. Just those three. The 9th, the 17th**  
19 **and February -- January 9th, January 17th, and**  
20 **February 1st.**  
21 Q. On these days, did you -- did you ask  
22 to enter the property for inspection?  
23 **A. I did not.**  
24 Q. And that includes February 1st, 7th,

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1 and the 9th; is that right?  
2 **A. 17th and the 9th, yes.**  
3 Q. 17th and the 9th. Thank you. So,  
4 that -- so, let me just ask that question again. That  
5 includes February 1st, January 17th, and January 9th?  
6 **A. Yes.**  
7 Q. Okay. And then did you present any  
8 type of credentials?  
9 **A. I'm all -- I don't remember. We**  
10 **didn't meet or discuss, so there was no credentials to**  
11 **present to anybody. So, no.**  
12 Q. Okay. I have no other questions?  
13 HEARING OFFICER: Thank you.  
14 MS. JORGENSEN: Just a couple of follow  
15 up.  
16 REDIRECT EXAMINATION.  
17 BY MS. JORGENSEN:  
18 Q. Mr. Kirk, does the Dust Control  
19 Operating Permit that was the subject that was in  
20 place on January 9th, January 17th, and February 1st  
21 require that the permittee allow inspections without  
22 notice during regular business hours?  
23 **A. It does, as we had read earlier with**  
24 **Ms. Sutowska.**

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<p>1 Q. And -- let's see. Oh, since February 2 1st -- so the -- this particular notice of violation 3 goes through February 1st, 2024. With that in mind, 4 have you been to the site since February 1st, 2024? 5 <b>A. I have.</b> 6 Q. Okay. I don't have anything further? 7 HEARING OFFICER: Thank you. Next 8 witness -- next witness. 9 MS. JORGENSEN: Next witness, these are 10 all the witnesses I have to -- for the purpose of 11 determining whether or not a violation occurred. 12 HEARING OFFICER: Okay. 13 MS. JORGENSEN: The next witness I 14 would have is Ms. Sutowska to discuss the penalty 15 amount. That is something that to your choosing. We 16 could go ahead and present and then you could make 17 both decisions or we could -- which -- whichever you 18 prefer. 19 HEARING OFFICER: So, I'd rather wait 20 and present evidence whether -- I understand your -- 21 if I'm understanding what your argument is, is that 22 under Air Quality regulations, you're challenging -- 23 you're saying it did not occur because the proper -- 24 it was unconstitutional or it's federal preemption, if</p> <p>Page 98</p>	<p>1 MR. GUBLER: I do have Mr. Truman here 2 today. 3 HEARING OFFICER: Okay. 4 MR. GUBLER: I didn't know if we -- are 5 we going -- are we done with both items on your side? 6 MS. JORGENSEN: Just 9994. 7 HEARING OFFICER: Yeah, just whether 8 the violation occurred and then -- 9 MS. JORGENSEN: For that one 10 (inaudible). 11 HEARING OFFICER: Oh, yes. For the 12 one. Okay. So, yeah. Okay. And with the other, did 13 we want -- I guess I would rather -- or what would be 14 more efficient, I guess, because these are all running 15 into one another too. 16 MS. JORGENSEN: They do involve the 17 same site, different time periods. There is an 18 allegation of unstable soil for the first NOV, 19 allegation of unstable soil for the second NOV. The 20 second NOV is the one that deals with denial of 21 access. But the first NOV does not. 22 HEARING OFFICER: Okay. How would you 23 like to proceed? You want to keep them separate or go 24 all with that one and then run into that? However you</p> <p>Page 100</p>
<p>1 I'm understanding that correctly? 2 MR. GUBLER: Yes. That's on -- that's 3 on -- going to be on both of the items that we're here 4 for today. The other -- you know, the other argument 5 is that the regulation itself requires the request and 6 the presenting of proper credentials, which submit did 7 not happen. So that -- that'll be a closing argument 8 though. 9 HEARING OFFICER: Okay. 10 MR. GUBLER: But that -- we didn't want 11 to lose sight of that either. 12 HEARING OFFICER: Okay. So -- 13 MS. JORGENSEN: And I'm sorry. I'm not 14 sure if they're planning to present any witnesses or 15 do anything, but -- 16 HEARING OFFICER: That -- okay. 17 Because that's what I'm understanding. Because, like, 18 if my understanding is correct, are you planning to 19 contest that under Air Quality regulations whether the 20 violation occurred? Do you have witnesses to contest 21 that? And that's what I would have you address right 22 now. 23 MR. GUBLER: Yes. We -- 24 HEARING OFFICER: Okay.</p> <p>Page 99</p>	<p>1 think it's more efficient. 2 MR. GUBLER: I think it would be more 3 efficient if we just have the government present their 4 evidence first, and then Mr. Truman, I can present 5 him. And I -- because I -- it's just going to be so 6 overlapping. I think it would just make more sense. 7 HEARING OFFICER: Okay. Then we'll 8 continue in that matter. 9 MS. JORGENSEN: Okay. So we'll move on 10 to notice of Violation 10078. 11 HEARING OFFICER: Yes. 12 MS. JORGENSEN: Okay. And we're just 13 addressing the -- whether the violations occurred -- 14 HEARING OFFICER: Yes. 15 MS. JORGENSEN: -- first. Yep. All 16 right. I'd like to call, Candy Rowsell. 17 DIRECT EXAMINATION. 18 BY MS. JORGENSEN: 19 Q. And just a reminder, you're still 20 under oath? 21 <b>A. Yes.</b> 22 Q. Ms. Rowsell, are you familiar with 23 notice of Violation 10078? 24 <b>A. Yes.</b></p> <p>Page 101</p>



1 Q. Does it -- does it involve the same  
2 site as the one that is the subject of notice of  
3 Violation 9994?  
4 A. Yes.  
5 Q. On July 17th, 2024, did you visit the  
6 construction site?  
7 A. Yes.  
8 Q. And what was the purpose of your  
9 visit?  
10 A. Just the routine inspection.  
11 Q. Did you visit the site with anyone  
12 else from Air Quality?  
13 A. Yes, Andrew Kirk.  
14 Q. And if you could just remind the  
15 hearing officer, what was your last visit prior to  
16 January 17th -- I'm sorry, July 17th?  
17 A. I believe it was in February.  
18 Q. And in February when you visited the  
19 site, had -- was the site in compliance?  
20 A. Yes.  
21 Q. Okay. During your inspection, what  
22 did you observe?  
23 A. Unstable soils.  
24 Q. And --

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1 A. Can I see my inspection, please?  
2 Q. Yeah. Let's go to Exhibit B. Ms.  
3 Rowsell, could you describe what this document is?  
4 A. It's my construction site inspection  
5 that I fill out when I do an inspection on all sites.  
6 Q. Okay. And do you -- were you able to  
7 conduct a full inspection while you were there on July  
8 17th?  
9 A. Yes.  
10 Q. So you got out of your car, walked  
11 around?  
12 A. Yes, we were able to go in.  
13 Q. Okay. And at that point, was there a  
14 -- was the site gated and blocked where you couldn't  
15 go in -- you couldn't drive in like you'd previously  
16 been able to in January and February?  
17 A. No, I don't believe so. I can't --  
18 Q. So you don't recall having to stop and  
19 --  
20 A. I can't see.  
21 Q. Oh, here, let me show you on this one?  
22 MS. JORGENSEN: I'm pulling up the one  
23 on -- here so she can see it easier.  
24 BY MS. JORGENSEN:

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1 Q. So, here's Exhibit B. So do what you  
2 want to do?  
3 A. Yes, I was allowed on site.  
4 Q. Do you recall whether or not you  
5 needed to -- was there a sign saying that you needed  
6 to check in?  
7 A. No.  
8 Q. Do you recall any sign about hazardous  
9 materials?  
10 A. No.  
11 Q. Okay. And do you remember -- did you  
12 have to check in -- to get onto the site, did you have  
13 to check in? Do -- if you recall?  
14 A. I don't recall this time.  
15 Q. Okay. So, during your inspection,  
16 what did you observe?  
17 A. Dry, loose, powdery site soils.  
18 Q. And do you recall whether or not the  
19 track out control device that had previously been  
20 installed was still in place?  
21 A. Yes, it was there.  
22 Q. Okay. So there was no issue with  
23 regard to the track out device?  
24 A. No.

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1 Q. Okay. Did you perform a drop ball  
2 test?  
3 A. I did not need to.  
4 Q. When you say you didn't need to, what  
5 do you mean?  
6 A. Because I could tell by the -- my  
7 training that the drop ball it would fail, because  
8 it's a -- it was very bad.  
9 Q. Okay. Did you take any photographs,  
10 what you saw?  
11 A. Yes.  
12 MS. JORGENSEN: Could we go to Exhibit  
13 C?  
14 BY MS. JORGENSEN:  
15 Q. Could you go through Photographs 1  
16 through 6 and describe what they depict?  
17 A. This is a view of the north at dry,  
18 loose, powdery site soils located in the southwestern  
19 portion of the project, that clearly see it's unstable  
20 with no water use. And then that's view looking  
21 northeast at the dry, loose, powdery site soils  
22 observed in the central portion of the project. And  
23 view looking north at dry, loose, powdery site soils  
24 observed in the southern portion of the project. And

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<p>1 you can clearly see there's inches of dry, loose, 2 powdery soils. 3 And then view looking east at dry, 4 loose, powdery site soils observed on the southeastern 5 portion of the project. And that's a closer up view 6 of the northeast -- looking northeast at dry, loose, 7 powdery site soils observed on the northeastern end of 8 the project. And view looking east at dry, loose, 9 powdery site observed on the Northwestern end of the 10 project. 11 Q. And do these -- are these photographs 12 that you took? 13 A. Yes. 14 Q. And do they thoroughly and accurately 15 represent what you observed? 16 A. Yes. 17 Q. Did you document your inspection -- 18 actually, I think we've already looked at or gone 19 through Exhibit B, but if we go to Exhibit B. Does 20 this construction site inspection report document 21 which you observed on that day? 22 A. Yes. 23 Q. And does the report note your 24 observations of the soil -- site soils were unstable?</p> <p>Page 106</p>	<p>1 lawyers are for. 2 Mr. Kirk and I left the site without 3 further discussion. I issued a notice of 4 non-compliance with a possible notice of violation and 5 sent the non via e-mail to Mr. Truman and his 6 attorney, Mr. Russell Gubler. 7 Q. And did you issue that notice of 8 non-compliance? 9 A. Yes. 10 MS. JORGENSEN: Could we go to Exhibit 11 E? 12 BY MS. JORGENSEN: 13 Q. Ms. Rowsell, could you describe what 14 this is? This document? 15 A. This is a notice of non-compliance 16 that we e-mailed to the responsible official when our 17 site is not in compliance, giving them direction of 18 what needs to be done to bring it back into 19 compliance. 20 Q. Okay. And at this point, on July 21 17th, there was still a Dust Control Operating Permit 22 on this site? 23 A. Correct. 24 Q. Did you provide a copy of the notice</p> <p>Page 108</p>
<p>1 A. Yes. 2 Q. And did you include any inspector 3 notes in the report? 4 A. I did. 5 Q. Would you please read them? 6 A. Yes. I conducted a routine inspection 7 with Andrew Kirk, senior Air Quality specialist, and 8 observed approximately 1.3831 acres of dry, loose, 9 powdery site soils. Due to the amount of egregious, 10 unstable soils, the soil stabilization test was not 11 conducted due to the fact it was not needed to verify 12 instability. 13 Andrew and I spoke in person with Moe 14 Truman, responsible official, and informed him that 15 the site was not in compliance at this time, and that 16 a notice of non-compliance with a possible notice of 17 violation will be issued. Mr. Truman stated that he 18 was in litigation regarding this site with Air 19 Quality. 20 When Mr. Kirk tried to explain to Mr. 21 Truman that the soils need to be stabilized and 22 maintained in a moisture crusted condition 24/7 per 23 the conditions of his dust permit, Mr. Truman stated 24 he wasn't going to discuss it and that's what the</p> <p>Page 107</p>	<p>1 of non-compliance to Mr. Truman and his attorney? 2 A. Yes. 3 Q. And when was that? 4 A. I believe on July 17th, I think. 5 Q. I think that's part of Exhibit E; is 6 that right? 7 MS. JORGENSEN: Can you make that 8 bigger, Pam? 9 THE WITNESS: Yeah, July 17th at 5:06 10 p.m. I e-mailed it to them. 11 BY MS. JORGENSEN: 12 Q. Okay. Did you return to the site 13 again? 14 A. Yes. 15 Q. And when was that? 16 A. July 25th, I think. Or was that Andy? 17 Q. Yeah? 18 A. I went the next day, July 31st. 19 Q. July 31st is when you went next time? 20 A. Yes. 21 Q. Okay. And did you go with anyone, 22 from Air Quality on July 31st? 23 A. Yes. 24 Q. And who is that?</p> <p>Page 109</p>



1 **A. I believe it was Noe Cran -- can I see**  
2 **the notes again?**  
3 Q. Here. We can go --  
4 THE CLERK: So many times.  
5 MS. JORGENSEN: I know. So let's go  
6 back to --  
7 THE WITNESS: Noel, I went with Noel.  
8 I can see it too.  
9 BY MS. JORGENSEN:  
10 Q. Noel?  
11 **A. Crandall.**  
12 Q. Okay?  
13 **A. The Air Quality Inspector 2.**  
14 Q. And why did he accompany you?  
15 **A. Because we had changed areas, and so I**  
16 **took Mr. Crandall with me to introduce him to Mr.**  
17 **Truman and explain that he was going to be the new**  
18 **inspector for that area.**  
19 Q. And so did you have that opportunity  
20 to -- just to introduce him to Mr. Truman?  
21 **A. I did.**  
22 Q. And did you recall any other parts of  
23 the discussion?  
24 **A. I explained to him that the soils were**

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1 **unstable, and that he needed to maintain them 24/7,**  
2 **and that it was another day of non-compliance.**  
3 Q. Okay. On July 31st, were you able to  
4 perform a full site inspection?  
5 THE WITNESS: Can you pull up the CSI,  
6 please? Okay. Yeah. Thank you.  
7 Yes, I believe we were on site. Can  
8 you --  
9 BY MS. JORGENSEN:  
10 Q. What do you need to look at?  
11 **A. (Inaudible) right there.**  
12 Q. Okay. Here?  
13 THE CLERK: I don't know how to, I'm  
14 so sorry.  
15 THE WITNESS: Sorry. It's at an angle  
16 where you can't read it very well.  
17 No, we were not able to go onto the  
18 full site.  
19 BY MS. JORGENSEN:  
20 Q. Okay. Did you take any pictures of  
21 what you were able to see?  
22 **A. Yes, I took pictures to the gate.**  
23 Q. Okay. So at this point, on July 3 --  
24 so, on July 17th there was no gate blocking your

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1 access?  
2 **A. Correct.**  
3 Q. And then on July 31st there was?  
4 **A. Correct.**  
5 Q. So how did you speak to -- how did you  
6 get to speak to Mr. Truman?  
7 **A. In the middle of the site on Stratford**  
8 **there is a button that you push, and a secretary, I**  
9 **believe, asks what you're there for. And I stated**  
10 **we're here to do -- we were with Air Quality, we're**  
11 **here to do an inspection. And Mr. Truman came out and**  
12 **spoke with this outside of that door.**  
13 Q. So, he came outside of the building  
14 and was speaking with you in the front of the --  
15 **A. In the front of the building --**  
16 Q. -- the area?  
17 **A. Yes.**  
18 Q. Okay?  
19 **A. In the parking area.**  
20 Q. Okay. Let's see?  
21 MS. JORGENSEN: If we could go to Photo  
22 12. Our Exhibit C.  
23 BY MS. JORGENSEN:  
24 Q. Is this a copy of a photo that you

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1 took?  
2 **A. Yes, that's where I was looking**  
3 **through the gate blocking the access to the site.**  
4 **That's what I could see looking through.**  
5 Q. And is this a gate that's on the where  
6 is the south end?  
7 **A. South.**  
8 Q. So this is where you've previously  
9 seen trucks go in and out?  
10 **A. Correct. There was trucks going in**  
11 **and out.**  
12 Q. Okay. And this is where the gate  
13 would automatically open up?  
14 **A. I -- somebody opened it. Yeah, I**  
15 **don't know if opened automatically.**  
16 Q. Okay. But while you were there,  
17 trucks were going in and out?  
18 **A. Yes.**  
19 Q. Okay. Did you document your visit by  
20 preparing a construction site inspection report?  
21 **A. Yes.**  
22 MS. JORGENSEN: Could we go to Exhibit  
23 H? Could you -- oh, gosh.  
24 THE CLERK: I can make it.

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1 MS. JORGENSEN: No, I'm sorry. I like  
2 messed this this up. One second. So, how do I get  
3 back to -- yeah. So, there we go. Thank you.  
4 BY MS. JORGENSEN:  
5 Q. Okay. So, let me get you to Exhibit  
6 H. Okay. So, do what you need to do to look at  
7 Exhibit H?  
8 **A. Okay.**  
9 Q. So could you describe what this  
10 document is?  
11 **A. Yes, it's the construction site**  
12 **inspection that we do when we do an inspection on the**  
13 **site.**  
14 Q. And does this report memorialize what  
15 occurred during your visit?  
16 **A. It does.**  
17 Q. Did you include any inspector notes in  
18 the report?  
19 **A. Yes.**  
20 Q. Would you please read those inspector  
21 notes?  
22 **A. Yes. An Air Quality specialist, Noel**  
23 **Crandall and I attempted to conduct a follow-up**  
24 **inspection on this project but was denied accessed by**  
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1 **the responsible official, Mr. Truman. I therefore was**  
2 **not able to complete a close-up inspection of the**  
3 **soils, but could see through the fence that they were**  
4 **still dry, loose, and powdery throughout the site and**  
5 **appeared to be unchanged from the last inspection on**  
6 **7/17 and 7/24, '25 - '24.**  
7 **There was a front end loader spreading**  
8 **what appears to be millings on the main area by the**  
9 **south entrance. But I was unable to confirm materials**  
10 **as access was denied. Mr. Truman stated that since no**  
11 **crime and I don't have OSHA 40 certification, we'll**  
12 **not be allowed access on his site.**  
13 **I did tell Mr. Truman that he must**  
14 **stabilize all site soils immediately and maintain them**  
15 **in a moisture crystal condition 24/7. I asked Mr.**  
16 **Truman, just to be clear, you are denying us access to**  
17 **your site; is that correct? And Mr. Truman stated,**  
18 **yes. I stated, okay, then Mr. Crandall and I left the**  
19 **premises.**  
20 Q. Prior to your attempt to fully inspect  
21 the site on July 31st, had Mr. Truman ever stated that  
22 an Air Quality inspector would need an OSHA 40  
23 certification to perform an inspection on this site?  
24 **A. No.**  
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1 Q. And does -- to the best of your  
2 knowledge -- well, let me ask it this way, before July  
3 31st, did Mr. Truman ever deny you entry to the site  
4 such as on January 8th, February 1st, or July 17th?  
5 **A. Not me personally, no.**  
6 Q. And was it a condition of the Dust  
7 Control Operating Permit that the permittee allow Air  
8 Quality inspections without notice during business  
9 hours?  
10 **A. Yes.**  
11 Q. Did Mr. Truman state or give any  
12 indication that he was denying access to you and Mr.  
13 Crandall because he questioned whether you were Clark  
14 County Air Quality inspectors?  
15 **A. No, he denied us access because we**  
16 **didn't have OSHA 40 certification.**  
17 Q. At least that's what he stated?  
18 **A. That's what he stated.**  
19 Q. Okay. Did you provide anything in  
20 writing to Mr. Truman and his attorney concerning the  
21 denial of access on July 31st?  
22 **A. Yes, we sent an e-mail.**  
23 MS. JORGENSEN: And if we could go to  
24 Exhibit I.  
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1 BY MS. JORGENSEN:  
2 Q. Ms. Roswell, is this the e-mail you  
3 were referencing?  
4 **A. Yes.**  
5 Q. And when was this sent?  
6 **A. July 31st at 5:05 p.m.**  
7 Q. Okay. Could you please read that  
8 first paragraph of the e-mail?  
9 **A. Yes. Good afternoon Mr. Truman, Mr.**  
10 **Gubler, I went out to your project Dust Control**  
11 **Operating -- DCO -- Permit, DCOP 57148-Stratford-1 on**  
12 **Wednesday, 7/31/2024 at approximately 1:55 p.m. for a**  
13 **follow-up inspection was denied access.**  
14 **I was told that your lawyer needed to**  
15 **figure out if access is going to be allowed since we**  
16 **don't have OSHA 40 certification before allowing**  
17 **access to the site. Even though as an inspector, I**  
18 **have the authority to complete an unscheduled**  
19 **inspection at any reasonable time.**  
20 **In fact, on page 3 of 16 of your DCOP,**  
21 **it says, in accordance with the DCOP and the AQRs, the**  
22 **applicant and the permittee shall consent to inspection**  
23 **of the site during normal hours of operation by**  
24 **Division of Air Quality, DAQ staff without prior**  
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<p>1 notice to determine compliance with the terms and</p> <p>2 conditions of the DCOP and the AQRs. This became</p> <p>3 binding after the DCOP was signed and issued to you,</p> <p>4 the responsible official.</p> <p>5 Q. And does the e-mail include anything</p> <p>6 else?</p> <p>7 A. Yes.</p> <p>8 Q. And what else does it include?</p> <p>9 A. It includes the two Nevada revised</p> <p>10 statutes that apply here for the power to do an</p> <p>11 inspection NRS445B.240, power of representative and</p> <p>12 department to enter and inspect premises.</p> <p>13 Q. And what's the other statute?</p> <p>14 A. NRS445A -- is that B or E?</p> <p>15 Q. B?</p> <p>16 B.580, officer of department may</p> <p>17 inspect or search premises.</p> <p>18 Q. Okay. Did you and Mr. Crandall return</p> <p>19 to the site again on August 7th for an inspection?</p> <p>20 A. Yes.</p> <p>21 Q. And while on site, did you speak with</p> <p>22 Mr. Truman?</p> <p>23 A. Yes.</p> <p>24 MS. JORGENSEN: Could you go to Exhibit</p> <p style="text-align: right;">Page 118</p>	<p>1 inspection with Air Quality Inspector Noel Crandall,</p> <p>2 and was denied access to the site by Mr. Moe Truman,</p> <p>3 responsible official. Mr. Truman stated that his</p> <p>4 lawyer had not gotten back to him yet as to whether</p> <p>5 access will be granted for an inspection. I was</p> <p>6 unable to tell if the soils were stable or unstable</p> <p>7 since access was denied. It appears that millings</p> <p>8 were applied throughout most of the site from what I</p> <p>9 could see through the fence.</p> <p>10 Q. I believe you had already testified</p> <p>11 that on July 17th -- no, I'm sorry, on August -- I'm</p> <p>12 sorry, July 31st. Let me just make sure. Let me just</p> <p>13 think for a second. Okay. Remind me. On July 17th,</p> <p>14 is that the first time -- no. On July 31st is the</p> <p>15 first time you went with Mr. Crandall; is that</p> <p>16 correct?</p> <p>17 A. Yes, I believe so.</p> <p>18 Q. And you introduced -- one of the</p> <p>19 reasons of bringing Mr. Crandall was to introduce him</p> <p>20 to Mr. Truman; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And on August 7th, did Mr. Truman make</p> <p>23 any statements about -- oh, let me back up?</p> <p>24 On July 31st, what was the reason of</p> <p style="text-align: right;">Page 120</p>
<p>1 J, please?</p> <p>2 BY MS. JORGENSEN:</p> <p>3 Q. Ms. Roswell, could you please describe</p> <p>4 what this document is?</p> <p>5 A. It's my construction site inspection</p> <p>6 report from when we did our inspection of what we</p> <p>7 found on site.</p> <p>8 Q. And this was for August 7th?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And were you able to go onto</p> <p>11 the site to perform your inspection?</p> <p>12 A. No.</p> <p>13 Q. And did you speak with Mr. Truman?</p> <p>14 A. Yes.</p> <p>15 Q. And did he deny you access?</p> <p>16 A. Yes. Mr. Truman stated his lawyer had</p> <p>17 not gotten back to him yet as to whether access will</p> <p>18 be granted for the inspection.</p> <p>19 Q. Did you document what you observed in</p> <p>20 the construction site inspection report?</p> <p>21 A. Yes.</p> <p>22 Q. Or I guess document your visit? Could</p> <p>23 you please read the inspector notes in the report?</p> <p>24 A. Yes. I conducted a follow-up</p> <p style="text-align: right;">Page 119</p>	<p>1 bringing Mr. Crandall to introduce him to Mr. Truman?</p> <p>2 A. Because our areas were changing and</p> <p>3 Mr. Crandall was going to be the new inspector of the</p> <p>4 area. And I wanted Mr. Truman to meet him.</p> <p>5 Q. So on August 7th when you showed up</p> <p>6 with Mr. Crandall, did Mr. Truman make any remark</p> <p>7 about your appearance?</p> <p>8 A. Yes, he said -- he goes, I thought you</p> <p>9 were done here. And I said, I'm not done until this</p> <p>10 is solved.</p> <p>11 Q. Okay. After your inspection on August</p> <p>12 7th, did you send a follow up e-mail to Mr. Truman and</p> <p>13 his attorney?</p> <p>14 A. Yes.</p> <p>15 MS. JORGENSEN: Could we go to Exhibit</p> <p>16 K?</p> <p>17 BY MS. JORGENSEN:</p> <p>18 Q. Ms. Roswell, could you describe what</p> <p>19 this document is?</p> <p>20 A. Is the e-mail that I sent to Mr.</p> <p>21 Truman.</p> <p>22 Q. And when did you send it?</p> <p>23 A. On August 12th, 9:18 a.m.</p> <p>24 Q. Okay. So August 7th was the date of</p> <p style="text-align: right;">Page 121</p>



<p>1 the inspection or attempted inspection, and then</p> <p>2 August 12th is the date that you sent the e-mail?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. And in that e-mail, did you again,</p> <p>5 state to Mr. Truman that the Dust Control Operating</p> <p>6 Permit provided that authorization to go onsite?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. On August 14th, did you and Mr.</p> <p>9 Crandall return again to the site to perform an</p> <p>10 inspection?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And on the 14th -- well, actually if</p> <p>13 we could go to -- oh, actually no?</p> <p>14 Did you -- do you recall speaking with</p> <p>15 Mr. Truman on the 14th?</p> <p>16 <b>A. Can I pull up the CSI, please?</b></p> <p>17 Q. Sure?</p> <p>18 <b>A. There. I can see.</b></p> <p>19 Q. Okay?</p> <p>20 <b>A. Yes, we did. No, actually, no. This</b></p> <p>21 <b>was the one where he was in a meeting, and we spoke</b></p> <p>22 <b>with a female worker. On the -- when we pushed the</b></p> <p>23 <b>button and asked to do a site inspection, she stated</b></p> <p>24 <b>that Mr. Truman was in a meeting, was unable to let us</b></p> <p style="text-align: right;">Page 122</p>	<p>1 <b>A. This is the gate that's on the north</b></p> <p>2 <b>end.</b></p> <p>3 Q. The north endOkay.</p> <p>4 <b>A. And then that's in the middle of the</b></p> <p>5 <b>project where the office is, that you check in.</b></p> <p>6 Q. Okay. And how did you know it was the</p> <p>7 office?</p> <p>8 <b>A. Just now there's a sign saying all</b></p> <p>9 <b>visitors must check in.</b></p> <p>10 Q. Okay. Since August 14th, have you</p> <p>11 returned to the site?</p> <p>12 <b>A. No, I don't believe -- oh, wait. I</b></p> <p>13 <b>don't believe so. No.</b></p> <p>14 Q. For the purposes of this notice of</p> <p>15 violation, is the last inspection on August 14th,</p> <p>16 2024?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And then since August 14th, 2024. So</p> <p>19 not part of this notice violation, but have there been</p> <p>20 subsequent visits --</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. -- that you've been to?</p> <p>23 <b>A. I believe on August 24th, I think.</b></p> <p>24 Q. Do you -- and again, if you recall, is</p> <p style="text-align: right;">Page 124</p>
<p>1 <b>in to do an inspection and to come back later.</b></p> <p>2 Q. Okay. And is this a construction site</p> <p>3 inspection report that you prepared?</p> <p>4 <b>A. I believe I -- no, I believe no.</b></p> <p>5 <b>Yeah, no. That there's inspection this time because</b></p> <p>6 <b>since it's in his area.</b></p> <p>7 Q. Okay. But you recall having that</p> <p>8 conversation with the -- with the employee, not Mr.</p> <p>9 Truman?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Okay?</p> <p>12 <b>A. Noel and I had the conversation with</b></p> <p>13 <b>her.</b></p> <p>14 Q. Okay?</p> <p>15 MS. JORGENSEN: Could you go to Exhibit</p> <p>16 C, Photo 16 and 17?</p> <p>17 BY MS. JORGENSEN:</p> <p>18 Q. Ms. Roswell, could you describe what</p> <p>19 these photographs depict, 16 and 17?</p> <p>20 <b>A. Yeah, this is a view looking southeast</b></p> <p>21 <b>at the close gate blocking access to the site observed</b></p> <p>22 <b>during the follow-up inspection.</b></p> <p>23 Q. And is this the gate that's on the</p> <p>24 south end?</p> <p style="text-align: right;">Page 123</p>	<p>1 it your understanding that the site has -- oh, let me</p> <p>2 back up?</p> <p>3 So, notice of Violation 9994, you went</p> <p>4 on July, on February 1st the site was in compliance,</p> <p>5 so things were closed out and moved forward. Is that</p> <p>6 a correct statement?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. For this notice of violation, after</p> <p>9 August 14th, 2024, is it your understanding that the</p> <p>10 site is now in compliance?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Okay?</p> <p>13 MS. JORGENSEN: I have nothing further</p> <p>14 for this witness.</p> <p>15 HEARING OFFICER: Thank you.</p> <p>16 Counsel?</p> <p>17 EXAMINATION.</p> <p>18 BY MR. GUBLER:</p> <p>19 Q. Ms. Roswell, so we've already</p> <p>20 discussed your prior visits before July. But you were</p> <p>21 on the property on July 17th, 25th, 31st, 7th, and</p> <p>22 14th; is that right?</p> <p>23 <b>A. I was not on the 25th.</b></p> <p>24 Q. Not on the 25th. I apologize. So, on</p> <p style="text-align: right;">Page 125</p>



1 the -- on the 17th, how did you access the site?  
2 **A. We drove in on the north side.**  
3 Q. And did you check in?  
4 **A. We did not.**  
5 Q. Okay. And now, when you had spoken to  
6 Mr. Truman before, he told you that you needed to  
7 check in; is that right?  
8 **A. And we told him he had to post signs.**  
9 Q. But he told you that, is that -- isn't  
10 that right?  
11 **A. Correct.**  
12 Q. Okay. Did you check in?  
13 **A. We checked -- we talked to him, but we**  
14 **didn't check -- we didn't push the button.**  
15 Q. On July 17th, did you check in? So,  
16 just for clarification?  
17 **A. No, I don't believe so.**  
18 Q. Okay. On -- and you said you weren't  
19 there July 25th. July 31st, did you check in?  
20 **A. Yes.**  
21 Q. Okay. And you checked in with whom?  
22 **A. Mr. Truman.**  
23 Q. With Mr. Truman. And did you ask him  
24 to enter the property for inspection?

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1 **A. Yes.**  
2 Q. Okay. And did you present your  
3 credentials?  
4 **A. We have our credentials around our**  
5 **neck at all times.**  
6 Q. Okay. And what is that?  
7 **A. My employee badge.**  
8 Q. Your employee badge, that doesn't have  
9 a certification on it, correct?  
10 **A. It does not say. It says I have the**  
11 **-- I have to have --**  
12 Q. Just answer my question, please?  
13 **A. No.**  
14 Q. Okay. And it -- it's the same badge  
15 that we had asked you about before; is that right?  
16 **A. Correct.**  
17 Q. Okay. So, let's see. Let's go to  
18 July 31st. Did you check in?  
19 **A. Yes.**  
20 Q. And did you -- did you ask to enter  
21 the property for inspection?  
22 **A. Yes.**  
23 Q. Okay. And did you present your  
24 credentials?

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1 **A. We have our badges around our necks,**  
2 **our vehicles, and our shirts at all times.**  
3 Q. Okay. Did you present them to him --  
4 to Mr. Truman?  
5 **A. He didn't ask for them, so no.**  
6 Q. Okay. And that's the same answer for  
7 the 17th. He didn't ask them, so no; is that right?  
8 **A. Correct.**  
9 Q. Okay. On August 7th, did you ask to  
10 enter the property for inspection?  
11 **A. Yes.**  
12 Q. And did you present your credentials?  
13 **A. No.**  
14 Q. Okay. On August 14th, did you ask to  
15 enter the property for inspection?  
16 **A. Yes.**  
17 Q. And did you present your credentials?  
18 **A. No.**  
19 Q. Let me ask you this, on the days that  
20 you said that you were on the property, what test  
21 methods did you use?  
22 **A. To determine -- what's the question?**  
23 **I'm sorry.**  
24 Q. You know, you said that my client's

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1 not in compliance, right?  
2 **A. Correct.**  
3 Q. So what test methods did you use?  
4 **A. You can tell by looking at the soils**  
5 **when there's two inches and you can see two inches of**  
6 **tire trucks that the soils are not stable because you**  
7 **should not be able to make tire trucks or footprints**  
8 **if the soils are stable.**  
9 Q. So under the regulations there's  
10 certain test methods, correct?  
11 **A. Correct.**  
12 Q. Which one did you use?  
13 **A. My visual training.**  
14 Q. Is that one of the test methods used  
15 in the regulations? It isn't, correct?  
16 **A. I'm not familiar, so --**  
17 Q. Okay. So I'm going to go under the  
18 USC, the Uniform Commercial Code, the United States  
19 Code, excuse me, Title 29, labor, Subtitle B,  
20 regulations relating to labor, Chapter 17,  
21 Occupational Safety, Health Administration, OSHA,  
22 Department of Labor, Occupational Safety and Health  
23 Standards, Part 1910, and Subpart Z, Toxic and  
24 Hazardous Substance?

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<p>1 Ms. Roswell, do you have -- do you</p> <p>2 have hazmat training as required under Title 29 of the</p> <p>3 USC?</p> <p>4 <b>A. I do not.</b></p> <p>5 Q. And why is that?</p> <p>6 <b>A. Because it's not required for my</b></p> <p>7 <b>position.</b></p> <p>8 Q. Okay. I don't have any other</p> <p>9 questions?</p> <p>10 HEARING OFFICER: Okay. Thank you.</p> <p>11 EXAMINATION.</p> <p>12 BY MS. JORGENSEN:</p> <p>13 Q. Ms. Roswell, was it your understanding</p> <p>14 that Mr. Truman recognized you and knew who you were</p> <p>15 on January -- I'm sorry, July 17th, July 31st, August</p> <p>16 7th, and August 14th?</p> <p>17 MR. GUBLER: Objection, speculation.</p> <p>18 THE WITNESS: Yes.</p> <p>19 MS. JORGENSEN: I asked about whether</p> <p>20 it was her understanding.</p> <p>21 HEARING OFFICER: Oh, well.</p> <p>22 BY MS. JORGENSEN:</p> <p>23 Q. Did he, on August 7th -- I believe it</p> <p>24 was, yeah, on August 7th, did he make a statement to</p> <p>Page 130</p>	<p>1 been going over two hours, so we'll go ahead and take</p> <p>2 a break.</p> <p>3 MS. JORGENSEN: Okay.</p> <p>4 HEARING OFFICER: It's like 10:16. So,</p> <p>5 we're going off the record. Is 10 minutes sufficient?</p> <p>6 Okay. So right before 10:26.</p> <p>7 (OFF THE RECORD).</p> <p>8 Okay. Are we ready to go back on the</p> <p>9 record? It's about 10:26, 10 minute after a 10-minute</p> <p>10 break. We all are ready.</p> <p>11 MS. JORGENSEN: Yeah, we're ready.</p> <p>12 HEARING OFFICER: Okay. Call your next</p> <p>13 witness.</p> <p>14 MS. JORGENSEN: I'd like to call Andrew</p> <p>15 Kirk. And just remind you, you're still under oath,</p> <p>16 Mr. Kirk.</p> <p>17 HEARING OFFICER: Yeah, go ahead.</p> <p>18 EXAMINATION.</p> <p>19 BY MS. JORGENSEN:</p> <p>20 Q. Mr. Kirk, are you familiar with notice</p> <p>21 of Violation 10078?</p> <p>22 <b>A. I am.</b></p> <p>23 Q. And did you perform or visit the site</p> <p>24 that is a subject to that NOV on a couple of different</p> <p>Page 132</p>
<p>1 you, asking why you were there when you weren't</p> <p>2 supposed to (inaudible)? If you could describe again</p> <p>3 what the interaction you had with him on August 7th</p> <p>4 with regard to him pointing out, asking you why you</p> <p>5 were there?</p> <p>6 <b>A. Yes. When he came out and he saw that</b></p> <p>7 <b>I was there with Mr. Crandall, he said, why are you</b></p> <p>8 <b>still here? I thought you were done with this area.</b></p> <p>9 Q. So, was it your understanding from</p> <p>10 that, that he remembered your discussion on July 31st</p> <p>11 when you introduced Mr. Crandall and stated that you</p> <p>12 would be changing areas?</p> <p>13 <b>A. Correct. Yes.</b></p> <p>14 MS. JORGENSEN: Nothing further.</p> <p>15 HEARING OFFICER: Counsel?</p> <p>16 MR. GUBLER: Nothing.</p> <p>17 HEARING OFFICER: Okay. The next</p> <p>18 witness.</p> <p>19 MS. JORGENSEN: I'd like to call, Mr.</p> <p>20 Kirk.</p> <p>21 HEARING OFFICER: Take a break. Okay.</p> <p>22 A break have been requested.</p> <p>23 MS. JORGENSEN: Oh, okay.</p> <p>24 HEARING OFFICER: And we have actually</p> <p>Page 131</p>	<p>1 occasions in July of 2024?</p> <p>2 <b>A. I did twice.</b></p> <p>3 Q. Did you visit the site on July 17th</p> <p>4 with Ms. Roswell?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And when you arrived on site, do you</p> <p>7 recall if the area around the site was blocked?</p> <p>8 <b>A. Yes, I remember they were blocked.</b></p> <p>9 Q. So you couldn't -- previous to what</p> <p>10 you'd been able to do, you weren't -- back in January</p> <p>11 and February, you were no longer able to drive onto</p> <p>12 the site?</p> <p>13 <b>A. That's correct.</b></p> <p>14 Q. And so when it was locked, what did</p> <p>15 you end up doing?</p> <p>16 <b>A. We rang on the doorbell in the middle</b></p> <p>17 <b>of the property on that west end. There's now a door</b></p> <p>18 <b>that says, all visitors must check in, and there's a</b></p> <p>19 <b>doorbell to ring, which we did.</b></p> <p>20 Q. Okay?</p> <p>21 MS. JORGENSEN: Could you go to -- Pam,</p> <p>22 could you go to Exhibit B of -- I know I'm going to be</p> <p>23 jumping around. Exhibit B of the reply. That's going</p> <p>24 to be the dust control. Yeah. And if you could go to</p> <p>Page 133</p>





1 the map. Okay.  
2 BY MS. JORGENSEN:  
3 Q. So Mr. Kirk, is this a map of the  
4 site?  
5 A. It is.  
6 Q. And could you indicate -- I think you  
7 have the clicker?  
8 MS. JORGENSEN: Oh, and I was going to  
9 say just for future reference, is this the only  
10 clicker we have or? Okay. No, that's fine. So we'll  
11 just -- if you end up needing it, then we can pass it  
12 over when it's -- if it becomes important.  
13 MR. GUBLER: On this?  
14 MS. JORGENSEN: Yeah. Or anything.  
15 BY MS. JORGENSEN:  
16 Q. Okay. Mr. Kirk, if you could show  
17 where you ended up pushing -- ringing a bell or  
18 ringing a --  
19 A. No. Try and get as close as possible,  
20 but it's hard to tell without the aerial visible.  
21 Q. Yeah?  
22 A. But it's right in the middle.  
23 Q. Okay?  
24 A. I know what that arrow says.

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1 Q. Looks like it says MO3?  
2 A. Oh, it's got nothing to do with it. I  
3 think it's south of there.  
4 Q. Okay?  
5 A. There's a -- there's a door right  
6 around here.  
7 Q. Okay?  
8 A. And then parking all up and down here.  
9 Q. Okay?  
10 A. Employee parking and stuff. And we  
11 drove in and parked right next to the door.  
12 Q. Okay. And what did you do next?  
13 A. We rang on the doorbell and Mr. Truman  
14 answered.  
15 Q. Okay?  
16 A. And we introduced ourselves.  
17 Q. When I say -- when you say he  
18 answered, like, he opened a door?  
19 A. Yes.  
20 Q. Okay?  
21 A. Yes.  
22 Q. Go ahead?  
23 A. And then we introduced ourselves. And  
24 then we had -- with Air Quality, here due to

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1 inspection. And then he asked us to grab some PPE,  
2 which is a hard hat and a vest, which we just went to  
3 the car, which is right next to where we were  
4 standing. Grabbed that stuff, and then we entered  
5 into the facility through that door.  
6 Mr. Truman was on a phone call or  
7 something. He went into the office, and Ms. Rowsell  
8 and I stood outside. There's a little office area  
9 here with some computers and phones and stuff like  
10 that. We stood outside of that for a few minutes.  
11 Q. Did he ask you to wait?  
12 A. Yes.  
13 Q. Okay. Go ahead?  
14 A. And then he came out when he was  
15 finished. And we just discussed, once again, what we  
16 were here to do. And he allowed us access to complete  
17 an inspection without presenting credentials.  
18 Q. Okay?  
19 A. Although we were wearing our badges  
20 and shirts and the truck logos.  
21 Q. Okay. And then did you return to the  
22 site again on July 25th, 2024?  
23 A. I did.  
24 Q. And did you perform a full site

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1 inspection on that day?  
2 A. I did not.  
3 Q. And were you there with anyone else --  
4 A. No, I was --  
5 Q. -- from Air Quality?  
6 A. No, it was just me.  
7 Q. Okay. And did you speak with Mr.  
8 Truman?  
9 A. I did.  
10 Q. And did you do the same thing where  
11 you parked and then rang a doorbell?  
12 A. Yes.  
13 Q. And did he appear at the -- that door?  
14 A. He did.  
15 Q. And did he deny you access to the  
16 site?  
17 A. Yes. He said that he needed to get  
18 approval from his lawyer, to give his access or not.  
19 Q. Okay. Did you take any -- even though  
20 you weren't able to go actually onto the site, did you  
21 take any photographs of what you saw?  
22 A. I did.  
23 MS. JORGENSEN: And could we go to  
24 Exhibit C, Photographs 7 through 11.

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1 BY MS. JORGENSEN:  
2 Q. Mr. Kirk, could you go through those  
3 five photographs and describe what they depict?  
4 A. Yeah. So this is a picture, it's  
5 looking east. This is the southwest gate where the  
6 trucks come in and out. It was closed at the time. I  
7 just took a picture through it. Photo number 8, that  
8 is the same -- that's another gate on the -- that's a  
9 northwest corner. You can see that it's closed.  
10 And there's just a picture of the  
11 conex boxes stacked on top. That's all along the  
12 western end of the project. And I believe I have a  
13 picture of the door next. Yes. Here's where you ring  
14 the doorbell. And there's a sign that says, now  
15 notice all visitors must check in or ring the  
16 doorbell, and that's where we're greeted or we were  
17 greeted by Mr. Truman.  
18 Q. Okay?  
19 A. And that's another picture of the  
20 southwest gate just further back, because you can see  
21 the entire area.  
22 Q. So is the door further north?  
23 A. Yes.  
24 Q. Okay?

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1 MS. JORGENSEN: Could you go back to  
2 Photograph 10, I think?  
3 BY MS. JORGENSEN:  
4 Q. Is this the same door that you  
5 observed on July 17th?  
6 A. Yes.  
7 Q. Okay?  
8 A. That's the only door entry and besides  
9 the gates, that's the only way in.  
10 Q. Okay. And -- let's see. Did you  
11 prepare a construction site inspection report?  
12 A. I did on the 25th.  
13 Q. On the 25th?  
14 A. Yes.  
15 MS. JORGENSEN: Could we go to Exhibit  
16 F?  
17 BY MS. JORGENSEN:  
18 Q. Mr. Kirk, could you please describe  
19 what this document is?  
20 A. Oh, so that's a construction site  
21 inspection form that I filled out after my inspection  
22 on the 25th, 3:00 p.m. -- 3:15 p.m.  
23 Q. Okay. And did you include in the  
24 inspector notes?

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1 A. I did.  
2 Q. Could you please read those notes?  
3 A. Yes. I attempted to conduct a  
4 follow-up inspection of this project, was -- but was  
5 denied access by the responsible official, Mr. Truman.  
6 I therefore was not able to complete a close up  
7 inspection of the soils, but could see through the  
8 fence that they appear to be dry, loose, and powdery  
9 and unchanged from the last inspection on July 17th,  
10 2024.  
11 I'm issuing another notice of  
12 non-compliance for access being denied, which is a  
13 violation of Section 4.1, D1 and NRS 445B240, and  
14 NRS445B580. I did tell Mr. Truman that he must  
15 stabilize all soils as immediately and maintaining the  
16 moist crystal condition 24/7.  
17 Q. To the best of your knowledge, had Mr.  
18 Truman ever denied entry or access to the site to an  
19 Air Quality inspector prior to your visit on July  
20 25th?  
21 A. Not that I'm aware of. That was the  
22 first time.  
23 Q. Okay. And I believe you've previously  
24 testified you were there on January 9th, January 17th,

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1 February 1st, and July 17th?  
2 A. I was.  
3 Q. And he didn't deny access on any of  
4 those days?  
5 A. No.  
6 Q. Was it a condition of the Dust Control  
7 Operating Permit that Air Quality staff could conduct  
8 inspections during business hours without notice?  
9 A. Yes, it is.  
10 Q. When Mr. Truman denied access on July  
11 25th, did he state or give any indication that he was  
12 denying access because he questioned whether you were  
13 a Clark County Air Quality inspector?  
14 A. No. It was specifically to get  
15 approval from his lawyer.  
16 Q. Okay. And when you were there, you  
17 were in a county vehicle?  
18 A. We -- yes, we were.  
19 Q. And the county -- I'm talking July  
20 25th?  
21 A. Yes.  
22 Q. And July -- and then July 17th?  
23 A. Yes, all the times, yes.  
24 Q. Okay. And that county vehicle has

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<p>1 printing on it?</p> <p>2 <b>A. Yes. Have like the Clark County seal</b></p> <p>3 <b>on the door and then Air Quality logo on both sides on</b></p> <p>4 <b>the bed of the truck.</b></p> <p>5 Q. And prior to your discussion with him</p> <p>6 on July 25th, you had already talked -- you had also</p> <p>7 talked to him on July 17th?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And did you -- and you were also</p> <p>10 present when David Dean was having a discussion with</p> <p>11 him on January 9th?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And then I know -- and then you also</p> <p>14 saw him on July 17th; is that right?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. Did you issue a notice of</p> <p>17 non-compliance?</p> <p>18 <b>A. I did.</b></p> <p>19 Q. And did you provide this notice of</p> <p>20 non-compliance to Mr. Truman and his attorney?</p> <p>21 <b>A. Yes.</b></p> <p>22 MS. JORGENSEN: Could we please go to</p> <p>23 Exhibit G?</p> <p>24 BY MS. JORGENSEN:</p> <p>Page 142</p>	<p>1 clarification, you were on the property on July 17th</p> <p>2 and July 25th; is that right?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Any other days other than in -- that</p> <p>5 you had testified to before?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Okay?</p> <p>8 <b>A. Just those two.</b></p> <p>9 Q. Just those two. So, on these days,</p> <p>10 well, we had -- we had discussed a notice of violation</p> <p>11 that you had -- that you had issued to the</p> <p>12 respondents; is that right? Do you remember that</p> <p>13 testimony?</p> <p>14 MS. JORGENSEN: I'm sorry. Did you say</p> <p>15 notice of violation.</p> <p>16 MR. GUBLER: Yes. Was it notice of</p> <p>17 violation? Notice of non-compliance? Which one was</p> <p>18 it?</p> <p>19 THE WITNESS: I -- can you repeat that?</p> <p>20 That -- I guess with who.</p> <p>21 BY MR. GUBLER:</p> <p>22 Q. You issued -- you said that you issued</p> <p>23 a notice of, I thought it was a violation, after the</p> <p>24 visit on the 25th; is that right?</p> <p>Page 144</p>
<p>1 Q. Could you, Mr. Kirk, please describe</p> <p>2 what this document is?</p> <p>3 <b>A. Yeah. So it's just a notice of</b></p> <p>4 <b>non-compliance with the deficiencies that were</b></p> <p>5 <b>observed that day, July 25th at the top. It goes</b></p> <p>6 <b>through that it failed to adhere to Section 4.1 D1, as</b></p> <p>7 <b>outlined in Dust Control Permit. And then I explained</b></p> <p>8 <b>exactly what section 4.1 says --</b></p> <p>9 Q. Okay?</p> <p>10 <b>A. -- in that. And then I sent that by</b></p> <p>11 <b>e-mail, I believe the next Monday. I think that was a</b></p> <p>12 <b>Thursday I did that inspection. And then on Monday</b></p> <p>13 <b>that e-mail was sent to both of them.</b></p> <p>14 Q. Okay. And that on July 29th?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. I don't have any further</p> <p>17 questions?</p> <p>18 MS. JORGENSEN: I don't have any</p> <p>19 further questions.</p> <p>20 HEARING OFFICER: Okay.</p> <p>21 Counsel?</p> <p>22 EXAMINATION.</p> <p>23 BY MR. GUBLER:</p> <p>24 Q. Mr. Kirk, hello again. So, just for</p> <p>Page 143</p>	<p>1 <b>A. Yeah. A notice of non-compliance.</b></p> <p>2 Q. Notice of non-compliance. Thank you.</p> <p>3 And what was that pursuant to?</p> <p>4 <b>A. We issued notice of non-compliance is</b></p> <p>5 <b>when we found non-compliance issues on our inspections</b></p> <p>6 <b>of sites that have Dust Control Permits. And we put</b></p> <p>7 <b>on there the deficiencies that are observed at that</b></p> <p>8 <b>time. In this case it was denying access to the</b></p> <p>9 <b>property.</b></p> <p>10 Q. Okay. And on there, did -- when --</p> <p>11 and did you ask to enter the property for inspection?</p> <p>12 <b>A. On which date?</b></p> <p>13 Q. On the 25th?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Same question on July 17th, did you</p> <p>16 ask to enter the property for inspection?</p> <p>17 <b>A. Yeah. Yes, I did. And it was</b></p> <p>18 <b>approved.</b></p> <p>19 Q. Okay. Did you present appropriate</p> <p>20 credentials on the 17th?</p> <p>21 <b>A. Can you explain what you mean by</b></p> <p>22 <b>present, please?</b></p> <p>23 Q. Did you -- did you show Mr. Truman any</p> <p>24 credentials? Your credentials?</p> <p>Page 145</p>



1 **A. With that explanation, yes.**  
2 Q. Okay. Tell me what you did?  
3 **A. I had my badge on my neck and Air**  
4 **Quality shirt on.**  
5 Q. Okay. And you -- and you -- and you  
6 showed him and said, I'm so -- I'm Mr. Kurt from Air  
7 Quality Control, and I request to enter your property  
8 for inspection. Is that what you said?  
9 **A. Yes.**  
10 Q. Okay. And you said these are my  
11 credentials. Is that what you said?  
12 **A. I don't remember exactly what I said.**  
13 **It was 10 months ago. I don't know if I used those**  
14 **exact words.**  
15 Q. I mean, you already testified that you  
16 didn't present credentials, right? Now you're saying  
17 the opposite, right? That's what you said in your  
18 testimony on the 17th?  
19 **A. Well, this is a different violation.**  
20 Q. Yes. But you said you didn't present  
21 credentials on the 17th, now you're changing your  
22 story; is that right?  
23 **A. I did not say that.**  
24 Q. You did too -- you did too?

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1 MS. JORGENSEN: You've already asked  
2 and answered -- it's already been asked and answered.  
3 BY MR. GUBLER:  
4 Q. On July 25th, did you present  
5 appropriate credentials?  
6 **A. Based on your explanation what present**  
7 **means, yes, I did.**  
8 Q. And so you showed him your badge and  
9 said, I'm Mr. Kirk and these are my -- this is my  
10 badge from Air Quality; is that right?  
11 **A. Again, I don't remember exactly what I**  
12 **said, but it was around my neck. So that is showing**  
13 **my credentials.**  
14 Q. But you didn't lift it up, say, this  
15 is who I am, right?  
16 **A. I don't remember.**  
17 Q. And that badge --  
18 **A. Probably not. I don't normally do**  
19 **that. I don't normally have to take my badge and show**  
20 **it to people, that's around my neck.**  
21 Q. So on your -- on your badge that says  
22 that -- does that say that you're authorized to  
23 conduct inspections?  
24 **A. No.**

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1 Q. Okay. Let me ask you something, are  
2 you with the State Department of -- indulgence here.  
3 Are you with the State Department of Conservation  
4 Natural Resources?  
5 **A. Can you -- I'm with the Department of**  
6 **Environment and Sustainability, Division of Air**  
7 **Quality.**  
8 Q. So you're not with the State  
9 Department of Conservation Natural Resources, correct?  
10 **A. That is correct.**  
11 Q. Do you know if Ms. Roswell is?  
12 **A. She works for the same as me, DES,**  
13 **Division of Air Quality?**  
14 Q. And so would you agree she's not with  
15 the State Department of Conservation Natural  
16 Resources; is that correct?  
17 MS. JORGENSEN: I object. They've  
18 already all testified that they work for Clark County.  
19 MR. GUBLER: I'm just --  
20 HEARING OFFICER: I'm not so sure where  
21 you're headed, but I -- it's an informal, I mean,  
22 form.  
23 MR. GUBLER: So, I mean, Ms. Roswell  
24 had said that she sent a -- some type of a

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1 correspondence pursuant to NRS445B.580, which  
2 identifies the department.  
3 MS. JORGENSEN: I can also clarify  
4 that. If you go to 445B.500, that is one of the  
5 statutes, it's applicable to the county program. So  
6 even though it says department in 580, 500 brings that  
7 into the purview of Clark County as well.  
8 MR. GUBLER: That's on what it says in  
9 NRS 445.1125, the department --  
10 MS. JORGENSEN: I -- honestly, you need  
11 to look at the statutes, and if we can want to have  
12 argument about statutes, we can do that.  
13 HEARING OFFICER: Yeah.  
14 MS. JORGENSEN: But I assure you that 5  
15 -- 445B.500 does authorize the use of 580 for purposes  
16 of the county.  
17 MR. GUBLER: So, may I finish my  
18 argument.  
19 HEARING OFFICER: That's fine.  
20 MR. GUBLER: The department means the  
21 State Department of Conservation National Resources  
22 under the statute.  
23 BY MR. GUBLER:  
24 Q. Mr. Kirk -- indulgence. When you were

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1 there on July 17th and July 25th, what test methods do  
2 you use -- did you use?  
3 **A. Oh, we didn't do any test methods --**  
4 **Q. Okay?**  
5 **A. -- on those days.**  
6 **Q. No other question?**  
7 **A. On the 17th.**  
8 **Q. Thank you?**  
9 MS. JORGENSEN: I have no further  
10 questions.  
11 HEARING OFFICER: One second. Okay.  
12 MS. JORGENSEN: Thank you. Nothing  
13 further for this witness.  
14 HEARING OFFICER: Okay. Next witness.  
15 MS. JORGENSEN: I'd like to call Noel  
16 Crandall.  
17 HEARING OFFICER: Okay. Mr. Crandall,  
18 please raise your right hand. Do you solemnly swear  
19 that you will tell the truth, whole truth, and nothing  
20 but the truth, so help you God.  
21 THE WITNESS: I do.  
22 (WITNESS SWORN).  
23 HEARING OFFICER: Okay.  
24 EXAMINATION.

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1 BY MR. GUBLER:  
2 **Q. Mr. Crandall, would you -- would you**  
3 **please state your name for the record?**  
4 **A. I'm Noel Crandall, Air Quality**  
5 **Specialist 2.**  
6 **Q. And what are your job duties?**  
7 **A. Do inspections, investigate**  
8 **complaints, go out and do routine inspections also.**  
9 **Q. And is it all related to the Dust**  
10 **program?**  
11 **A. Yes.**  
12 **Q. How long have you been with Air**  
13 **Quality?**  
14 **A. Excuse me. Going on almost 20 years.**  
15 **Q. And how long have you been in your**  
16 **current position?**  
17 **A. About three.**  
18 **Q. And I'm sorry, you said you're an Air**  
19 **Quality Specialist 2?**  
20 **A. Yes.**  
21 **Q. And what were you prior to -- prior to**  
22 **the three years ago?**  
23 **A. I worked at the front desk.**  
24 **Q. And what other positions have you**

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1 held?  
2 **A. That's it in Air Quality.**  
3 **Q. Okay. Did you visit the site on July**  
4 **31st, August 7th, and August 14th with Ms. Rowsell to**  
5 **perform site inspections on each of those days?**  
6 **A. Yes, I did.**  
7 **Q. Did Mr. Truman deny you and Ms.**  
8 **Rowsell access to the site on July 31st, August 7th,**  
9 **and August 14th?**  
10 **A. No, he didn't.**  
11 **Q. He did?**  
12 **A. No, he didn't.**  
13 **Q. He did not?**  
14 **A. He did not denied access.**  
15 **Q. So, when did he -- when did he -- did**  
16 **he allow you on any of those dates?**  
17 **A. No, he didn't. No, he did not.**  
18 **Q. He did not allow you access. Okay.**  
19 **Do you recall any of the reasons why Mr. Truman denied**  
20 **access?**  
21 **A. On August 30, July 31st, it was**  
22 **because he said that we didn't have OSHA 40 training.**  
23 **Q. Do you know what OSHA 40 training is?**  
24 **A. Not at that time. It was probably**

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1 **related to hazardous materials.**  
2 **Q. Okay. Was there any signs posted**  
3 **saying that there was hazardous materials on site that**  
4 **you recall seeing?**  
5 **A. Not that I could see.**  
6 **Q. Okay. Do you recall being introduced**  
7 **to Mr. Truman on July 31st?**  
8 **A. Yes.**  
9 **Q. And did you speak with him or did Ms.**  
10 **Rowsell do all the talking?**  
11 **A. She spoke to him then after she**  
12 **introduced me, I introduced myself, and I actually**  
13 **held up my badge and showed him, you know, who I was.**  
14 **Q. Okay. Do you recall any other reasons**  
15 **why Mr. Truman denied access on any of those days?**  
16 **July 31st, August 7th, or August 14th?**  
17 **A. The 31st was OSHA 40. The seventh was**  
18 **he was unable to -- his lawyer was not getting back to**  
19 **him to allow us access, if -- you know, if we were**  
20 **allowed access at the time.**  
21 **Q. And I believe the previous testimony**  
22 **regarding August 14th is that you did not see Mr.**  
23 **Truman on August 14th?**  
24 **A. I believe so. That's where the female**

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1 **worker came out and said he was in a meeting.**  
2 Q. Okay. To the best of your knowledge,  
3 did Mr. Truman ever state or give any indication that  
4 he denied access because he -- because he questioned  
5 whether you or Ms. Rowsell were Clark County Air  
6 Quality inspectors?  
7 Q. No, he didn't.  
8 Q. When you went to the site on August  
9 14th with Ms. Rowsell, did you prepare a construction  
10 site inspection report?  
11 **A. I believe so.**  
12 MS. JORGENSEN: Could we go to Exhibit  
13 L?  
14 THE WITNESS: So I can see it right  
15 here.  
16 BY MS. JORGENSEN:  
17 Q. Okay. Probably for my --  
18 **A. Oh, okay.**  
19 Q. Yeah. Mr. Crandall, could you  
20 describe what this document is?  
21 **A. It's a construction site inspection**  
22 **report of the day that we inspected the site.**  
23 Q. And which day is that?  
24 **A. August 14th.**

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1 Q. And is this something that you  
2 prepared?  
3 **A. Yes.**  
4 Q. And were you able to go on site and do  
5 it a full inspection?  
6 **A. No, we were denied access.**  
7 Q. Okay. And did you include any  
8 inspector notes on the report?  
9 **A. Yes, I did.**  
10 Q. And what did those notes state?  
11 **A. It states, I attempted to conduct a**  
12 **follow-up inspection with Air Quality inspector,**  
13 **Canduela Rowsell, but was denied access to the site**  
14 **by a female officer -- office worker. She stated that**  
15 **Mr. Truman -- Moe Truman, who was responsible official**  
16 **was in a meeting and was unable to let us in to do an**  
17 **inspection and to come back later. I was unable to**  
18 **tell if the soils were stable or unstable since access**  
19 **was denied, but I did -- but it did appear that the**  
20 **mailings have been applied throughout most of the site**  
21 **from what could be seen through the fence.**  
22 Q. Okay. And did you or Ms. Rowsell go  
23 back later?  
24 **A. No, we didn't.**

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1 Q. Okay. Did you provide a follow-up  
2 e-mail to Mr. Truman and his attorney?  
3 **A. I believe so.**  
4 MS. JORGENSEN: And could we go to  
5 Exhibit M?  
6 BY MS. JORGENSEN:  
7 Q. Mr. Crandall, could you please  
8 describe what this document is?  
9 **A. It's an e-mail to Mr. Truman, with our**  
10 **findings to our inspection.**  
11 Q. And what date? What's the date of  
12 this e-mail?  
13 **A. August 14th.**  
14 Q. Okay. So you sent it the same day as  
15 the -- as when you -- after you and Ms. Rowsell went  
16 out to the site?  
17 **A. Correct.**  
18 Q. I have no further questions?  
19 HEARING OFFICER: Okay.  
20 Counsel.  
21 MR. GUBLER: Thank you.  
22 EXAMINATION.  
23 BY MR. GUBLER:  
24 Q. Mr. Crandall, so just for

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1 clarification, the days that you were on site included  
2 the 30 -- July 31st, August 7th and August 14th; is  
3 that right?  
4 **A. Correct.**  
5 Q. Were there any other days that I'm  
6 missing there?  
7 **A. Just for this particular NOV, it was**  
8 **those days.**  
9 Q. And let's just go through each of  
10 those dates. On July 31st, did you -- did you ask to  
11 enter the property for inspection?  
12 **A. Yes.**  
13 Q. Okay. And you present -- did you  
14 present any credentials?  
15 **A. Yes, when I was introduced to Mr.**  
16 **Truman, I spoke to him and showed my badge who I was.**  
17 Q. And what does that badge include?  
18 **A. My picture, the county logo, my title.**  
19 Q. Okay. And what is your title?  
20 **A. Air Quality Specialist 2.**  
21 Q. Air Quality Specialist 2. What did  
22 you -- what was your qualifications to become an Air  
23 Quality Specialist 2?  
24 **A. We have to have training and then we**

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1 **have to, kind of, pass a knowledge test, I believe,**  
2 **you know, just where they feel that you could go out**  
3 **on your own and, you know, won't -- you know the**  
4 **regulations.**  
5 Q. And how long does that take?  
6 **A. It could vary, you know, whenever they**  
7 **feel that you're good to go and I'm able to do the**  
8 **job.**  
9 Q. How long did it take you?  
10 **A. I don't quite remember, sir.**  
11 Q. Okay. Are we talking about more than  
12 six months of training?  
13 **A. Probably six months, yeah, six months,**  
14 **around there.**  
15 Q. Okay. So, on your -- does it -- does  
16 it call you a control officer on there, on your badge?  
17 **A. No, it doesn't.**  
18 Q. Does it have any certification saying  
19 that you're authorized to conduct inspections?  
20 **A. No.**  
21 Q. Any credential number on it?  
22 **A. No.**  
23 Q. Did you -- on -- let's go to August  
24 7th. Did you enter the property -- did you ask to

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1 enter the property for inspection on August 7th?  
2 **A. August 7th? Yes, I did.**  
3 Q. Okay. And who -- with whom did you  
4 speak?  
5 **A. Mr. Truman.**  
6 Q. And did you present credentials to Mr.  
7 Truman?  
8 **A. Just had my -- like everyone else, I**  
9 **had my badge and my shirt that stated I was working**  
10 **for Air Quality.**  
11 Q. Okay. Let's go to August 14th. Did  
12 you request to enter the property for inspection?  
13 **A. Yes, I did.**  
14 Q. And did you present credentials to, I  
15 believe you said it was a female worker; is that  
16 right?  
17 **A. Yes.**  
18 Q. And did you -- did you show those  
19 credentials to the female worker?  
20 **A. Same thing, we had our badges on our**  
21 **neck and our shirts.**  
22 Q. Okay. At any time while you were  
23 there, did you perform some type of a test?  
24 **A. No. Access was denied.**

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1 Q. Do you work for the State Department  
2 of Conservation Natural Resources?  
3 **A. No.**  
4 Q. I don't have any other questions?  
5 HEARING OFFICER: Okay. Thank you.  
6 MS. JORGENSEN: I don't have anything  
7 further. And no further witnesses for whether or not  
8 a violation occurred.  
9 HEARING OFFICER: Okay.  
10 Counsel, your case.  
11 MR. GUBLER: Where would you like him?  
12 Right here is fine.  
13 HEARING OFFICER: He's fine there?  
14 Yeah, that's fine.  
15 MR. GUBLER: Okay.  
16 HEARING OFFICER: Would you to leave  
17 that chair out, so you have more space?  
18 EXAMINATION.  
19 BY MR. GUBLER:  
20 Q. Mr. Truman --  
21 HEARING OFFICER: And I'll remind you,  
22 you're under oath. I believe I swore him in first.  
23 Thank you. Thank you. Mr. Truman.  
24 BY MR. GUBLER:

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1 Q. You can go ahead and state and spell  
2 your name for the record?  
3 **A. Mitchell, M-I-T-C-H-E-L-L, last name**  
4 **Truman, T-R-U-M-A-N. Middle name, Moe, M-O-E.**  
5 Q. Mr. Truman, who's your employer?  
6 **A. I work for two different companies.**  
7 **One is Tonopah Tidewater Railroad and one is ETON**  
8 **Transportation, denoted name as ETON.**  
9 Q. Okay. And what is your position with,  
10 let's just do them individually Tonopah Tidewater?  
11 **A. Manager.**  
12 Q. Manager. And with ETON?  
13 **A. Manager.**  
14 Q. Manager. I'd like you to look at our  
15 Exhibit 2. First of all, do you recognize this  
16 document?  
17 **A. I do.**  
18 Q. What is it?  
19 **A. It's incorporation of the railroad by**  
20 **the day George Keal for the Tonopah Tidewater**  
21 **Railroad.**  
22 Q. And how long has it been in -- been --  
23 when was it formed?  
24 **A. 2004.**

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<p>1 Q. And what type of business does Tonopah 2 and Tidewater Railroad Company do?</p> <p>3 <b>A. Move freight across railroads.</b></p> <p>4 Q. And how long has it done that?</p> <p>5 <b>A. On and off since 2004.</b></p> <p>6 Q. Does it currently do that?</p> <p>7 <b>A. No, it does not.</b></p> <p>8 Q. Does it --</p> <p>9 MS. JORGENSEN: I'm sorry, I can't hear</p> <p>10 very well.</p> <p>11 HEARING OFFICER: (Inaudible).</p> <p>12 THE WITNESS: It does not.</p> <p>13 BY MR. GUBLER:</p> <p>14 Q. Does the -- does it -- does it own</p> <p>15 railroads rails?</p> <p>16 <b>A. It does.</b></p> <p>17 Q. And did it construct rails?</p> <p>18 <b>A. It did.</b></p> <p>19 Q. And does -- did it -- and does it have</p> <p>20 access still to operate on those roads?</p> <p>21 <b>A. It has an active license on property</b> 22 <b>of Las Vegas Paving, yes.</b></p> <p>23 Q. Okay. We're going to go ahead and --</p> <p>24 so, to your knowledge, before we leave this exhibit,</p> <p style="text-align: right;">Page 162</p>	<p>1 for it to be a Class 3 railroad -- rail carrier; is</p> <p>2 that right?</p> <p>3 <b>A. An exemption from some of the safety</b> 4 <b>requirements of the Class 1 and Class 2s.</b></p> <p>5 Q. So if you didn't get this exemption,</p> <p>6 could it still be a railroad company?</p> <p>7 <b>A. Yes. The only thing is, the Federal</b> 8 <b>Railroad Administration would've regulatory issues</b> 9 <b>over it.</b></p> <p>10 Q. Okay. I'd like you to just briefly to</p> <p>11 look at Exhibit 4. Do you recognize this?</p> <p>12 <b>A. I do. We tried to do a name change</b> 13 <b>and we were unsuccessful with the name changed.</b></p> <p>14 Q. Why is that?</p> <p>15 <b>A. Union Pacific Railroad thought that</b> 16 <b>the name was close to their name, which was our</b> 17 <b>intent, and they went through and filed an exception</b> 18 <b>report, which was granted.</b></p> <p>19 Q. So what did you do?</p> <p>20 <b>A. Then we went back to operate the</b> 21 <b>railroad under the Tonopah and Tidewater Railroad.</b></p> <p>22 Q. And when you say operate the railroad,</p> <p>23 what are we talking about?</p> <p>24 <b>A. Just the 2.6 miles. Just bring cars</b></p> <p style="text-align: right;">Page 164</p>
<p>1 the railroad company was formed under NRS Chapter 78;</p> <p>2 is that right?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. Does it hold itself out as a railroad</p> <p>5 company?</p> <p>6 <b>A. It does.</b></p> <p>7 Q. Still to this day; is that right?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. I'd like to look at Exhibit 3?</p> <p>10 MR. GUBLER: And probably scroll down</p> <p>11 just a little bit.</p> <p>12 BY MR. GUBLER:</p> <p>13 Q. Do you recognize this document?</p> <p>14 <b>A. It was -- I do.</b></p> <p>15 Q. What is it?</p> <p>16 <b>A. It's actually for exemption from</b> 17 <b>regulatory issues by the Surface Transportation Board</b> 18 <b>as a Class 3 railroad.</b></p> <p>19 Q. What's a Class 3 railroad?</p> <p>20 <b>A. The STB rates railroad by revenue</b> 21 <b>stream. Class one would be the UP, BNSF, the larger</b> 22 <b>revenue ones. Class 3 is the smallest revenue style</b> 23 <b>of railroads that they have.</b></p> <p>24 Q. And if -- so, this is an application</p> <p style="text-align: right;">Page 163</p>	<p>1 <b>in off the main line, trans-loading them, loading</b> 2 <b>them, and send it back on the railroad. And then we</b> 3 <b>entered back into lease with Van Western to go through</b> 4 <b>and lease the property -- the railroad property back</b> 5 <b>again.</b></p> <p>6 Q. So, I'd like to look -- we're going to</p> <p>7 jump -- skip ahead just a little bit. Exhibit 20. Do</p> <p>8 you recognize this document?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. What is it?</p> <p>11 <b>A. We entered an agreement with a company</b> 12 <b>called Las Vegas Paving to jointly pay for switch off</b> 13 <b>the main line and to go through and get them a</b> 14 <b>perpetuity -- access in perpetuity. There was</b> 15 <b>agreement to go through and convey an easement across</b> 16 <b>a piece of property on West University to go ahead and</b> 17 <b>get onto their property. That way the Las Vegas</b> 18 <b>Paving piece of property have access across the Pan</b> 19 <b>Western property in perpetuity for the railing.</b></p> <p>20 Q. So, now it's saying Pan Western had</p> <p>21 its office in West University. Now, the property that</p> <p>22 we're dealing with on this easement, what is -- which</p> <p>23 property are we talking about? Is it the same one</p> <p>24 that we've been discussing earlier today?</p> <p style="text-align: right;">Page 165</p>



1 **A. It is. West University is where we**  
2 **lived at this timeframe, which was backed up to Las**  
3 **Vegas Paving property on Decatur. And the property in**  
4 **question was over on Donovan Way -- 4910 Donovan Way.**  
5 Q. Okay. So the property that we've been  
6 discussing where there were some --  
7 **A. Rail equipment?**  
8 Q. Well, where -- well, before, that  
9 we've been discussing all morning. On that property  
10 that has, you know, the Conex box?  
11 **A. Oh, the Stratford?**  
12 Q. The Stratford Avenue. Is this a  
13 separate property?  
14 **A. It is.**  
15 Q. And so, the Stratford Avenue property  
16 is what?  
17 **A. Supports the Las Vegas Paving piece**  
18 **that we have the property or the rail equipment on.**  
19 Q. And it's -- is it a yard of Tonopah  
20 Tidewater?  
21 **A. It is.**  
22 Q. So just looking at page 3 of this  
23 exhibit. Mitchell Truman, do you recognize that  
24 person?

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1 **A. I do.**  
2 Q. Who is that?  
3 **A. Myself.**  
4 Q. Okay. And so, you were involved with  
5 Pan Western Corporation as well; is that right?  
6 **A. I was.**  
7 Q. And what was your position there?  
8 **A. In this time I was vice president.**  
9 Q. Okay. And just going back and, I  
10 guess, page 5 of this document, do you recognize these  
11 signatures?  
12 **A. I do. One's Richard Truman, who's my**  
13 **father, is deceased, and one's Robert Mendenhall, is**  
14 **also deceased.**  
15 Q. Okay. Now, after this document was  
16 signed, what did you do to it?  
17 **A. We had it where you give it to the**  
18 **county and they record it. There's work.**  
19 Q. You had it recorded. And I see on the  
20 very top, there is a number on every page,  
21 199703060001677. Is that the recorded easement?  
22 **A. It's probably the recorded document**  
23 **number.**  
24 Q. The recorded document?

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1 **A. Uh-huh.**  
2 Q. Thank you. Moving on, let's look at  
3 Exhibit 21. Do you recognize this document?  
4 **A. I do.**  
5 Q. What is it?  
6 **A. It's a conveying of the original**  
7 **recorded document or recorded easement, putting**  
8 **Tonopah Tidewater in Pan Western's position.**  
9 Q. So -- but this is a license agreement.  
10 And it looks like, if you look down --  
11 **A. Oh, sorry, sorry, sorry. This one's**  
12 **for the right of way across Paving property.**  
13 Q. So this is -- this is for a right of  
14 way across Las Vegas Paving property; is that right?  
15 **A. Correct.**  
16 Q. And down below, so Paragraph 1, it  
17 looks like it says railroad right of way act across  
18 described property with an APN of 12331302001. Do you  
19 see that?  
20 **A. Correct.**  
21 Q. So what was your understanding what  
22 this -- what this does?  
23 **A. That APN number is the Las Vegas**  
24 **Paving piece, and that gives us access to go through**

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1 **and run the rail across our property and access to the**  
2 **ability to use that right of way.**  
3 Q. Okay. And what is the permitted use  
4 under this?  
5 **A. Permitted to use -- operate on**  
6 **Industrial Railroad.**  
7 Q. Okay. Now, the -- now looking under  
8 the ground of the license, can you just read that  
9 part?  
10 **A. The license or grants license and**  
11 **exclusive license to use the property, the license**  
12 **from March 6th, 2008 until the parties provide to the**  
13 **parties 90 -- 60 days written notice to terminate the**  
14 **agreement, such period of time.**  
15 Q. Is this agreement still valid?  
16 **A. As I understand it, yes.**  
17 Q. Has it been -- has anybody given  
18 notice that they intend to terminate?  
19 **A. No, not that I've seen.**  
20 Q. Okay. So just going to exhibit or the  
21 same exhibit, page 5?  
22 THE CLERK: No, I don't think so.  
23 MR. GUBLER: That's great, thank you.  
24 No, you're good. Done by the signatures. Would be

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1 great. That's page 5, it looks like. I don't know,  
2 somehow it got mixed up.  
3 BY MR. GUBLER:  
4 Q. Do you recognize these signatures?  
5 A. I recognize mine. I guess that's  
6 Bob's, kind of was an office worker, I think at  
7 Paving.  
8 Q. Okay. Did you sign these at the same  
9 time?  
10 A. We did.  
11 Q. Okay. So you watched Bob Mendenhall  
12 sign this?  
13 A. Uh-huh.  
14 Q. Yes?  
15 A. Yes.  
16 MR. GUBLER: Let's go to Exhibit 22.  
17 BY MR. GUBLER:  
18 Q. Do you recognize this document?  
19 A. Yes. It's where we moved the asset  
20 from Pan Western into Tonopah Tidewater all the rail  
21 and ties and switches and all the other associated  
22 rail paraphernalia.  
23 Q. Okay. So Tonopah Tidewater purchased  
24 these rails; is that right?

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1 A. Correct.  
2 Q. Do they still own them?  
3 A. They do.  
4 Q. Okay?  
5 MR. GUBLER: And let's fully leave  
6 there. Let's go to page 6 of this document.  
7 BY MR. GUBLER:  
8 Q. Do you recognize these signatures?  
9 A. I do.  
10 Q. And who are they?  
11 A. Catherine Truman, my wife, and myself.  
12 Q. And so Tonopah Tidewater owns those  
13 rails; is that right?  
14 A. Correct.  
15 Q. And where are those rails today?  
16 A. Still over the Las Vegas Paving piece  
17 of property.  
18 Q. Okay. Will you look at Exhibit 23?  
19 A. Do you have a pointer? So I can go  
20 ahead and -- there is property line between the Pan  
21 Western piece and the Las Vegas Paving piece. So  
22 everything on this site is on the Las Vegas Paving  
23 piece. This right here was the old Pan Western piece.  
24 Again, the rail line comes in from the main line,

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1 comes across the easement on the Pan Western slash  
2 rail across line that comes over Las Vegas Paving. And  
3 that's the stuff we had purchased.  
4 Q. And so, does Tonopah Tidewater operate  
5 these rails?  
6 A. Not today, no -- not today, no.  
7 Q. It owns them, correct?  
8 A. Correct.  
9 Q. And it has -- and it can go and  
10 operate them; is that right?  
11 A. Absolutely.  
12 Q. And it does maintain them; is that  
13 right?  
14 A. We do.  
15 Q. Okay. And you are paid to have them  
16 put there; is that right?  
17 A. Yes.  
18 Q. And so any -- anything -- anytime  
19 Tonopah and Tidewater wants, they can utilize those  
20 rails?  
21 A. Correct.  
22 MR. GUBLER: Let's go to Exhibit 1,  
23 please.  
24 BY MR. GUBLER:

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1 Q. Do you recognize this document?  
2 A. I do. It's when we bought the  
3 property on Stratford.  
4 Q. Okay. And Tonopah Tidewater Railroad  
5 Company is the owner; is that right?  
6 A. Correct.  
7 Q. And that's still till today?  
8 A. It is.  
9 MR. GUBLER: Let's go to Exhibit 5.  
10 BY MR. GUBLER:  
11 Q. Do you recognize this?  
12 A. It's a commercial lease. Looks like  
13 we started in 2023, between Tonopah Tidewater and  
14 ETON.  
15 Q. And what is this lease for?  
16 A. ETON was getting evicted from their --  
17 evicted but their rent had gone up on their Losee  
18 address. They needed to a place to land, so we leased  
19 them the property for several months.  
20 Q. Okay. Does ETON do any work for to  
21 Tonopah Tidewater Railroad Company?  
22 A. It transports material off the rail  
23 line from time to time.  
24 Q. Okay. And does it do any other type

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1 of work?  
2 **A. Yeah, it's a -- it's a common carrier,**  
3 **regulated under the Interstate Commerce Commission.**  
4 **It was superseded by the Service Transportation Board.**  
5 **So it has a STB number or a DOT number to operate in**  
6 **Interstate Commerce.**  
7 Q. Okay. Is Tonopah Tidewater able to do  
8 that as well?  
9 **A. It's not a trucking company nor does**  
10 **it put itself out to the trucking company. So it uses**  
11 **ETON to do its trucking.**  
12 Q. But it does ship product across state  
13 lines?  
14 **A. Absolutely.**  
15 Q. Okay. So both ETON and Tonopah  
16 Tidewater do that?  
17 **A. Tonopah Tidewater will bring material**  
18 **in from other states and they'll ship, yes.**  
19 Q. So ETON, under what state is it  
20 organized?  
21 **A. It should be stated Nevada, I think.**  
22 Q. Okay. And it's -- and it's organized  
23 as a -- as a company under the State of Nevada?  
24 **A. As a corporation, yes.**

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1 Q. Okay. And now, I believe what we were  
2 showing a permit previously; is that right?  
3 **A. Or a few permits?**  
4 Q. That ETON had applied for a dust  
5 permit?  
6 **A. On behalf of ETON, since they needed**  
7 **access to the property, I went through and filled out**  
8 **a dust permit for ETON to go through and do the**  
9 **grabbing and grading on the Stratford property.**  
10 Q. And that's -- and that was -- is ETON  
11 still on property?  
12 **A. Eton? Yes.**  
13 Q. Okay. Does -- so, what did ETON do as  
14 far as this grabbing for Tonopah Tidewater?  
15 **A. It had bought some equipment, a**  
16 **loader, dozer, some other moving equipment in it,**  
17 **would own trucks. It leveled the truck and, or**  
18 **leveled the property, cleaned it off, put the material**  
19 **that was organic, sent it to the landfill, and then**  
20 **roll in some field to go through and bring it up to a**  
21 **usable piece of property for the railroad.**  
22 Q. Now, we'd already talked a little bit  
23 about the railroad. Does the railroad do any type of  
24 work for the Department of Defense?

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1 **A. It has the defense, yes.**  
2 Q. What type of work has it done?  
3 **A. From time to time the DOD will go**  
4 **ahead and have either trains of personal carriers or**  
5 **tanks that they need to get off the main line and they**  
6 **would go through and bring it into the facility to**  
7 **clear the main line, and then they'd go through and**  
8 **put it back on the main line and take it either to**  
9 **Barstow or to where the other just department facility**  
10 **would be. Typically, would be airline.**  
11 **HEARING OFFICER: Just to -- just to**  
12 **pause here. And it's just -- it's a time thing. I**  
13 **didn't realize, I thought we have the room till 1:00,**  
14 **but we have it till 12:00.**  
15 MS. JORGENSEN: We have it till 12:00.  
16 However, I've just asked to see if we can maybe move  
17 into a different room in the event we go past 12:00.  
18 So --  
19 HEARING OFFICER: Yeah, because it's  
20 only fair. I want -- he's going through --  
21 MS. JORGENSEN: Absolutely.  
22 HEARING OFFICER: -- and I'm -- I've  
23 reviewed the briefs and I see tracking. It's going to  
24 be some time going through this.

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1 MS. JORGENSEN: Yeah.  
2 HEARING OFFICER: So I want to have  
3 them to have sufficient time.  
4 MS. JORGENSEN: Absolutely. So, Ms.  
5 Sutowska is looking to see if we can move into a  
6 different room once we hit noon.  
7 HEARING OFFICER: Okay.  
8 Continue.  
9 MR. GUBLER: Thank you.  
10 BY MR. GUBLER:  
11 Q. Let's go ahead and look at Exhibit 7.  
12 Do you recognize this document?  
13 **A. I do.**  
14 Q. What is it?  
15 **A. It's a partial stuff of auction of**  
16 **some equipment.**  
17 Q. Okay. And what is this showing this?  
18 **A. That right there is just a postal**  
19 **driver -- postal driver.**  
20 Q. Did Tonopah Tidewater, does it own any  
21 track equipment? Well, let's scroll through?  
22 **A. Oh, there. It's right there. It's a**  
23 **D9L, so yes, that's part of Tonopah Tidewater.**  
24 Q. Okay. And where is -- well, I --

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<p>1 we've heard some testimony, but please describe what</p> <p>2 this track equipment looks like?</p> <p>3 <b>A. The one testimony was close, it's</b></p> <p>4 <b>about 200,000 pounds is what the weight is, not 20 or</b></p> <p>5 <b>10,000 pounds. It is -- he's correct, 15 feet tall,</b></p> <p>6 <b>12 feet wide with a blade, and then with a ship --</b></p> <p>7 <b>with a ripper shank on it. It's about 28 feet long.</b></p> <p>8</p> <p>9 Q: Now, if you drove this on asphalt or concrete,</p> <p>10 what would it do?</p> <p>11 <b>A. It would -- the grousers, the part</b></p> <p>12 <b>that actually makes it into a tractor would destroy it</b></p> <p>13 <b>in quick order because of the weight of the material</b></p> <p>14 <b>or the weight of the -- of the dozer.</b></p> <p>15 Q. Now, have you ever purchased asphalt</p> <p>16 before?</p> <p>17 <b>A. We have.</b></p> <p>18 Q. Is it expensive?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Will you give us an idea of how</p> <p>21 expensive that is? Are you able to do that?</p> <p>22 <b>A. I don't think -- I think they sell it</b></p> <p>23 <b>by the ton, and I think it's about \$150 to \$200 a ton,</b></p> <p>24 <b>depends on the design you have.</b></p> <p>Page 178</p>	<p>1 Q. Is there a barrier around the</p> <p>2 property?</p> <p>3 <b>A. There is. We have to comply to a</b></p> <p>4 <b>federal regulation just called HM 232, which is</b></p> <p>5 <b>regulated by PHMSA. Where we, if it's stated</b></p> <p>6 <b>incorrectly in their testimony, we don't have</b></p> <p>7 <b>hazardous waste, we have hazardous material.</b></p> <p>8 <b>Hazardous material that haul in trucks. If they had</b></p> <p>9 <b>some hazardous communication, there's a flip chart on</b></p> <p>10 <b>the -- on the trailers.</b></p> <p>11 <b>The flip chart has a nomenclature of</b></p> <p>12 <b>what material you have. As an example, if the flip</b></p> <p>13 <b>chart says Class 7, that would be radioactive.</b></p> <p>14 <b>Inhalation damage or inhalation danger would be one of</b></p> <p>15 <b>the other flip charts, explosives, flammable. So the</b></p> <p>16 <b>flip charts which are on the trailers determine what's</b></p> <p>17 <b>in the trailers.</b></p> <p>18 <b>So as a transporter, and I'll read HM</b></p> <p>19 <b>232 requires shippers, which is ourselves,</b></p> <p>20 <b>transporters, which are ourselves, of hazards smeared</b></p> <p>21 <b>materials to create a formal written security plan to</b></p> <p>22 <b>prevent equipment or cargo from being used as a weapon</b></p> <p>23 <b>and terrorist attack.</b></p> <p>24 <b>So based on the 9/11 unfortunate</b></p> <p>Page 180</p>
<p>1 Q. And to place it on this property that</p> <p>2 we've been discussing today, not where the rails are,</p> <p>3 but when I say the property, I'm just going to refer</p> <p>4 to the --</p> <p>5 <b>A. Stratford?</b></p> <p>6 Q. -- Stratford, yes. If you were to put</p> <p>7 asphalt on that property, what would happen?</p> <p>8 <b>A. Oh, the dozer would -- to its -- to</b></p> <p>9 <b>its determining on the gravel it would bring it back</b></p> <p>10 <b>into its native components, which is gravel with some</b></p> <p>11 <b>mass, although they call it rip wrap or what they call</b></p> <p>12 <b>it, regrind is one of the other names for it.</b></p> <p>13 Q. What areas of the property does this</p> <p>14 dozer go?</p> <p>15 <b>A. Typically goes where it's needed to</b></p> <p>16 <b>go. So, it's romes the whole property. When you have</b></p> <p>17 <b>to load it, you need to be off the asphalt to load it</b></p> <p>18 <b>and unload it, otherwise you destroy it. So it's</b></p> <p>19 <b>problematic to go through and find out other place.</b></p> <p>20 <b>It's not going be --</b></p> <p>21 Q. Now, we saw some pictures earlier, do</p> <p>22 you recall that? There's some Conex boxes and things</p> <p>23 like that, right?</p> <p>24 <b>A. Correct.</b></p> <p>Page 179</p>	<p>1 <b>accident that happened with the Twin Towers, before</b></p> <p>2 <b>there and after that, the federal government had put</b></p> <p>3 <b>in place the people who hazard -- who haul hazards</b></p> <p>4 <b>material have a safety plan on their sites so that the</b></p> <p>5 <b>material in transit isn't dropped overnight or over</b></p> <p>6 <b>the weekend that, somebody doesn't get into that area,</b></p> <p>7 <b>grab the truck and now they have a arbitrarily a</b></p> <p>8 <b>potential bomb that they can go through and take out</b></p> <p>9 <b>Hofer Dam or some other high profile facility.</b></p> <p>10 <b>So as we reach to our HM 232 plan, we</b></p> <p>11 <b>did a security analysis of the old property, the new</b></p> <p>12 <b>property. We updated every three years of thread</b></p> <p>13 <b>analysis. And that's our requirement to go through</b></p> <p>14 <b>and keep the site safe. Just so that the hearing</b></p> <p>15 <b>officer will know, the killing field of a rail car of</b></p> <p>16 <b>chlorine is about 15 miles. So that's what the UP</b></p> <p>17 <b>requires or suggests when there's a breach of a rail</b></p> <p>18 <b>car, that the 15 square miles around that is</b></p> <p>19 <b>evacuated. So every day there's has some material</b></p> <p>20 <b>going up and down I95 and I15 through the -- through</b></p> <p>21 <b>the Valley.</b></p> <p>22 Q. So, we're going to go back just a</p> <p>23 little bit. We started talking about barriers and --</p> <p>24 <b>A. So that's part of our security plan.</b></p> <p>Page 181</p>



<p>1 Q. Just part of the security plan. And</p> <p>2 we'll get to that here shortly. How tall are these</p> <p>3 barriers at a minimum?</p> <p>4 <b>A. Containers are nine feet tall, so</b></p> <p>5 <b>they're 18 feet if you put them on top of each other.</b></p> <p>6 Q. Okay. So at least nine feet tall; is</p> <p>7 that right?</p> <p>8 <b>A. Correct.</b></p> <p>9 MR. GUBLER: Let's go to Exhibit 7 (b).</p> <p>10 BY MR. GUBLER:</p> <p>11 Q. Do you recognize this photograph?</p> <p>12 <b>A. I do.</b></p> <p>13 Q. Who took it?</p> <p>14 <b>A. Myself.</b></p> <p>15 Q. Okay. And what is this showing you?</p> <p>16 <b>A. A track piece of equipment. D9 is the</b></p> <p>17 <b>model number.</b></p> <p>18 Q. Okay. And is this the same track</p> <p>19 equipment that's on the property?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. Okay. Why does Tonopah Tidewater have</p> <p>22 this tracked equipment?</p> <p>23 <b>A. Probably an issue that we have at the</b></p> <p>24 <b>rail lines. This is the best equipment to go through</b></p> <p style="text-align: right;">Page 182</p>	<p>1 <b>drove by the security guards. And they, again,</b></p> <p>2 <b>alerted me that she was there.</b></p> <p>3 <b>Went back and tried to find out why</b></p> <p>4 <b>she was there. The door was locked to her vehicle.</b></p> <p>5 <b>She rolled down the window and I asked her what the</b></p> <p>6 <b>heck she was doing there. We were a controlled</b></p> <p>7 <b>environment. We had a hazardous goods on site,</b></p> <p>8 <b>non-hazardous waste. And wanted to know what she was</b></p> <p>9 <b>doing back here, where she went by the security</b></p> <p>10 <b>people.</b></p> <p>11 Q. Do you know who she was?</p> <p>12 <b>A. Through testimony, it's the lady that</b></p> <p>13 <b>testified that she was there. I don't remember her</b></p> <p>14 <b>name or much of what she looked like when she was in</b></p> <p>15 <b>the car. I would match it with the testimony's been</b></p> <p>16 <b>given. I would not doubt that she was who she was on</b></p> <p>17 <b>that date.</b></p> <p>18 <b>She presented no credentials. And I</b></p> <p>19 <b>asked her again why she was here, and she told me that</b></p> <p>20 <b>she had the right to be there. And I let her know in</b></p> <p>21 <b>some (inaudible) via our security plan, under the HM</b></p> <p>22 <b>232, that you needed to go through and check in</b></p> <p>23 <b>because we're a controlled yard.</b></p> <p>24 Q. And did you ever revoke that</p> <p style="text-align: right;">Page 184</p>
<p>1 <b>and clear the rail line. It's large enough to push</b></p> <p>2 <b>rail cars off the railroad to go ahead and clear the</b></p> <p>3 <b>line.</b></p> <p>4 Q. And do you do this work for just</p> <p>5 Tonopah Tidewater or is it for other railroad</p> <p>6 companies?</p> <p>7 <b>A. Primarily for us. And if the UP needs</b></p> <p>8 <b>help, we've been offered that and helped them in the</b></p> <p>9 <b>past.</b></p> <p>10 Q. Now, we -- we've heard some testimony</p> <p>11 about various visits on January 8th, 9th, I believe</p> <p>12 February 1st, July 17th, July 25th, July 31st, July --</p> <p>13 August 7th, and August 14th. Do you recall that</p> <p>14 testimony, first of all?</p> <p>15 <b>A. I do.</b></p> <p>16 Q. Okay. And on January 8th, 2024, can</p> <p>17 you tell us what happened?</p> <p>18 <b>A. Was that the first time?</b></p> <p>19 Q. Yes?</p> <p>20 <b>A. We got a radio call from one of the</b></p> <p>21 <b>security guards that we had an intruder on the</b></p> <p>22 <b>facility. And so they told me where it was at. So I</b></p> <p>23 <b>went out in the back of the property and found a</b></p> <p>24 <b>person there. Had no clue why she was there, but she</b></p> <p style="text-align: right;">Page 183</p>	<p>1 statement, that she did need to check in?</p> <p>2 <b>A. No, I've never revoked that statement.</b></p> <p>3 <b>This statement still stands.</b></p> <p>4 Q. Now, you mentioned the security guard.</p> <p>5 Where's the security guard located?</p> <p>6 <b>A. You can see, first of all, there is --</b></p> <p>7 <b>right there, there's a person who is -- during normal</b></p> <p>8 <b>work hours, is in that facility. On the other side,</b></p> <p>9 <b>there's another facility person who sits there.</b></p> <p>10 Q. And was the security guard there when,</p> <p>11 I believe it was Ms. Roswell said that she showed up</p> <p>12 on January 8th. Was the security guard there?</p> <p>13 <b>A. That's -- the security guard let me</b></p> <p>14 <b>know by radio that we had an intruder.</b></p> <p>15 Q. And so what -- and so that's when you</p> <p>16 went and to find out who it was?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And did that person request entry of</p> <p>19 the property?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Did that person present credentials?</p> <p>22 <b>A. No.</b></p> <p>23 Q. And, I guess, you know, before we get</p> <p>24 into too much of these other dates, tell me, when I</p> <p style="text-align: right;">Page 185</p>



<p>1 say credentials, what -- what's your understanding of</p> <p>2 credentials?</p> <p>3 <b>A. So I've been here 55 years at the same</b></p> <p>4 <b>company -- same companies. And so in that timeframe,</b></p> <p>5 <b>I have worked with lots of federal agencies, the FBI,</b></p> <p>6 <b>we've worked with the Department of Treasury, we've</b></p> <p>7 <b>worked with ATF, worked with the Department of Energy,</b></p> <p>8 <b>worked with the police on several issues, State Nevada</b></p> <p>9 <b>Department of Taxation, Home and Security, FEMA. I'm</b></p> <p>10 <b>trying to think.</b></p> <p>11 <b>And they all seem to have the same</b></p> <p>12 <b>pattern as they introduce themselves, and they present</b></p> <p>13 <b>their credentials, and say, I'm here with the FBI,</b></p> <p>14 <b>here's my badge. And the badges all look to -- look</b></p> <p>15 <b>the same. They have a number that's identifiable that</b></p> <p>16 <b>you can call back to headquarters and go through and</b></p> <p>17 <b>find out who they're. And once they've gone through</b></p> <p>18 <b>their credentials, they ask, can we come on site?</b></p> <p>19 <b>The FBI, we had some issues with some</b></p> <p>20 <b>-- it was a joint issue. There were some drugs coming</b></p> <p>21 <b>in from Mexico along the railroad cars that were</b></p> <p>22 <b>hidden inside. So they came in on site before they</b></p> <p>23 <b>got a -- what do you call it where the judge issues?</b></p> <p>24 <b>Q. Search warrant?</b></p> <p style="text-align: right;">Page 186</p>	<p>1 <b>seen to follow the same format here. So I am, here's</b></p> <p>2 <b>my credentials, can we come in?</b></p> <p>3 <b>Q. And so going off of some of these, you</b></p> <p>4 <b>mentioned FEMA, you mentioned the FBI, you dealt with</b></p> <p>5 <b>Department of Justice?</b></p> <p>6 <b>A. Department of Justice came by, Michael</b></p> <p>7 <b>Chu, and he also went through and say, I'm Michael Chu</b></p> <p>8 <b>with DOJ and here's my credentials.</b></p> <p>9 <b>Q. Okay. And Federal Railroad</b></p> <p>10 <b>Administration, have you -- have you dealt with them?</b></p> <p>11 <b>A. Same routine. Special agents will</b></p> <p>12 <b>come in and also just regular audits out of Roseville,</b></p> <p>13 <b>this is where the department that we go. They'll come</b></p> <p>14 <b>in with credentials. My name is so and so, here's my</b></p> <p>15 <b>credential. State of Nevada Public Service Commission</b></p> <p>16 <b>has a railroad department. Same issue. They'll come</b></p> <p>17 <b>in, tell me who they're, they'll show me their</b></p> <p>18 <b>credentials.</b></p> <p>19 <b>Q. The PUC?</b></p> <p>20 <b>A. Public Utilities Commission, that's</b></p> <p>21 <b>what you just talked about.</b></p> <p>22 <b>Q. Okay. That -- that's the same one</b></p> <p>23 <b>that you're talking about?</b></p> <p>24 <b>A. Uh-huh.</b></p> <p style="text-align: right;">Page 188</p>
<p>1 <b>A. Search warrant to come on site. They</b></p> <p>2 <b>ask if they could come on with their dogs and search</b></p> <p>3 <b>the rail cars. So that's the same. We had the -- a</b></p> <p>4 <b>fatality of a person killed in transit from Mexico in</b></p> <p>5 <b>a rail car. We called the Coroner's office, came and</b></p> <p>6 <b>they prevented their credentials. I'm so and so. I'm</b></p> <p>7 <b>with the Clark County Coroner's Office, here's my</b></p> <p>8 <b>credentials.</b></p> <p>9 <b>So there is a -- seems to be a common</b></p> <p>10 <b>thread of when somebody comes in a regulatory issue to</b></p> <p>11 <b>go through and present their credentials of who they</b></p> <p>12 <b>are. And they all typically have the same type of</b></p> <p>13 <b>information, which is something that's hard to</b></p> <p>14 <b>replicate, a badge that's raised or a hologram or</b></p> <p>15 <b>something of this nature to go through and do that.</b></p> <p>16 <b>Department of Transportation, they</b></p> <p>17 <b>come and do audits on us. Federal agency, state</b></p> <p>18 <b>agency, but they do the same thing. Before they ever</b></p> <p>19 <b>do anything they always, I'm with Department of</b></p> <p>20 <b>Transportation, here's my credentials. And they go</b></p> <p>21 <b>through and show that before they go through and do</b></p> <p>22 <b>that.</b></p> <p>23 <b>So, of the 55 years in the -- in the</b></p> <p>24 <b>different departments we've dealt with, they've all</b></p> <p style="text-align: right;">Page 187</p>	<p>1 <b>Q. How about the Coroner's Office?</b></p> <p>2 <b>A. Same drill. Here I am, here's my</b></p> <p>3 <b>credentials. We had a fatality in the back of the</b></p> <p>4 <b>facility. We had a undercover police officer came by.</b></p> <p>5 <b>Same deal. I'm officer so and so, here's my badge.</b></p> <p>6 <b>And we had a fire marshal come in the same routine.</b></p> <p>7 <b>I'm officer or fire marshal, so and so, here's my</b></p> <p>8 <b>credentials.</b></p> <p>9 <b>Q. Okay. And so, we'll just go down this</b></p> <p>10 <b>list briefly. The Vegas Valley Water District, did</b></p> <p>11 <b>they have credentials?</b></p> <p>12 <b>A. They did.</b></p> <p>13 <b>Q. The Department of Energy, are they --</b></p> <p>14 <b>did they have credentials?</b></p> <p>15 <b>A. DOE, we've done quite a bit of cleanup</b></p> <p>16 <b>jobs with some hazardous waste out the Tonopah test</b></p> <p>17 <b>range and also Berkely. And every time they present</b></p> <p>18 <b>the same type of credentials, I'm so and so with DOE.</b></p> <p>19 <b>Q. The Clark County Aviation?</b></p> <p>20 <b>A. We dealt with Randy Walker's office</b></p> <p>21 <b>quite a bit of bring rail by fuel way rail for the</b></p> <p>22 <b>airport in the same dance. I'm Randy Walker with</b></p> <p>23 <b>Clark County Aviation and here's my credentials.</b></p> <p>24 <b>Q. Department of Defense?</b></p> <p style="text-align: right;">Page 189</p>





<p>1       <b>A.    DOD, moving on the rail cars we talked</b> 2 <b>about, same dance. I'm officer so and so, here's my</b> 3 <b>Navy credentials.</b> 4       Q.    US Air Force? 5       <b>A.    USAF, Air Force, they wanted some help</b> 6 <b>with some cleanup, and the same dance. I'm a petty</b> 7 <b>officer, so and so, here's my credentials.</b> 8       Q.    A dog (inaudible)? 9       <b>A.    They're up on my neighborhood. Pretty</b> 10 <b>funny that he also would show his credentials before</b> 11 <b>he did anything.</b> 12       Q.    And when they -- what -- I guess, 13 backing up, when they show you these credentials, what 14 were they doing? What were they asking for? 15       <b>A.    Sometimes entry, sometimes</b> 16 <b>information, but they have the same issue to identify</b> 17 <b>themselves that they have a standing to do something.</b> 18       Q.    How about the Constable? 19       <b>A.    Constable's Office, we've dealt with</b> 20 <b>them quite a bit for truck drivers and railroad</b> 21 <b>workers that have garnishments. And they come to do</b> 22 <b>the same thing, I'm Officer or Constable Ellison. And</b> 23 <b>he would have his credentials.</b> 24       Q.    The FDIC?</p> <p style="text-align: right;">Page 190</p>	<p>1       <b>so with the IRS, here is my credentials.</b> 2       Q.    Metro? 3       <b>A.    We talked about Metro.</b> 4       Q.    We talked about Metro, Fire 5 Department, we talked about the ATF? 6       <b>A.    Again, that was on some -- the</b> 7 <b>smuggling of stuff from Mexico. So they showed up.</b> 8 <b>Again, they showed their credentials of we're with the</b> 9 <b>ATF.</b> 10       Q.    The Highway Patrol? 11       <b>A.    Safety audit. They come in and,</b> 12 <b>again, they do the same thing. I'm officer so and so,</b> 13 <b>here's my credentials.</b> 14       Q.    OSHA? 15       <b>A.    OSHA, we've had actions on site. And</b> 16 <b>they, again, will identify themselves as their name.</b> 17 <b>And OSHA will show their state issued credentials,</b> 18 <b>which will typically have, we'll always have an ID</b> 19 <b>number so we can check with their office to find out</b> 20 <b>if they're a bonafide officer.</b> 21       Q.    Now, just so that we understand. So, 22 let's look at Exhibit 8, going to second page. So, is 23 this typically something that -- what is typical is 24 something that you would see with these credentials</p> <p style="text-align: right;">Page 192</p>
<p>1       <b>A.    We had problems with a bank that</b> 2 <b>somebody -- we took some material off of a facility</b> 3 <b>that they wanted to know where it went to. So the</b> 4 <b>FDIC came over and they again showed their</b> 5 <b>credentials, wanted to know where that equipment we</b> 6 <b>transported went to.</b> 7       Q.    How about the BLM? 8       <b>A.    BLM. Had problems with -- they</b> 9 <b>thought we were on their property and they came over</b> 10 <b>and wanted to show up and get an order officer, fill</b> 11 <b>someone with a Bureau of -- Bureau of Land Management</b> 12 <b>and show me their credentials. Government issues.</b> 13       Q.    What of IRS? 14       <b>A.    IRS, they came over doing some, you</b> 15 <b>know what rims are?</b> 16       Q.    What is it? 17       <b>A.    Fuel tax when you do -- when you do</b> 18 <b>environment or when you do diesel field. They give</b> 19 <b>you a rims credit and the IRS tracks that. And so we</b> 20 <b>had bring in diesel or ethanol in the State of Nevada.</b> 21 <b>And so they wanted to know where that was going</b> 22 <b>because rims were being fraudulently applied. So the</b> 23 <b>IRS came and wanted do an audit of the rail cars that</b> 24 <b>came in. Again, the same problem, I'm officer so and</b></p> <p style="text-align: right;">Page 191</p>	<p>1       that you've been shown? 2       <b>A.    Either a raised seal that's hard to</b> 3 <b>replicate, and if not, it I'll be very official</b> 4 <b>looking like a government issued. And then they will</b> 5 <b>always have a -- ID number that's be able to go back</b> 6 <b>to their home office and call and see if they're valid</b> 7 <b>as inspector. And I'll have a date that it's good</b> 8 <b>for, and their signature in the picture.</b> 9       Q.    Is it -- is it common to have a 10 statement that, this person's authorized to conduct 11 whatever it is, inspections or anything like that? 12       <b>A.    Yeah, it gives them jurisdictional</b> 13 <b>issues. Is -- that says that on their ID information</b> 14 <b>that they have the scope of work that they're able to</b> 15 <b>do.</b> 16       Q.    And have you had credential training? 17       <b>A.    I have.</b> 18       Q.    Tell us about that? 19       <b>A.    Part of our Homeland Security training</b> 20 <b>at the railroad yard is we have to go through and do a</b> 21 <b>site assessment. And a site assessment is we go to</b> 22 <b>training at DOE over their office Losee and Atomic</b> 23 <b>Wave, is where we do their training, and they go</b> 24 <b>through to help us do a site selected process.</b></p> <p style="text-align: right;">Page 193</p>



<p>1           <b>And one of the things they do is</b></p> <p>2   <b>school us on what we should look for people who are</b></p> <p>3   <b>trying to enter the process or the yard or facility</b></p> <p>4   <b>fraudulently. And so we go through and have been</b></p> <p>5   <b>trained by that department of what to look for and how</b></p> <p>6   <b>to put that in our plan.</b></p> <p>7           Q.    So on these -- let's go back to some</p> <p>8   of these dates. January 8th you already testified to,</p> <p>9   but January 9th, was there a request for entry?</p> <p>10          <b>A.    There was -- there was not. Again, I</b></p> <p>11   <b>knew they're on property when one of the security</b></p> <p>12   <b>guards let us know we had an intruder on site. And</b></p> <p>13   <b>that's where I came out and find them. I think they</b></p> <p>14   <b>had a big pickup of -- a big ford pickup of dual cab,</b></p> <p>15   <b>and there was three individuals in there.</b></p> <p>16          Q.    And so, were there -- were there any</p> <p>17   credentials presented?</p> <p>18          <b>A.    No, they were not like the typical</b></p> <p>19   <b>government agencies where they say, I'm so and so,</b></p> <p>20   <b>here's my credentials. That was not presented.</b></p> <p>21          Q.    Okay. And going through -- we're</p> <p>22   going to ask same question on July 17th, 25th, July</p> <p>23   31st, August 7th, August 14th. On any of those days,</p> <p>24   is there a request for entry on the property?</p> <p style="text-align: right;">Page 194</p>	<p>1   <b>I said, does it have a -- an ID number on it that I</b></p> <p>2   <b>could call and find out if you're legitimate or not?</b></p> <p>3   <b>And there's no signature on it. And she just sort of,</b></p> <p>4   <b>that's all I got.</b></p> <p>5          Q.    Okay. And was that typical? Did</p> <p>6   anybody else show you anything like that?</p> <p>7          <b>A.    Nobody showed me and presented it like</b></p> <p>8   <b>other government officials have, that I am so and so,</b></p> <p>9   <b>here is my credentials.</b></p> <p>10          Q.    And why is that important to you?</p> <p>11          <b>A.    You know, I've learned as we've gone</b></p> <p>12   <b>through this process that they have a dance, meaning</b></p> <p>13   <b>that the county officials have a dance to do also is</b></p> <p>14   <b>to present credentials. Present to me is like the</b></p> <p>15   <b>adjective says, present is to give, to show.</b></p> <p>16          Q.    Let's take a look here?</p> <p>17          MR. GUBLER: Let's pull Exhibit 24,</p> <p>18   please.</p> <p>19   BY MR. GUBLER:</p> <p>20          Q.    Do you recognize this?</p> <p>21          <b>A.    I do.</b></p> <p>22          Q.    What is this?</p> <p>23          <b>A.    It's an owner's responsibility for the</b></p> <p>24   <b>trucking and the railroad companies to meet and have a</b></p> <p style="text-align: right;">Page 196</p>
<p>1           <b>A.    Define that for me.</b></p> <p>2          Q.    Was there a request for entry? Did</p> <p>3   they ask you, I'm here to inspect this, may I enter</p> <p>4   your property?</p> <p>5          <b>A.    They did later on. Not in the</b></p> <p>6   <b>beginning, but later on. But then they never followed</b></p> <p>7   <b>that up with presentation of credentials.</b></p> <p>8          Q.    Okay. Did anybody come out on August</p> <p>9   28th, 2024?</p> <p>10          <b>A.    Is that the one where they testified</b></p> <p>11   <b>that somebody from the office talked to them and I was</b></p> <p>12   <b>on the phone?</b></p> <p>13          Q.    No, I believe this was later?</p> <p>14          <b>A.    I can't tell you that. If we could</b></p> <p>15   <b>look at their exhibit maybe.</b></p> <p>16          Q.    At any time -- let me ask you this.</p> <p>17   At any time, did anybody show up and did you ask them</p> <p>18   for credentials?</p> <p>19          <b>A.    I did at the -- at the last. It's</b></p> <p>20   <b>towards the last, I guess. The lady for one, and she</b></p> <p>21   <b>said, I have no credentials. And she pulled out her</b></p> <p>22   <b>human resource tiny little thing. And she said, all I</b></p> <p>23   <b>have is this. And I use this just to swipe to get</b></p> <p>24   <b>into the office. And I said -- and I laughed at her.</b></p> <p style="text-align: right;">Page 195</p>	<p>1   <b>security plan.</b></p> <p>2          Q.    What's a security plan?</p> <p>3          <b>A.    The site where we have a terminal,</b></p> <p>4   <b>we're required to go through and provide a security</b></p> <p>5   <b>plan to keep it secure.</b></p> <p>6          Q.    And so this tells you what those</p> <p>7   requirements are; is that right?</p> <p>8          <b>A.    It does. You start off with the</b></p> <p>9   <b>threat assessment. Is where you look at the</b></p> <p>10   <b>geographic and demographic property that you're</b></p> <p>11   <b>talking about, and go through and look at what threats</b></p> <p>12   <b>are available to that property. And then you design a</b></p> <p>13   <b>security plan to go through and meet the threats of</b></p> <p>14   <b>that property to keep terrorists from gaining access</b></p> <p>15   <b>to it and then gaining access to the trucks and</b></p> <p>16   <b>trailers that have the hazardous material inside them.</b></p> <p>17          Q.    Okay?</p> <p>18          MR. GUBLER: Let's go to, I think it's</p> <p>19   three pages in on this one. Stop, go back.</p> <p>20   BY MR. GUBLER:</p> <p>21          Q.    So, I think you had mentioned this,</p> <p>22   the little triangle. Do you see that on the truck?</p> <p>23          <b>A.    Yes, we call it the flip chart, but</b></p> <p>24   <b>yes.</b></p> <p style="text-align: right;">Page 197</p>





1 Q. And that's what you were referring to  
2 before?  
3 A. Yes.  
4 Q. Okay. And what is that again?  
5 A. That is the triangle that tells the  
6 material that's inside the container and has it has or  
7 has hazardous communication training, will teach the  
8 employee what that placard means.  
9 Q. Okay. So, did you ever come up with a  
10 security plan?  
11 A. We have. We do.  
12 Q. Let's take a look at Exhibit 25. What  
13 is this?  
14 A. Social security plan.  
15 Q. Okay. When was this created?  
16 A. It was created 2005, would've been  
17 updated when we moved in 2023.  
18 Q. And did it exist before January of  
19 2024?  
20 A. It did.  
21 Q. Okay. So going to the second page of  
22 this, down towards the end, part of the -- part of the  
23 plan, if you look the second to last point, do you see  
24 that? Fake ID look for ID on badge?

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1 A. Correct.  
2 Q. Why is that on there?  
3 A. It's a big part of stopping people who  
4 fraudulently are trying to get onto a secured site.  
5 Q. And that was part of your security  
6 plan before?  
7 A. It was.  
8 Q. And so when you were -- when these  
9 individuals all showed up on the January and July and  
10 August, was this a concern for you?  
11 A. Yes. I mean, they presented nothing  
12 that I'd ever dealt with before that looked official.  
13 Q. And again, why -- I -- you probably  
14 touched on this, but why is that important?  
15 A. The official list allows us to know  
16 that they're going to be safe on site.  
17 Q. Okay. And if they're not safe on  
18 site, what could happen?  
19 A. The potential, again, as I'll  
20 reiterate -- the killing field of a rail car with  
21 chlorine is 15 miles. And so it's incumbent upon us  
22 to keep our society and our little part of the world  
23 safe.  
24 Q. And is that -- so you mentioned

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1 chlorine. Is that -- is that type of thing on a -- on  
2 the property?  
3 A. Well, it's truth to put. I mean, the  
4 material comes and goes, that's why they call it a  
5 terminal. So the cars will come in or tanker cars  
6 will come in. They either get repowered, sit there  
7 for the weekend. The drivers take their hours of  
8 service off, and then depart again.  
9 Q. Okay. Well let's look at Exhibit 17.  
10 So -- well, do you -- what is this? Do you recognize  
11 this?  
12 A. It's from FRA.  
13 Q. What's the FRA?  
14 A. It's a sub department of the  
15 Department of Transportation. Stands for Federal  
16 Railroad Administration.  
17 Q. Okay. So, it says trespassing is  
18 dangerous and illegal. Would you agree or disagree  
19 with that statement?  
20 A. Trespassing is illegal.  
21 Q. And why is that?  
22 A. There is -- most of -- most of the  
23 hazmat in this country is moved by rail. And so with  
24 such a large profile potential material to get into

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1 terrorist hand it's important that they are secured,  
2 to the point that the railroad has its own police  
3 department to go through and provide security.  
4 MR. GUBLER: Let's go to Exhibit 18.  
5 Sorry.  
6 BY MR. GUBLER:  
7 Q. And again, do you recognize this?  
8 A. I do.  
9 Q. And what is it?  
10 A. It's, again, it's the Federal Railroad  
11 Administration talking about trespassers and help us a  
12 railroad go through and understand and watch out for.  
13 Q. And is that a real safety issue?  
14 A. It is.  
15 Q. Okay. And that's because of the  
16 hazardous materials and such that they're on the  
17 property?  
18 A. It is.  
19 Q. That come and go on the property.  
20 Now, do you have any signage on your property?  
21 A. We do.  
22 Q. Okay. What does that look like?  
23 A. No camping here.  
24 Q. Okay. Railroad property, no

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1 trespassing, federal statute. I -- it looks to me  
2 like there's some dust on there. How long has that  
3 been on the property?  
4 **A. That was put in October, I want to**  
5 **say.**  
6 Q. Of what year?  
7 **A. '23.**  
8 Q. 2023?  
9 **A. Uh-huh.**  
10 Q. And where was it displayed?  
11 **A. It's been in several different places.**  
12 **It's ended up on the gates and then front, before that**  
13 **it would've just been on the front of the property.**  
14 Q. So if you wanted to enter the  
15 property, would you have seen this sign?  
16 **A. I -- that's a speculation. I don't**  
17 **know their acuity.**  
18 Q. Is it -- is it obviously posted in the  
19 front?  
20 **A. To me it was, but again, it's probably**  
21 **different for everybody.**  
22 Q. Okay. But it was -- it was there in  
23 January, 2024, posted --  
24 **A. Yes.**

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1 Q. -- on the front of the property?  
2 **A. Uh-huh.**  
3 Q. What else do you have there?  
4 **A. Just the signs we have about all**  
5 **visitors need to check in.**  
6 Q. And where is that posted?  
7 **A. From time to time -- right now they're**  
8 **on both gates in the middle. It's always been on the**  
9 **-- on the very front where the gate was at.**  
10 Q. When you say always, what do you mean?  
11 **A. Since we were set up there in October.**  
12 Q. October of 2023?  
13 **A. Correct.**  
14 Q. Okay. Are you familiar with  
15 rotomilling?  
16 **A. I am.**  
17 Q. What is it?  
18 **A. It's the aftermath of -- aftermath of**  
19 **somebody taking a machine and grinding up the asphalt,**  
20 **either to rehabilitate it or to go through and regrind**  
21 **it.**  
22 Q. And what's the size of this material?  
23 **A. Typically, three inch to quarter inch.**  
24 Q. Okay?

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1 MR. GUBLER: And let's go to Exhibit 9,  
2 please.  
3 BY MR. GUBLER:  
4 Q. Do you recognize this picture?  
5 **A. I do.**  
6 Q. What is it?  
7 **A. 2596 Stratford Avenue.**  
8 Q. Okay. So this is the property,  
9 correct?  
10 **A. Correct.**  
11 Q. And is this what it looks like to me?  
12 **A. It does.**  
13 Q. Now, that on the ground, what is that?  
14 **A. Roto-Mill.**  
15 Q. And what areas of the property does  
16 that cover?  
17 **A. 98 percent.**  
18 Q. Okay. The nine -- the 2 percent,  
19 where's that at?  
20 **A. Offices.**  
21 Q. The offices, so there's a structure?  
22 **A. It's some concrete.**  
23 Q. It's some concrete. Okay. Otherwise,  
24 this covers the property; is that right?

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1 **A. Correct.**  
2 Q. Okay. And how deep is it?  
3 **A. About six-inch lift.**  
4 Q. So six inches deep?  
5 **A. Correct.**  
6 Q. Why is this on the property?  
7 **A. Best practices for dust abatement.**  
8 Q. For dust abatement, you said?  
9 **A. Yes.**  
10 Q. How do you know that?  
11 **A. I asked my date neighbor, Jay Smith,**  
12 **but from Las Vegas Paving on what the best product**  
13 **would be and he said the best product is six inches of**  
14 **Roto-Mill.**  
15 Q. Have you used Roto-Mill before,  
16 though?  
17 **A. I have.**  
18 Q. Where?  
19 **A. We used it at university property, we**  
20 **used the Donovan Way property, and we used it at the**  
21 **Losee Road property.**  
22 Q. Okay. And why did you use it?  
23 **A. It's the most economical, best**  
24 **material to -- as a pallet to stop the dust emissions.**

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<p>1 Q. How much is this a ton?</p> <p>2 <b>A. Jay gave me a good price. So, maybe</b></p> <p>3 <b>\$20 a ton.</b></p> <p>4 Q. Dollars a ton compared to how much is</p> <p>5 that?</p> <p>6 <b>A. Probably 10 percent of what</b></p> <p>7 (inaudible) is.</p> <p>8 Q. Okay. And when you use this, has this</p> <p>9 created any type of dust plumes?</p> <p>10 <b>A. Not that I can tell.</b></p> <p>11 Q. Now, does this work as effectively as</p> <p>12 asphalt for your property?</p> <p>13 <b>A. You know, there's some qualifiers in</b></p> <p>14 <b>there because of the track equipment we have, because</b></p> <p>15 <b>of that, I think it works better than asphalt, because</b></p> <p>16 <b>then we don't have to destroy what we just put down as</b></p> <p>17 <b>we use the -- get rid of the -- remove the loader for</b></p> <p>18 <b>an assignment.</b></p> <p>19 Q. Does this material maintain?</p> <p>20 <b>A. Yeah, we have it laid right there and</b></p> <p>21 <b>maintains it.</b></p> <p>22 Q. Okay. And is this -- is this work as</p> <p>23 effectively as water?</p> <p>24 <b>A. Qualify that because water's in when</b></p> <p style="text-align: right;">Page 206</p>	<p>1 them?</p> <p>2 <b>A. I did.</b></p> <p>3 Q. And did -- and so what did they</p> <p>4 recommend?</p> <p>5 <b>A. Roto-Mill.</b></p> <p>6 Q. Both of them did?</p> <p>7 <b>A. Correct.</b></p> <p>8 MS. JORGENSEN: And I'm going to stop</p> <p>9 you right there because I know you're going to</p> <p>10 probably go to their affidavits. But we're -- the</p> <p>11 time. So we've got a -- that's more or less. So I</p> <p>12 have to check first because I only anticipated being</p> <p>13 here for -- so, there is a conference room available</p> <p>14 that I booked on this first floor. It's by the east</p> <p>15 entrance to the building.</p> <p>16 HEARING OFFICER: Okay. And how long</p> <p>17 do we anticipate? Because -- or what's the hours that</p> <p>18 we're --</p> <p>19 MS. JORGENSEN: We can have it until</p> <p>20 the end of the day.</p> <p>21 HEARING OFFICER: Of the day. Yeah.</p> <p>22 MR. GUBLER: Did you want them to stay</p> <p>23 till 3:00 instead.</p> <p>24 HEARING OFFICER: Well, the problem is,</p> <p style="text-align: right;">Page 208</p>
<p>1 <b>in a drought? So it's --</b></p> <p>2 Q. Well, I mean, is it -- was this</p> <p>3 cheaper than watering this 24/7 to put this Roto-Mill</p> <p>4 down?</p> <p>5 <b>A. It's probably more socially</b></p> <p>6 <b>responsible than water. Because, again, we are in a</b></p> <p>7 <b>drought and this material would go to landfill. So</b></p> <p>8 <b>it's a recycled material. So does it work better than</b></p> <p>9 <b>water? It's equal to, I've had to say that, but</b></p> <p>10 <b>again, it's more socially responsible.</b></p> <p>11 Q. So, with water, do you have to employ</p> <p>12 anybody to put that?</p> <p>13 <b>A. You do. So you have CO2 emissions</b></p> <p>14 <b>from the water truck, and then you just, again, have</b></p> <p>15 <b>the whole issue to pump the water. Is power</b></p> <p>16 <b>intensive.</b></p> <p>17 Q. Now, did you do any type of inquiries?</p> <p>18 What would be the best dust pallet for your property?</p> <p>19 <b>A. Just asking the experts.</b></p> <p>20 Q. Okay. Who are those experts?</p> <p>21 <b>A. Two asked -- what I asked would Jay</b></p> <p>22 <b>Smith from Las Vegas Paving and Floyd Milgram from</b></p> <p>23 <b>Houston, Southern Nevada Paving.</b></p> <p>24 Q. Okay. And you spoke with both of</p> <p style="text-align: right;">Page 207</p>	<p>1 yeah, I only -- I have to take off time to be here as</p> <p>2 well. That's the whole day that I'm out. And I did</p> <p>3 not plan on that from my office.</p> <p>4 MR. GUBLER: Do we need to reschedule</p> <p>5 it.</p> <p>6 HEARING OFFICER: So I have to check</p> <p>7 with my office. Let's just take a break. We'll take</p> <p>8 a break right now and reconvene at -- it's 11:54</p> <p>9 --11:55. So right before noon, so I can figure out</p> <p>10 whether --</p> <p>11 MR. GUBLER: Or we reschedule it?</p> <p>12 MS. JORGENSEN: No.</p> <p>13 HEARING OFFICER: Well, is hard to get</p> <p>14 a room.</p> <p>15 MR. GUBLER: No, no. For a different</p> <p>16 --</p> <p>17 HEARING OFFICER: Day. That's -- I</p> <p>18 mean, because everybody's here today, so -- Yes.</p> <p>19 Okay. So the options are to have a room. If I can be</p> <p>20 here till 05:00.</p> <p>21 MS. JORGENSEN: But it'd be available</p> <p>22 till 5:00.</p> <p>23 HEARING OFFICER: Right. And then I</p> <p>24 have to return to my office and we'll discuss this.</p> <p style="text-align: right;">Page 209</p>



<p>1 Let's -- we'll come back right before -- let's do --</p> <p>2 let's do like a three minutes, 55 to 56. So we're</p> <p>3 going off the record at 11:55. I can find out by --</p> <p>4 within the next three minutes and we can discuss</p> <p>5 whether we move to another day or if we --</p> <p>6 MS. JORGENSEN: And then if we were</p> <p>7 going to reschedule, then we'd need dates.</p> <p>8 HEARING OFFICER: Right.</p> <p>9 MS. JORGENSEN: Okay.</p> <p>10 (OFF THE RECORD).</p> <p>11 HEARING OFFICER: Okay. We are going</p> <p>12 to go back on the record. We convened shortly before</p> <p>13 12:00. It's now 12:16. We were trying to come up</p> <p>14 with dates or times to ensure that respondent has</p> <p>15 plenty of time to put on their case in chief. And we</p> <p>16 have enough time for cross and to address the penalty</p> <p>17 phase because we are still in the violation phase.</p> <p>18 So, we have confirmed that we can</p> <p>19 reconvene on the 5th of November, Tuesday, which is</p> <p>20 next Tuesday. So we will start -- I can start at</p> <p>21 8:00.</p> <p>22 MS. JORGENSEN: No, no, no.</p> <p>23 HEARING OFFICER: Okay.</p> <p>24 MS. JORGENSEN: That would not be my</p> <p>Page 210</p>	<p>1 (Off the record.)</p> <p>2 (Whereupon, the proceeding was adjourned at</p> <p>3 12:18 p.m.)</p> <p>4 ***</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Page 212</p>
<p>1 preference.</p> <p>2 HEARING OFFICER: Okay.</p> <p>3 MS. JORGENSEN: Could we start at 9:00?</p> <p>4 This way I know I'll be on time too. Yeah, we -- I</p> <p>5 come from Henderson, so --</p> <p>6 HEARING OFFICER: Is 9:00 okay?</p> <p>7 MS. JORGENSEN: 9:00 is fine for me.</p> <p>8 THE CLERK: 9:00 a.m.</p> <p>9 HEARING OFFICER: 9:00 a.m.? Okay. We</p> <p>10 will --</p> <p>11 MR. GUBLER: I'll follow you later.</p> <p>12 HEARING OFFICER: I'm sorry?</p> <p>13 MR. GUBLER: I said I'll follow you</p> <p>14 later on. 9:00's fine.</p> <p>15 HEARING OFFICER: Oh, I can do later.</p> <p>16 MR. GUBLER: No. (Inaudible).</p> <p>17 HEARING OFFICER: I cannot agree to</p> <p>18 that. Okay. So we'll reconvene on the fifth, which</p> <p>19 is next Tuesday, November 5th at 9:00 a.m. And then</p> <p>20 this adjourns the meeting now it is 12:17 -- 12:18.</p> <p>21 MS. JORGENSEN: Okay.</p> <p>22 HEARING OFFICER: Thank you.</p> <p>23 MR. GUBLER: Thank you.</p> <p>24</p> <p>Page 211</p>	



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# EXHIBIT 31

25

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Page 1 (1)



1 APPEARANCES :

2

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4 Johnson & Gubler, P.C.  
5 8831 W. Sahara Avenue  
6 Las Vegas, Nevada 89117  
7 (702) 471-0065

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<p>1 PROCEEDINGS</p> <p>2 ***</p> <p>3 THE CLERK: This is the Air Pollution</p> <p>4 Control Hearing Officer Meeting. It's approximately</p> <p>5 8:30 a.m., on November 5th, 2024.</p> <p>6 Holly Fic is the presiding hearing</p> <p>7 officer.</p> <p>8 HEARING OFFICER: (Indiscernible) it's</p> <p>9 9:00, and this is going to be the time to start.</p> <p>10 I'm going to call the meeting to order. This is the</p> <p>11 Air Pollution Control Hearing Officer Meeting. This</p> <p>12 is the continuation from the 1029 testimonies and</p> <p>13 representations by air quality and ETON</p> <p>14 Transportation Corp in regards to NOB 9994 and</p> <p>15 10078.</p> <p>16 ETON Transportation had the floor putting</p> <p>17 their case on chief, so we want to continue from</p> <p>18 there. I'm going to -- sir, would you raise your</p> <p>19 right hand? Do you solemnly swear that you'll tell</p> <p>20 the truth, the whole truth, and nothing but the</p> <p>21 truth, so help you God?</p> <p>22 THE WITNESS: I do.</p> <p>23 HEARING OFFICER: Okay. And you may</p> <p>24 continue with your case in chief.</p> <p>25 MR. GUBLER: Before we get involved, any</p> <p>Page 3</p>	<p>1 Mr. Kirk, Mr. -- Ms. Crandall, sorry, Byers and</p> <p>2 Kirk.</p> <p>3 HEARING OFFICER: I mean, this is an open</p> <p>4 forum and it's usually open to everyone. That's --</p> <p>5 my concern, is that we usually don't invoke</p> <p>6 exclusionary rules and it's open. It's just that</p> <p>7 this happens to be a -- a special time that's set</p> <p>8 away for that -- set away for that. And you're</p> <p>9 going to call all of these people to testify today?</p> <p>10 MR. GUBLER: Yes. It'll -- it'll be</p> <p>11 different testimony. I'm not -- I'm not seeking to</p> <p>12 ask them things that I've -- I've asked --</p> <p>13 HEARING OFFICER: Okay.</p> <p>14 MR. GUBLER: -- previously.</p> <p>15 HEARING OFFICER: Okay.</p> <p>16 MR. GUBLER: Hoping to be very brief.</p> <p>17 HEARING OFFICER: Okay.</p> <p>18 MR. GUBLER: Okay.</p> <p>19 HEARING OFFICER: I'm going to allow it if</p> <p>20 -- if it's different from what he's saying, and I</p> <p>21 just want to give them every opportunity to present</p> <p>22 their case. So -- and they are witnesses and he's</p> <p>23 going to call them, and he has a reason for that.</p> <p>24 Although this is -- is an open proceeding, this is</p> <p>25 -- we've put it to this time. So I'm just going to</p> <p>Page 5</p>
<p>1 -- here just briefly. I'm going to make a request</p> <p>2 to sequester witnesses.</p> <p>3 HEARING OFFICER: Okay. And reason being?</p> <p>4 MR. GUBLER: I -- I -- I intend to call</p> <p>5 after Mr. Truman, I intend to call in some more</p> <p>6 witnesses that are in the room. And I do not want</p> <p>7 them to collude on their -- on their testimony. I</p> <p>8 believe that there was last time, I think we all</p> <p>9 observed how -- how the testimonies had changed</p> <p>10 throughout the hearing last time. And so that's why</p> <p>11 I would like it sequestered today.</p> <p>12 HEARING OFFICER: Okay. Respondent's</p> <p>13 counsel, any objections?</p> <p>14 MS. JORGENSEN: I think it's too late. I</p> <p>15 think it's a -- a belated request and I think the</p> <p>16 representation that testimony change I think it is</p> <p>17 unsupported, and I -- I don't think it's necessary.</p> <p>18 I mean, and my only concern is, I mean, we're here a</p> <p>19 week later if -- whatever was said was said. I -- I</p> <p>20 understand you're to say that they're going to --</p> <p>21 that certain witnesses are going to collude on</p> <p>22 testimony. But questions that you're going to ask</p> <p>23 today, what -- specifically, who do you want</p> <p>24 excluded?</p> <p>25 MR. GUBLER: I would ask for Ms. Roswell,</p> <p>Page 4</p>	<p>1 -- well, they'll have to be, I guess, on standby to</p> <p>2 be called in. Well, there wouldn't be a reason to</p> <p>3 exclude them right now, until they start testifying,</p> <p>4 at least based on the representations by counsel.</p> <p>5 MR. GUBLER: No. I would like them</p> <p>6 excluded with Mr. Truman's testimony.</p> <p>7 HEARING OFFICER: Again, it's an informal</p> <p>8 proceeding, but if he's got a good faith basis that</p> <p>9 he's saying, that I would want him to put on his</p> <p>10 testimony, just so that they won't be prepared for</p> <p>11 that. And that happens in a normal process, I don't</p> <p>12 see that as unreasonable. So I'm going to allow it.</p> <p>13 MS. JORGENSEN: Okay. So who's being</p> <p>14 excluded?</p> <p>15 MR. GUBLER: We've asked Roswell.</p> <p>16 HEARING OFFICER: Roswell?</p> <p>17 MR. GUBLER: Forgive me. Yes.</p> <p>18 HEARING OFFICER: Uh-huh.</p> <p>19 MR. GUBLER: Roswell. Thank you.</p> <p>20 HEARING OFFICER: Mr. Kirk.</p> <p>21 MR. GUBLER: Byers, Dean, and Kirk.</p> <p>22 HEARING OFFICER: Dean is not here today.</p> <p>23 I believe I stated last time that he would not be</p> <p>24 here.</p> <p>25 MR. GUBLER: That -- that -- that's fine</p> <p>Page 6</p>



<p>1 -- that's fine.</p> <p>2 HEARING OFFICER: So, Byers.</p> <p>3 MR. GUBLER: Uh-huh.</p> <p>4 HEARING OFFICER: Roswell, Kirk, Byers and</p> <p>5 Crandall I thought you said.</p> <p>6 MR. GUBLER: Crandall.</p> <p>7 HEARING OFFICER: Okay. Okay. It is now</p> <p>8 9:06, and I've granted counsel's request to exclude</p> <p>9 potential witnesses while we -- he puts his case on</p> <p>10 and starts with the -- his case. So you may</p> <p>11 continue.</p> <p>12 MR. GUBLER: Thank you so much.</p> <p>13 EXAMINATION</p> <p>14 BY MR. GUBLER:</p> <p>15 Q. Mr. Truman, do you recall last time we</p> <p>16 were talking about credentials, do you remember</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. Now, you -- you -- we went through -- we</p> <p>20 won't go through all that again. But we went</p> <p>21 through different agencies that had come and -- and</p> <p>22 -- and presented their credentials to you for</p> <p>23 different various reasons relating to -- to business</p> <p>24 and personal experience. Do you remember that?</p> <p>25 A. Yes.</p> <p>Page 7</p>	<p>1 signed on behalf of a representative of ETON, you</p> <p>2 signed a permit; is that right?</p> <p>3 A. Correct. Electronically.</p> <p>4 Q. Now, when you signed this permit, what</p> <p>5 were you thinking?</p> <p>6 A. Well, before this on the permit, I looked</p> <p>7 at the statutes, the code, whatever, to go through</p> <p>8 and understand what that would entail. And in the</p> <p>9 county code, it presented a protocol of how they</p> <p>10 would go through and present themselves to enter the</p> <p>11 property.</p> <p>12 So with -- with that understood of how the</p> <p>13 protocol would work, I guess you'd call the -- the</p> <p>14 rule of law. Here's how the law's going to be</p> <p>15 presented to you, Mr. Truman, I then signed that --</p> <p>16 that they would've access to the property, based on</p> <p>17 their presentation in their literature of what the</p> <p>18 code required them to do.</p> <p>19 Q. Why is that important to you?</p> <p>20 A. I've had several opportunities to work</p> <p>21 with the government agencies where they have -- have</p> <p>22 been heavy handed and have come on my properties</p> <p>23 over -- over the years without duly presenting</p> <p>24 credentials. And then we have negotiated out under</p> <p>25 the Fourth Amendment issues, that they came under</p> <p>Page 9</p>
<p>1 Q. At any time did the same person from the</p> <p>2 same agency ever come back?</p> <p>3 A. Yes, they have.</p> <p>4 Q. And -- and when they came back -- so the</p> <p>5 first time your testimony was, and correct me if I'm</p> <p>6 wrong, that -- that they presented their</p> <p>7 credentials, whatever that was, said what they were</p> <p>8 there for, stated their purpose. Did they say</p> <p>9 anything else?</p> <p>10 A. Sometimes they would ask what they were</p> <p>11 there for. If they could come on property, if they</p> <p>12 could talk to somebody. So it depended on the</p> <p>13 reason they were there.</p> <p>14 Q. Okay. So when they returned, what did</p> <p>15 they do?</p> <p>16 A. The same, for lack of a better word,</p> <p>17 dance. They present themselves that I'm so and so</p> <p>18 from this department, here's my credentials. Can I</p> <p>19 come on site? Can I talk to somebody? So it was --</p> <p>20 every time they would come back, it would be the</p> <p>21 same protocol of introducing themselves, presenting</p> <p>22 credentials, and then I ask if they could come on</p> <p>23 site if they needed to come on site for some reason.</p> <p>24 Q. Now, I believe that there was some</p> <p>25 testimony previously kind of moving on, that you had</p> <p>Page 8</p>	<p>1 issues that they provided unreasonable seizures --</p> <p>2 search and seizures.</p> <p>3 The first time would've been with my aunt</p> <p>4 who owned a company called Trainer Wholesale. And</p> <p>5 the feds came on her property to go ahead and get</p> <p>6 some information without a warrant and without</p> <p>7 asking her, she was not at the home or the business</p> <p>8 when they came by. And that was settled out?</p> <p>9 And then my own personal first one was</p> <p>10 with the water district. The water district came on</p> <p>11 a piece of property we owned or leased, and a</p> <p>12 representative or a city inspector of the water</p> <p>13 district came on site, and rejected some pipe, and</p> <p>14 then proceeded to graffiti my property that -- that</p> <p>15 I had there.</p> <p>16 And so, when this happened, I told the --</p> <p>17 the water district and they sent out an investigator,</p> <p>18 and we went through what happened. And when I was</p> <p>19 in college, I -- I was a history major first, and so</p> <p>20 I studied -- the study was 1780 to 1790 was my part</p> <p>21 of history that I specialized in, which had a lot to</p> <p>22 do with the Bill of Rights.</p> <p>23 And so, I knew somewhat of what the</p> <p>24 historical context was of the Bill of Rights,</p> <p>25 particularly the Fourth Amendment. And particularly</p> <p>Page 10</p>



<p>1 at -- at college, I got to know a guy by the name of</p> <p>2 Bruce Hafen (ph), who taught constitutional law at</p> <p>3 the college -- legal college, next to the college I</p> <p>4 went to. We got to know him.</p> <p>5 And so through my study of history, my</p> <p>6 relationship with him and followed up with</p> <p>7 relationship with Judge George here in Las Vegas,</p> <p>8 where we got to know him through his kids and spent</p> <p>9 some time with him at his home and his chambers</p> <p>10 discussing that 1880 to 1890 or 1780 to 1790 time</p> <p>11 period, I became somewhat information -- informed</p> <p>12 about the Fourth Amendment.</p> <p>13 Q. So let me just break this up just a little</p> <p>14 bit. You -- you've mentioned the Fourth Amendment a</p> <p>15 couple times. What does that mean to you?</p> <p>16 A. Historically, the -- the British would</p> <p>17 come onto the -- the Colonist property without any</p> <p>18 ability to stop them. And so, Madison went through</p> <p>19 and helped to write that into the Fourth Amendment,</p> <p>20 that, that would be a keystone of the new</p> <p>21 constitution, the new country that government did</p> <p>22 not have that right to come on site without some</p> <p>23 sort of warrant, some sort of information, some sort</p> <p>24 of process.</p> <p>25 So protected and -- the integrity of -- of</p> <p>Page 11</p>	<p>1 Next time we have problems with the Fourth</p> <p>2 Amendment, those was Clark County waste department.</p> <p>3 We have a client, a person who rented from us called</p> <p>4 Renew Oil, and a overzealous (indiscernible) jumped</p> <p>5 the fence, searched some containers that they had on</p> <p>6 site to find out if there's any solid waste that had</p> <p>7 come from the casinos.</p> <p>8 Again, we went back to the county this</p> <p>9 time and found somebody who was in charge of the</p> <p>10 solid waste in the the legal department. I guess</p> <p>11 it's the -- I don't know if it's the DA's or what</p> <p>12 sub-department, but he came out of Chicago and he</p> <p>13 was very familiar with the -- the solid waste</p> <p>14 landscape with interstate commerce.</p> <p>15 And so he was quite conversant with what</p> <p>16 interstate commerce meant. Again, they backed out,</p> <p>17 got the letter of apology from the Solid Waste</p> <p>18 Department of Clark County of their -- their</p> <p>19 enforcement agency jumping on the fence to go</p> <p>20 through and present an illegal search and seizure of</p> <p>21 our property.</p> <p>22 So those are the -- the big ones that I</p> <p>23 haven't been involved with personally to understand</p> <p>24 what overreach of the government is, but also the</p> <p>25 rule of law. If you understand what the the</p> <p>Page 13</p>
<p>1 somebody's personal property that they just could</p> <p>2 not show up and say, okay, I'm here. That there's a</p> <p>3 process that the government had to go through to --</p> <p>4 to get on the property. And so, that was -- they</p> <p>5 validated when we dealt with the -- the water</p> <p>6 district and -- and they concurred that the Fourth</p> <p>7 Amendment was violated. They put in place to train</p> <p>8 their -- their employees of what that became.</p> <p>9 The next issue with the Fourth Amendment</p> <p>10 was, we had problems with a -- a government agency</p> <p>11 called an Air Force, we owned a property next to the</p> <p>12 Air Force Base at Sloan and Range Road. We had some</p> <p>13 monitoring wells we put on to find out whether some</p> <p>14 aviation fuel had leaked from somebody's tanks was</p> <p>15 come across our property.</p> <p>16 And the Air Force came on our -- our</p> <p>17 property and took samples off from of our monitor</p> <p>18 wells. And we had to -- to go to the base commander</p> <p>19 with the attorney at the time, with Stan Perry, to</p> <p>20 go through and get it straightened out that they had</p> <p>21 no ability to come on my property.</p> <p>22 Even though they're the government, even</p> <p>23 though they had this, I was protected in the Fourth</p> <p>24 Amendment. Air Force backed down, we were issued a</p> <p>25 letter -- a policy from the Air Force.</p> <p>Page 12</p>	<p>1 responsibilities of the parties going in, you should</p> <p>2 be able to determine and hold fast to what both</p> <p>3 party says.</p> <p>4 So if the -- the county air quality</p> <p>5 control says, we statutorily or -- or our code says</p> <p>6 that this is how we'll enter your property, I signed</p> <p>7 that, contractually in my mind, that this is how it</p> <p>8 would happen. If they wanted to come on property,</p> <p>9 it'd present their credentials and has to come on.</p> <p>10 Q. So you -- you heard testimony before from</p> <p>11 some of the government employees. One related to</p> <p>12 saying there's no security guard, there's no signs.</p> <p>13 You know, last time that you -- you brought a couple</p> <p>14 different signs, what did those signs say again?</p> <p>15 A. One was the issue about the trespassing,</p> <p>16 and there the federal CFR, and the other was just a</p> <p>17 -- a blue and white line that told them they needed</p> <p>18 to stop at the property, and sign in.</p> <p>19 Q. Okay. Now, do you believe that they did</p> <p>20 not see any security guard?</p> <p>21 A. I -- I can't testify what they saw or --</p> <p>22 or cannot see.</p> <p>23 Q. I'm asking what you believe.</p> <p>24 A. I believe they -- they did not look for</p> <p>25 one.</p> <p>Page 14</p>



1 Q. Okay. So you brought some -- some things  
2 today with you?  
3 **A. I did.**  
4 Q. What is it?  
5 **A. One is -- two items from when I bought**  
6 **something from Amazon, and then the other two are**  
7 **actual pictures of the signs that were on the site**  
8 **at the time in question that they arrived on site.**  
9 Q. Okay. And what else did you bring?  
10 **A. Affidavits of the security guards on duty**  
11 **of both the 8th and the 9th.**  
12 Q. Okay. I -- I know this -- this is a  
13 little unusual, but we'd ask to at least present  
14 those so that they're in the record --- --- ---  
15 HEARING OFFICER: So they're not ones yet.  
16 So these are new that haven't been presented or  
17 because I know there are quite a few affidavits in  
18 there.  
19 MR. GUBLER: Correct. That is correct.  
20 There's -- there's two, they're very short. It's  
21 basically saying that this is what they observed.  
22 HEARING OFFICER: Any objection  
23 (indiscernible) to review it?  
24 MS. JORGENSEN: I believe these are -- I  
25 assume that these are employees of either ETON or  
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1 Tonopah & Tidewater. So I -- best evidence is, they  
2 should have brought these witnesses too, so I can  
3 have the ability to cross-examine them. So I would  
4 object to the entrance of these affidavits.  
5 HEARING OFFICER: And --  
6 MS. JORGENSEN: As to the other items, I  
7 don't know what those are yet.  
8 HEARING OFFICER: My only concern is that  
9 too. I mean, you guys have the opportunity I review  
10 them and -- and I know you presented all your  
11 exhibits, and that would've been a time when they  
12 would have fair times to respond to that. And it's  
13 like after the fact we're in day 2 of trial, and so  
14 it's -- it's -- it's unfair.  
15 But I get, it's -- it's -- it's an  
16 informal process, so I'll -- I'll allow it. But  
17 it's -- it's because of how brief it is, I don't  
18 want pages that are new to give them the opportunity  
19 to respond to it. And then, I mean, I guess you --  
20 you can testify about how those affidavits came out,  
21 but best evidence would be that (indiscernible).  
22 MR. GUBLER: May I approach.  
23 HEARING OFFICER: Yes. Oh.  
24 MR. GUBLER: Sorry.  
25 HEARING OFFICER: Yes. No, that's fine.  
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1 MR. GUBLER: No disrespect.  
2 HEARING OFFICER: And -- and I assume  
3 you're going to question the witnesses. Would you  
4 question some of the air quality about this as well?  
5 MR. GUBLER: About the picture, yes.  
6 HEARING OFFICER: Okay. I'm going to --  
7 because it's informal, I mean, obviously I get trial  
8 by ambush, but because it's informal, and no  
9 opportunity to cross-examine, and these are -- I  
10 assume either ETON though it's not -- doesn't say  
11 who they work for. So it's -- clearly they could  
12 have had these people here if they had so chosen.  
13 And I -- that's something that I will  
14 consider. And -- and -- and I have my own questions  
15 as well too. So -- but I will consider that, I'll  
16 allow it because we are informal because that's --  
17 that's, you know, the process here. And you'll be  
18 allowed to cross and we'll just -- I'd rather have  
19 it in than have this, you know, I just want to give  
20 him every opportunity. So go ahead and proceed.  
21 BY MR. GUBLER:  
22 Q. Let's go ahead and look at the declaration  
23 of Willard Stickler. Who's Mr. Stickler?  
24 **A. He's an employee of ETON.**  
25 Q. Of ETON. And what's Mr. Sticklers  
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1 responsibilities?  
2 **A. General yard labor and security guard.**  
3 Q. And I -- I believe that you showed us in  
4 some pictures, where the -- the security shack is.  
5 What is -- what's the security shack look like?  
6 Please describe that.  
7 **A. That's an 8 by 20 office building mobile.**  
8 Q. Okay. And where is it located?  
9 **A. Just inside the south entrance to the**  
10 **property.**  
11 Q. So what -- what did Mr. -- so January 9th,  
12 what did Mr. Stickler report to you? Tell -- tell  
13 me in your own words, what -- what happened?  
14 **A. We used the Nextcom radio on site for**  
15 **communication, and he just got on the next tel, let**  
16 **us know there was a potential intruder on site. And**  
17 **I was walking out and I said, no, let me go and see**  
18 **who it is.**  
19 Q. Do you know -- do you know how he knew  
20 that there was an intruder -- potential intruder on  
21 site?  
22 **A. Inside the security shack there's video**  
23 **monitors at the site. So he -- he -- he would've**  
24 **either saw them that way or the door was open, he**  
25 **would've seen them coming (indiscernible).**  
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<p>1 Q. Drive by?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. So you mentioned a -- a sign that was</p> <p>4 posted saying that all visitors must check in; Is</p> <p>5 that right?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. And where was that located?</p> <p>8 <b>A. Would've been in three places. Would've</b></p> <p>9 <b>been on the south, the north, and the middle.</b></p> <p>10 Q. So how did -- how did Mr. Stickler contact</p> <p>11 you?</p> <p>12 <b>A. Just on the radio.</b></p> <p>13 Q. Okay. And what did he tell you?</p> <p>14 <b>A. Just giving a trigger on side pass.</b></p> <p>15 Q. And so what did he do?</p> <p>16 <b>A. Went out there to find out who it was.</b></p> <p>17 Q. Okay. Did you involve Mr. Stickler at all</p> <p>18 after that?</p> <p>19 <b>A. No. He needed to stay in his post.</b></p> <p>20 Q. Okay. So then after -- after he informed</p> <p>21 you, Mr. Stickler informed you that there were</p> <p>22 intruders on the property, what did you do?</p> <p>23 <b>A. Went out and met them.</b></p> <p>24 Q. Okay. And who was it?</p> <p>25 <b>A. I don't know their names, but they're a</b></p> <p style="text-align: right;">Page 19</p>	<p>1 Q. Okay. So what did she report to you?</p> <p>2 <b>A. Just there's a car in the back of the</b></p> <p>3 <b>property that just came in.</b></p> <p>4 Q. And so what did you do?</p> <p>5 <b>A. Went back there to find out who was there,</b></p> <p>6 <b>why they're there.</b></p> <p>7 Q. And who was it?</p> <p>8 <b>A. I think her name is -- I take it from last</b></p> <p>9 <b>time, Candy or something. Cindy, Candy or something</b></p> <p>10 <b>of that nature.</b></p> <p>11 Q. Okay. You also brought some pictures and</p> <p>12 invoices; is that correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. Tell us what these are.</p> <p>15 <b>A. Early on in October, we had problems with</b></p> <p>16 <b>people understanding where the office was. Security</b></p> <p>17 <b>was spending way too much time trying to chase them</b></p> <p>18 <b>down, and we likewise were helping them chase the</b></p> <p>19 <b>people down that came on the property. So we bought</b></p> <p>20 <b>illuminated signs that said office on them, and put</b></p> <p>21 <b>them on the perimeter of the facility, and the</b></p> <p>22 <b>interior of the facility.</b></p> <p>23 Q. When were they installed?</p> <p>24 <b>A. The end of November.</b></p> <p>25 Q. What year?</p> <p style="text-align: right;">Page 21</p>
<p>1 <b>white Ford pickup crew cab. We saw them last time</b></p> <p>2 <b>we're here. I -- I don't recall their names, but</b></p> <p>3 <b>there's two females and -- maybe one female and two</b></p> <p>4 <b>males.</b></p> <p>5 Q. Crystal Thorne, who's -- who is she?</p> <p>6 <b>A. She's a long time employee that does</b></p> <p>7 <b>security, you know, by security, day security for</b></p> <p>8 <b>us.</b></p> <p>9 Q. Okay. Who does she work with?</p> <p>10 <b>A. ETON -- ETON.</b></p> <p>11 Q. And so she discusses an incident on</p> <p>12 January 8th, looks like in her declaration. Where</p> <p>13 was she located? Where was her post on January 8th?</p> <p>14 What was she -- what duties were she performing?</p> <p>15 <b>A. Same, security office or shack.</b></p> <p>16 Q. It's same -- same as Mr. -- where Mr.</p> <p>17 Stickler was?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Okay. And -- and so tell us what</p> <p>20 happened.</p> <p>21 <b>A. Same issue. She called me on the radio.</b></p> <p>22 <b>The security people are not to leave their -- their</b></p> <p>23 <b>post. So whoever's on the radio and closer will go</b></p> <p>24 <b>through and look and find out who the people are and</b></p> <p>25 <b>find out why they're here.</b></p> <p style="text-align: right;">Page 20</p>	<p>1 <b>A. 2023.</b></p> <p>2 Q. And so looking at, there's -- looks like</p> <p>3 there's two pictures. What are these pictures of?</p> <p>4 <b>A. They show the signs that get on the</b></p> <p>5 <b>perimeter and then on the interior.</b></p> <p>6 Q. And -- okay. So which one's the interior?</p> <p>7 <b>A. The one with the red Conex, with the green</b></p> <p>8 <b>outline around it, that would be on the interior,</b></p> <p>9 <b>and the security person would then -- if somebody</b></p> <p>10 <b>came in, signed up, they would then use that as a</b></p> <p>11 <b>landmark for them of where to go, where to park.</b></p> <p>12 Q. So this was installed in November of 2023.</p> <p>13 Is it still there?</p> <p>14 <b>A. It is.</b></p> <p>15 Q. Has it ever been taken down?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Is the light -- when -- when -- when the</p> <p>18 office is open, is the light always on?</p> <p>19 <b>A. It's always on.</b></p> <p>20 Q. It's always on?</p> <p>21 <b>A. Yes. Because we get Amazon on the</b></p> <p>22 <b>outside, and so we're having an Amazon dropbox on</b></p> <p>23 <b>the outside shown in the -- the one picture with the</b></p> <p>24 <b>car in it. So it helps Amazon people at that time</b></p> <p>25 <b>know where to take the Amazon packages.</b></p> <p style="text-align: right;">Page 22</p>



1 Q. So are -- is the -- is it pretty obvious  
2 where the office is, at -- at the Stanford property?  
3 **A. Seems to be to everybody else who comes on**  
4 **site.**  
5 Q. Okay. So there's also some -- looks like  
6 -- looks like a couple emails. Where are these?  
7 **A. The receipts back from the courier where**  
8 **we bought signs from?**  
9 Q. So this is just the receipt for the  
10 purchase of the two signs?  
11 **A. Correct.**  
12 MR. GUBLER: Just for, I guess, purposes,  
13 we could just mark Mr. Stickler's as Exhibit 26 and  
14 Ms. Thorne's as 27, and the -- the pictures with the  
15 invoices as 28.  
16 HEARING OFFICER: Okay. All together?  
17 MR. GUBLER: Yes.  
18 HEARING OFFICER: Okay. So marked Exhibit  
19 26 is Stickler's affidavit, Exhibit 27 is Thorne's  
20 affidavit, and 28 is the pictures along with the  
21 invoices.  
22 (Exhibit 26 through 28 marked for  
23 identification).  
24 MR. GUBLER: Thank you.  
25 HEARING OFFICER: (Indiscernible) so, I

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1 guess I'll just -- you're fine, that's fine.  
2 (Indiscernible). Okay. Continue.  
3 BY. MR. GUBLER:  
4 Q. When any of these visitors or your --  
5 whether it was the 8th, the 9th, 17th, 25th, excuse  
6 me -- 8th and 9th of January, 17th of January, July  
7 17th, February 1st, February the 8th. We've had --  
8 we've had testimony about those days already, given  
9 some testimony. Did you ever witness anybody  
10 performing any tests?  
11 **A. None.**  
12 Q. Let's go to Exhibit 9. I -- I think we  
13 had sort of left off around here last time. Again,  
14 this is Exhibit 9. This is -- I believe you  
15 testified that this is the -- the yards Stratford?  
16 **A. Correct. The property.**  
17 Q. The property. And -- and the the guard  
18 gravel, what is that?  
19 **A. Rotor Mill.**  
20 Q. And what is a Rotor Mill?  
21 **A. It's the end product of a process where**  
22 **they use a cutter head to go through and take up**  
23 **asphalt.**  
24 Q. And what is the size of this?  
25 **A. 3 inch to quarter inch maybe.**

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1 Q. Okay. So it's a pretty good size?  
2 **A. It is.**  
3 Q. It's -- it's above a quarter of an inch;  
4 is that right?  
5 **A. That's -- yeah, the cut. 3 inch to a**  
6 **quarter inch.**  
7 Q. Now, how deep is -- is this Rotor Mill?  
8 **A. I think I testified the last time. I put**  
9 **about six inches of Rotor Mill.**  
10 Q. Okay. So before you put down this Rotor  
11 Mill, did you do anything else to the property?  
12 **A. We did. And our discussion with Jay Smith**  
13 **from Las Vegas (indiscernible) of a product called**  
14 **chad.**  
15 Q. And what is chad?  
16 **A. It's limestone that's mined out of the**  
17 **Apex plant. Lime's a very hard -- hard material,**  
18 **very dense. And they -- they crush it and gets to a**  
19 **3 inch to quarter inch cut, and you put that down,**  
20 **it's like gold standard for buildings. Put water on**  
21 **it and start to revert back to limestone again.**  
22 Q. And did -- did you put chad below this  
23 Rotor Mill?  
24 **A. We did, so it's native. 6 inches of chad**  
25 **and then 6 inches of Rotor Mill.**

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1 Q. So you have a full foot that you -- that  
2 was put on this property?  
3 **A. Correct.**  
4 Q. And what parts of the property does it  
5 cover?  
6 **A. 95 percent. There's some -- there's some**  
7 **concrete, then there's some buildings. Everything**  
8 **else is -- has a -- the chad and Rotor Mill.**  
9 Q. So everywhere but concrete and -- and the  
10 --  
11 **A. Buildings.**  
12 Q. The buildings.  
13 **A. Uh-huh.**  
14 Q. Now, do you remember a visit in or about  
15 August 24th, 2024, from Ms. Roswell?  
16 **A. Was she by herself or with another person?**  
17 Q. It would -- it would've been the last time  
18 that anybody visited?  
19 **A. There were two of them, but the last time**  
20 **that they visited they came on property, they**  
21 **quickly left and it surprised me.**  
22 Q. Why?  
23 **A. Because typically they were -- they were**  
24 **just so quick.**  
25 Q. Okay.

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1 **A. And I asked if everything's okay and she**  
2 **said there was no dust here and they left.**  
3 Q. I would like you to look at Exhibit 10.  
4 Do you recognize this?  
5 **A. I do.**  
6 Q. How'd you recognize it?  
7 **A. It's a declaration by Joel Miller.**  
8 Q. Who's Joel Miller?  
9 **A. He worked for Ames Construction here in**  
10 **Las Vegas. And from Ames he went to Frederick**  
11 **Construction.**  
12 Q. Do you know Joel Miller?  
13 **A. I do.**  
14 Q. How do you know him?  
15 **A. Met him when he was working at Ames**  
16 **Construction, when he did a -- a water line from**  
17 **(indiscernible) and then I kept in contact when he**  
18 **worked for my uncle over at Frederick Construction.**  
19 Q. Okay. Did you consult Mr. Joel Miller?  
20 **A. I did.**  
21 Q. What did you consult him about?  
22 **A. Just ask him his opinion of Rotor Mill.**  
23 Q. Okay. What did he tell you?  
24 **A. He was okay with it. It does what it's**  
25 **supposed to do which is suppress the dust.**

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1 Q. Okay. What -- what about with respect to  
2 -- did he have any opinion as Rotor Mill versus  
3 Blacktop?  
4 **A. With tracked equipment he understood just**  
5 **from being in the industry that Blacktop and tracked**  
6 **equipment don't -- don't last. One has to go**  
7 **because of the tractor equipment will turn the**  
8 **asphalt back into Rotor Mill.**  
9 Q. Okay. What if you had concrete?  
10 **A. Overtime same thing.**  
11 Q. And so what did he recommend to you?  
12 **A. Well, everybody else uses (indiscernible)**  
13 **with tracked equipment Rotor Mill.**  
14 Q. Okay. Let's go to Exhibit 11. Do you  
15 know Paul Harbor -- Harbor?  
16 **A. I do.**  
17 Q. Who's Paul Harbor?  
18 **A. He owned the Harbor Company.**  
19 Q. What type of visits was that?  
20 **A. Underground general contracting company.**  
21 Q. Okay. And did you consult Mr. Harbor?  
22 **A. I did. He owned a yard ---**  
23 Q. Go ahead.  
24 **A. He owned a yard over there at Creek Road**  
25 **and Lamb, and we had a similar situation we have**

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1 **here where he had tracked equipment and they wanted**  
2 **him to -- to pay this yard.**  
3 Q. Okay.  
4 **A. And it was -- it was no point -- it**  
5 **wouldn't work with the tracked equipment.**  
6 Q. Now what does no bueno mean?  
7 **A. It won't work.**  
8 Q. And what -- so what did -- so what did Mr.  
9 Harbor recommend?  
10 **A. A Rotor Mill.**  
11 Q. And why is that?  
12 **A. It does -- it does suppress it, but it**  
13 **also stays together the environment of the tracked**  
14 **equipment.**  
15 Q. So we -- we talked about tracked equipment  
16 before. Do you remember that testimony?  
17 **A. Yes, sir.**  
18 Q. What -- what -- what part of the property  
19 does the tracked equipment go -- your tracked  
20 equipment go on -- on the property?  
21 **A. When it's needed. If a truck gets stuck,**  
22 **we use it all with the property to go through and**  
23 **get the truck or trailer unstuck.**  
24 Q. Okay. So it's not just to unload and  
25 load; is that right?

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1 **A. Correct.**  
2 Q. Okay. So ---  
3 **A. Acts as a wrecker on site.**  
4 Q. And you -- and -- and -- and the reason  
5 though, that you keep this tracked equipment is for  
6 what purpose?  
7 **A. Typically for emergencies if we a**  
8 **(indiscernible) for the Railroad (indiscernible.)**  
9 Q. Okay.  
10 Q. Let's go to Exhibit 12. Do you know David  
11 McDonough?  
12 **A. We do.**  
13 Q. Who's David McDonough?  
14 **A. He's the -- the principal in a company**  
15 **called Aztech Material Testing and they test**  
16 **materials which includes, concrete sand, everything**  
17 **to do with underling or -- or base material around**  
18 **the valley.**  
19 Q. And did you consult Mr. McDonough?  
20 **A. I did. I asked him what would be the --**  
21 **the -- the best product for our application and he**  
22 **came back with Rotor Mill.**  
23 Q. And you had him signed declarations; is  
24 that right?  
25 **A. We did.**

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<p>1 Q. Is this true and accurate copy of that</p> <p>2 declaration?</p> <p>3 <b>A. It is.</b></p> <p>4 Q. And I don't know if I did that with the</p> <p>5 other ones, but you obtained the declaration from</p> <p>6 Joe Miller as well?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. And is that a true and correct copy of the</p> <p>9 declaration?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. And -- and from Paul Harbor, is that a</p> <p>12 true and correct -- and accurate copy of a</p> <p>13 declaration?</p> <p>14 <b>A. Correct. That's what they sent back to</b></p> <p>15 <b>me.</b></p> <p>16 Q. Okay. Let's go to Exhibit 13. Recognize</p> <p>17 this?</p> <p>18 <b>A. I do.</b></p> <p>19 Q. What is this?</p> <p>20 <b>A. It's Floyd's declaration.</b></p> <p>21 Q. Who's Floyd Miller?</p> <p>22 <b>A. He's owned Southern Brother Paving for</b></p> <p>23 <b>years and years and years.</b></p> <p>24 Q. Okay.</p> <p>25 <b>A. He's a licensed engineer out of Utah, came</b></p> <p style="text-align: right;">Page 31</p>	<p>1 used, what was his ultimate opinion to you?</p> <p>2 <b>A. It's not a good solution if you're trying</b></p> <p>3 <b>to go through and meet greenhouse gas emissions.</b></p> <p>4 Q. When you say it, we're talking about what?</p> <p>5 <b>A. The virgin asphalt is -- is not beneficial</b></p> <p>6 <b>to greenhouse gas reduction.</b></p> <p>7 Q. As environmental aspects aside, did he</p> <p>8 give you his opinion about the -- whether it was a</p> <p>9 good palliative, whether Rotor Mill was a good</p> <p>10 palliative or alternative to flag top or asphalt?</p> <p>11 <b>A. For -- for the use of tracked equipment,</b></p> <p>12 <b>it's the best in his opinion, based on, I think what</b></p> <p>13 <b>it says.</b></p> <p>14 Q. Now, you had mentioned some emissions and</p> <p>15 things like that. Come back here 14. Let's go to</p> <p>16 Exhibit 19. Do you recognize it?</p> <p>17 <b>A. I do.</b></p> <p>18 Q. What is it?</p> <p>19 <b>A. It's (indiscernible) executive order on</b></p> <p>20 <b>climate goals and --</b></p> <p>21 Q. What is it -- what is it saying?</p> <p>22 <b>A. We direct agencies to evaluate policies</b></p> <p>23 <b>regulatory strategy to achieve the long term goal of</b></p> <p>24 <b>greenhouse gas emission, reductions as required by</b></p> <p>25 <b>Senate Bill 254 in accordance with Nevada commitment</b></p> <p style="text-align: right;">Page 33</p>
<p>1 <b>down and started the business here. Very</b></p> <p>2 <b>successful.</b></p> <p>3 Q. And did you consult with Floyd Miller as</p> <p>4 to Rotor Mill or anything else?</p> <p>5 <b>A. I did. I asked what the best product</b></p> <p>6 <b>would be to -- to put down a for dust suppressor.</b></p> <p>7 Q. And what did he tell you?</p> <p>8 <b>A. (Indiscernible.) He went on about the just</b></p> <p>9 <b>the cost of -- environmentally of virgin asphalt</b></p> <p>10 <b>versus the cost of Rotor Mill, just a sustainability</b></p> <p>11 <b>issue, disaster (indiscernible) recycling would</b></p> <p>12 <b>work.</b></p> <p>13 Q. Okay. Did he go -- you said he -- he told</p> <p>14 you a lot. He went into -- I guess some -- some</p> <p>15 information about making asphalt; is that right?</p> <p>16 <b>A. He did. Just environmental cost of mining</b></p> <p>17 <b>it, milling it, and then all the other components</b></p> <p>18 <b>that it takes to go through and heat the asphalt,</b></p> <p>19 <b>heat the -- heat the rock up, and then coat the rock</b></p> <p>20 <b>with asphalt oil and transportation and all of --</b></p> <p>21 <b>all the components, that I never thought about that</b></p> <p>22 <b>goes into making virgin asphalt.</b></p> <p>23 Q. And -- and so, you know, with the mining</p> <p>24 of it and the fuel costs and the transportation and</p> <p>25 generator use and I guess all the machinery that's</p> <p style="text-align: right;">Page 32</p>	<p>1 <b>as a member of the US Climate Alliance to achieve</b></p> <p>2 <b>these reduction targets administration led by DC&amp;R,</b></p> <p>3 <b>DOE will coordinate statewide efforts including</b></p> <p>4 <b>facilitation agencies, stakeholder participation.</b></p> <p>5 <b>So my understanding is that,</b></p> <p>6 <b>(indiscernible) that the document sort of speaks for</b></p> <p>7 <b>itself is that the -- the governor to his directive</b></p> <p>8 <b>takes all public, they're all governmental agencies</b></p> <p>9 <b>to look at their practices and reevaluate them and</b></p> <p>10 <b>do things necessary to lower the greenhouse gas</b></p> <p>11 <b>emission.</b></p> <p>12 Q. He -- he was concerned about global</p> <p>13 warming, correct?</p> <p>14 <b>A. Probably the Paris -- Paris Accord, Paris</b></p> <p>15 <b>Treaty, but yes.</b></p> <p>16 Q. I mean, in it at the beginning, talks</p> <p>17 about as the climate continues to warm, that is 1,</p> <p>18 2, 3, 4, fifth paragraph down from the beginning.</p> <p>19 Do you see that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And the severity and length of droughts,</p> <p>22 do you see that?</p> <p>23 <b>A. I do.</b></p> <p>24 Q. So obviously, a public policy concern for</p> <p>25 heat and water use; is that right?</p> <p style="text-align: right;">Page 34</p>



1 **A. Correct.**  
2 Q. So let's -- let's jump back now to Exhibit  
3 14. Do you recognize this?  
4 **A. Oh, I'm there. Yes.**  
5 Q. Who is Michael Montandon?  
6 **A. He was the former, I think, three term**  
7 **mayor of North Las Vegas.**  
8 Q. Okay. Did you consult Michael Montandon  
9 on Rotor Mill?  
10 **A. I did.**  
11 Q. Why?  
12 **A. He was in the hot seat as the mayor of**  
13 **North Las Vegas. They too have inner workings, or**  
14 **local agreements with Clark County AQM, find out his**  
15 **thought processes as the city owned so much**  
16 **property. Particularly Creek Road -- Creek Road**  
17 **Ranch comes to mind where they had the large parking**  
18 **area that he went through with somebody's**  
19 **authorization and they use Rotor Mill to go through,**  
20 **use a dust palliative there on Creek Road Ranch**  
21 **parking lot.**  
22 Q. Why did they do Rotor Mill for that, do  
23 you know?  
24 **A. Probably the most effective solution for**  
25 **the dust palliative.**

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1 Q. So what -- what -- what -- what did he --  
2 you -- you consulted him, what did he tell you?  
3 **A. For -- for the city standpoint that was**  
4 **the best solution for keeping all parties happy,**  
5 **global warming, the dust people and keeping the**  
6 **water usage down. So it led to everybody's**  
7 **consensus in one product.**  
8 Q. So the city of North Las Vegas used Rotor  
9 Mill less an alternative to asphalt?  
10 **A. Guess I've driven around the city**  
11 **extensively.**  
12 Q. Did -- did any of these people -- by the  
13 way, is that declaration a true and correct copy?  
14 **A. Yes.**  
15 Q. Is -- did any of them have any opinions  
16 about the effectiveness of Rotor Mill compared --  
17 well, we already talked about pavement, what about  
18 water?  
19 **A. Mike was -- Mike, sorry, Mayor Mike --**  
20 **Mayor Montandon. It's just a big expense for the**  
21 **city to -- to water all the time. So that was his**  
22 **big objection to that. And the same with Floyd,**  
23 **it's just a very expensive way to go through and**  
24 **maintain dust palliative.**  
25 Q. Was it just as -- was Rotor Mill just as

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1 effective as one?  
2 **A. In their minds, yes.**  
3 Q. And why is that?  
4 **A. I can't testify why they -- they think**  
5 **that, but I would surmise or guess.**  
6 Q. They didn't tell you?  
7 **A. They didn't tell me.**  
8 Q. Okay. So going back a little bit, as far  
9 as the property goes is there any fencing around the  
10 property?  
11 **A. There is.**  
12 Q. Is there a barrier completely around the  
13 property?  
14 **A. There is.**  
15 Q. How tall is it?  
16 **A. Approximately 6 to 8 feet.**  
17 Q. With -- with this -- with this Rotor Mill,  
18 it's been in the -- in the property. Have you  
19 driven across it?  
20 **A. I have.**  
21 Q. Have you noticed any dust plumes?  
22 **A. I have not seen any fugitive dust from my**  
23 **driving across or I've not noticed any fugitive dust**  
24 **leaving the property.**  
25 Q. If you'll look at Exhibit 15. Do you

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1 recognize this?  
2 **A. I do.**  
3 Q. Have you been there before?  
4 **A. I have.**  
5 Q. What is this?  
6 **A. It's a Boulder City Railroad.**  
7 Q. Okay. And that's in Clark County,  
8 correct?  
9 **A. Yes, it is.**  
10 Q. Okay. What did you observe at this firm?  
11 **A. From the Railroad and the right of way**  
12 **next to the Railroad, and it's -- there's no pallet**  
13 **put on it. You can see that the disturbed stuff up**  
14 **here towards the -- the right of way is driven over.**  
15 **And this area through here has been driven over.**  
16 **(Indiscernible) kids, there's -- there's dust coming**  
17 **off the property.**  
18 Q. And --  
19 **A. And that up further by the buildings on**  
20 **the other side there's -- there's additional, you**  
21 **can see where the trucks been, right there through**  
22 **there where they've driven next to the Railroad.**  
23 Q. So how about down here? You -- you see  
24 the -- the pink line down at the bottom, and then  
25 there's some buildings in there. Do you see that?

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<p>1 <b>A. Oh, right there by the round house.</b></p> <p>2 <b>There's areas here that you can see that they've</b></p> <p>3 <b>driven over with -- with no dust palliative but also</b></p> <p>4 <b>altered here. There's state officials or state</b></p> <p>5 <b>employees or people who go out there and do stuff</b></p> <p>6 <b>for free (indiscernible).</b></p> <p>7 Q. So -- so not only the runways, but the --</p> <p>8 the yards as well; is that right?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. Go two -- two pages down. How about this</p> <p>11 property, do you recognize this property?</p> <p>12 <b>A. I do.</b></p> <p>13 Q. Have you been there before?</p> <p>14 <b>A. I have, with the right of way inspector of</b></p> <p>15 <b>the Railroad.</b></p> <p>16 Q. Okay. Why were you there?</p> <p>17 <b>A. We were looking at some potential places</b></p> <p>18 <b>to put a -- a spur on. So this is county-owned</b></p> <p>19 <b>property and this is the area that the Railroad</b></p> <p>20 <b>constantly drives up and down on to go through and</b></p> <p>21 <b>maintain or look at state of the rail that's</b></p> <p>22 <b>unpaved.</b></p> <p>23 Q. Does it have any dust palliative at all?</p> <p>24 <b>A. Sure does not.</b></p> <p>25 Q. Go two -- two pages down. You recognize</p> <p style="text-align: right;">Page 39</p>	<p>1 <b>palliative next to the rail.</b></p> <p>2 Q. How about down here in New York?</p> <p>3 <b>A. Here?</b></p> <p>4 Q. There or within -- up -- up in there.</p> <p>5 <b>A. Yeah. There's -- there's containers there</b></p> <p>6 <b>but there's no dust palliative at all. It's just</b></p> <p>7 <b>native, maybe type two color.</b></p> <p>8 Q. Okay. And you've been to this property?</p> <p>9 <b>A. I have.</b></p> <p>10 Q. Two more pages down. Recognize this</p> <p>11 property?</p> <p>12 <b>A. I do. Railroad goes across it. There's a</b></p> <p>13 <b>Railroad right of way that they -- right of way</b></p> <p>14 <b>people drive on all the time it's unimproved native,</b></p> <p>15 <b>not even type two.</b></p> <p>16 Q. No -- no dust palliative?</p> <p>17 <b>A. Dust palliative. No, sir.</b></p> <p>18 Q. And you've been to this property?</p> <p>19 <b>A. I have.</b></p> <p>20 Q. Go two pages down. You recognize this?</p> <p>21 <b>A. Yes. They call it the Y. This goes out</b></p> <p>22 <b>to Simplot material. Again, there's the Railroad</b></p> <p>23 <b>right of way (indiscernible) this is a -- a</b></p> <p>24 <b>runaround they have -- and this is a whole building</b></p> <p>25 <b>they have here. They used to do transloading, that</b></p> <p style="text-align: right;">Page 41</p>
<p>1 it?</p> <p>2 <b>A. I do. County-owned property. Again,</b></p> <p>3 <b>there is the -- the right of way that the Railroad</b></p> <p>4 <b>track versus on county property, no dust palliative.</b></p> <p>5 Q. And how about separate, you see how the --</p> <p>6 the pink line goes out? See that in there?</p> <p>7 <b>A. Out here?</b></p> <p>8 Q. Yeah.</p> <p>9 <b>A. It's -- there's no dust palliative at all</b></p> <p>10 <b>on the county property.</b></p> <p>11 Q. Would you agree that those look like</p> <p>12 tracks there?</p> <p>13 <b>A. It does to me, yes.</b></p> <p>14 Q. Have you been out to this property?</p> <p>15 <b>A. I have.</b></p> <p>16 Q. And -- and are those tracks?</p> <p>17 <b>A. They are.</b></p> <p>18 Q. Any dust palliative on this property?</p> <p>19 <b>A. None that was available to me to see.</b></p> <p>20 Q. Go two pages. You recognize this?</p> <p>21 <b>A. I do.</b></p> <p>22 Q. What is it?</p> <p>23 <b>A. It's Creek Road and -- over there by I15.</b></p> <p>24 <b>Again, this is the (indiscernible), there's a</b></p> <p>25 <b>Railroad, right of way and there's no dust</b></p> <p style="text-align: right;">Page 40</p>	<p>1 <b>all native type two.</b></p> <p>2 Q. Have you been to this property?</p> <p>3 <b>A. I have.</b></p> <p>4 Q. Now, on some of the notice that there's a</p> <p>5 recorded dock date, dock number, when -- when the</p> <p>6 property was deeded to whoever owns it. Do you see</p> <p>7 that to the left?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And are you able to tell looking at that</p> <p>10 -- what at -- at a minimum when that property's been</p> <p>11 owned?</p> <p>12 <b>A. The first four numbers was a -- a big year</b></p> <p>13 <b>of recording, so it would've been 2022.</b></p> <p>14 Q. Okay. And we'll go two -- two more pages</p> <p>15 down. Do you recognize this property?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. Have you been there?</p> <p>18 <b>A. I have.</b></p> <p>19 Q. And what is it?</p> <p>20 <b>A. It's Simplot Sand Mine out there in</b></p> <p>21 <b>Logandale. End of Logandale. This is their</b></p> <p>22 <b>facility. Again, there's the right of way. This is</b></p> <p>23 <b>their property here that they coal into, and it's</b></p> <p>24 <b>all native, no dust -- dust palliative.</b></p> <p>25 Q. Two more pages down. Recognize this?</p> <p style="text-align: right;">Page 42</p>



1 **A. I do it's apex where they have a line**  
2 **plant. The black materials to co-pile. This is --**  
3 **old state 91, and this is all the facility here that**  
4 **is unpaved. There is the right of way paved, no**  
5 **dust palliative in there.**  
6 Q. You've been out there?  
7 **A. I have.**  
8 Q. And that's what you have observed?  
9 **A. I have.**  
10 Q. Next two pages. Recognize this?  
11 **A. I do. It's the (indiscernible) site on**  
12 **Arville. Again, there's the right of way that the**  
13 **Railroad transverses consistently. (Indiscernible)**  
14 **owns it, but there's some sort of easement that the**  
15 **Railroad comes across (indiscernible) dust**  
16 **palliative.**  
17 Q. And you have been out this property?  
18 **A. I have.**  
19 Q. Two more pages down, please. Do you  
20 recommend this property?  
21 **A. I do. It's the -- (indiscernible) used to**  
22 **be the name of it. Again, this is the Railroad**  
23 **right of way and this is where they traverse to go**  
24 **ahead and come up on side the rails and if**  
25 **necessary, fix it. No -- no dust palliative.** Page 43

1 Q. You've been on this property?  
2 **A. I have.**  
3 Q. And that's what you observed?  
4 **A. Correct.**  
5 Q. Go to the next two pages, please. Do you  
6 recognize this property?  
7 **A. I do. This piece right here was in a**  
8 **James Bond movie. But this is their Railroad that**  
9 **they have right there, this is their unsupported**  
10 **facility, and this is all their right of way**  
11 **unpaved. You can see where the tractor is there**  
12 **with regard to the quarry, quite dusty.**  
13 Q. Is there any dust palliative?  
14 **A. No.**  
15 Q. And you've been out there?  
16 **A. I have.**  
17 Q. And so far all these are in Clark County;  
18 is that right?  
19 **A. Correct.**  
20 Q. Next two pages. You recognize this?  
21 **A. It's a bigger picture of the**  
22 **(indiscernible).**  
23 Q. Who we have already seen, huh?  
24 **A. Uh-huh.**  
25 Q. Two more pages. Do you recognize this? Page 44

1 **A. I do. It's a yard out the old BMI complex**  
2 **Anderson.**  
3 Q. Okay. What is this? What have you  
4 observed?  
5 **A. It's the -- it's an old rail yard that is**  
6 **unpaved, no dust palliative in there.**  
7 Q. How about the other parts?  
8 **A. This is all complex, none of then is paved**  
9 **or have any dust palliative at all.**  
10 Q. Have you been out there?  
11 **A. I have.**  
12 Q. And that's what you observed?  
13 **A. I have.**  
14 Q. (Indiscernible.)  
15 **A. This is a retention base known by the**  
16 **(indiscernible) County, and there's all of the sand**  
17 **that comes in there that's a mess with blows,**  
18 **there's no dust palliative over where the county**  
19 **zone, of water -- water, flood control people.**  
20 Q. Next -- next. Do you recognize this, sir?  
21 **A. Yes.**  
22 Q. What is it?  
23 **A. Right there you can see where the property**  
24 **owners let the railroad go across there with no dust**  
25 **palliative.** Page 45

1 Q. You've been out this property?  
2 **A. I have.**  
3 Q. And you observed -- this what you  
4 observed?  
5 **A. Correct.**  
6 Q. Two more pages. Do you recognize this?  
7 **A. It's right off the freeway by the hidden**  
8 **valley exit. They -- they produce -- processed corn**  
9 **here. Cars come in. As you can see on the railroad**  
10 **property, there's no dust palliative. Again, when**  
11 **the wind blows it's (indiscernible.)**  
12 Q. And you recognize -- and you've been here?  
13 **A. I have.**  
14 Q. And that's what you have observed, yeah?  
15 **A. Correct.**  
16 Q. Let's go to Exhibit 16. Do you recognize  
17 this?  
18 **A. I do.**  
19 Q. What is it?  
20 **A. It's the (indiscernible) supports the two**  
21 **gold mines up in Elko County.**  
22 Q. Have you been there?  
23 **A. I have.**  
24 Q. And what do you observe in there?  
25 **A. It's your atypical rail yard, ballast with** Page 46





1 **no dust palliative of -- of any (indiscernible).**  
2 Q. Next -- next two pages. Do you recognize  
3 this?  
4 **A. I do.**  
5 Q. What is it?  
6 **A. The train yard for the -- I think the**  
7 **state sponsors this.**  
8 Q. Okay. Have you been there?  
9 **A. I have.**  
10 Q. What did you observe?  
11 **A. There's the shed that they put their**  
12 **mobiles commotors in and there's their yard. Again,**  
13 **no -- no dust palliative.**  
14 Q. Next two pages. Do you recognize this?  
15 **A. I have.**  
16 Q. What is it?  
17 **A. It's an oil terminal up in -- outside of**  
18 **Reno.**  
19 Q. Okay. And you've been there?  
20 **A. I have.**  
21 Q. What have you observed there?  
22 **A. Your typical rail yard, no dust**  
23 **palliative. Type two down to -- to go ahead and**  
24 **keep water from -- everything sinking.**  
25 Q. You recognize this?

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1 **A. I do.**  
2 Q. What is this?  
3 **A. Can I clarify, the last one was a**  
4 **(indiscernible), this is the -- the real oil site.**  
5 **It's -- they bring hot oil in, they put in the tank**  
6 **so they go through and mix it to go through and take**  
7 **it to the asphalt plants. There's a rail line and**  
8 **there's all the unpaved facility around it. And**  
9 **this is not paved at all.**  
10 Q. Have you been there?  
11 **A. I have.**  
12 Q. And that's what you have observed?  
13 **A. Correct. There's a -- this is the UP**  
14 **right -- right there again is the right of ways next**  
15 **it is not paved.**  
16 Q. Where is it?  
17 **A. This is outside Reno.**  
18 Q. The next two pages. What is this?  
19 **A. This downtown Reno. My grandfather used**  
20 **to work here. It's the old rail yard. Again, it's**  
21 **not paved. They call it a switching yard. Multiple**  
22 **tracks there to go through and put different cars**  
23 **and build different cars together, change**  
24 **directions, moving the cars.**  
25 Q. You've been there?

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1 **A. I have.**  
2 Q. And did you observe any dust palliative?  
3 **A. Not at all.**  
4 Q. So let's -- let's talk about ETON and  
5 Tonopah & Tidewater. I believe you testified  
6 earlier that ETON is -- does interstate commerce; is  
7 that right?  
8 **A. Correct. It has a DOT number and MC**  
9 **number.**  
10 Q. And -- and then upon Tonopah & Tidewater,  
11 they -- they have product that does come through on  
12 rail; is that right?  
13 **A. Not today. It owns rail, but it does not**  
14 **produce that in this county. Produces stuff in**  
15 **other counties the -- the Railroad, turns to ETON to**  
16 **move for it.**  
17 Q. Okay. So -- so it's -- it's product does  
18 get moved out outside of -- into interstate commerce  
19 as well?  
20 **A. Correct.**  
21 Q. And -- and so some of the -- the Air  
22 Quality control regulations that ETON's been  
23 required to observe and find for, as well as Tonopah  
24 7 Tidewater, are -- are those burdens on the  
25 Railroad company?

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1 **A. And the trucking company, based on the**  
2 **other places where we work in that don't have that**  
3 **same sort of burden put upon interstate commerce.**  
4 Q. Okay. So with -- is it a burden on  
5 interstate commerce as well?  
6 **A. It is. It's not level playing field.**  
7 Q. So tell me -- tell me how it's a burden.  
8 **A. It's just a financial burden to -- to put**  
9 **it down and then maintain it. So you look up here**  
10 **in Reno to get a -- a terminal such as ETON in Reno**  
11 **there's no requirement to -- to pay Reno or in Ely**  
12 **or an Elko or in (indiscernible.)**  
13 Q. Okay. And -- and so, I think you've  
14 already testified, I don't think we have to go over  
15 them again, but you said that the financial expense,  
16 what -- what does that include you? We mentioned  
17 asphalt last time. Anything else?  
18 **A. Just the continuation of -- of maintaining**  
19 **the asphalt or the -- of the product or project or**  
20 **the property.**  
21 Q. Why would you have to maintain asphalt if  
22 you paint it?  
23 **A. It works out. It gets wet and it freezes**  
24 **and it gets water damage it -- it's not a standalone**  
25 **forever product. If you look at the freeways, you**

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<p>1 <b>see Las Vegas paving all the time out there,</b></p> <p>2 <b>currently putting -- fixing potholes. It's -- it's</b></p> <p>3 <b>not a onetime process.</b></p> <p>4 Q. And that's if you don't have tracked</p> <p>5 equipment; is that right?</p> <p>6 <b>A. That is correct. If you have tracked</b></p> <p>7 <b>equipment, then it becomes a -- a more onerous</b></p> <p>8 <b>responsibility to maintain it.</b></p> <p>9 Q. We -- we have talked about, you know,</p> <p>10 people you've consulted and everything, Rotor Mill</p> <p>11 chad versus (indiscernible) and I guess, let me stop</p> <p>12 here for just a minute. You -- you said that Jay</p> <p>13 Smith was the big proponent of chad; is that right?</p> <p>14 <b>A. Hugely.</b></p> <p>15 Q. Who's Jay Smith?</p> <p>16 <b>A. Oh, he's the president of Las Vegas</b></p> <p>17 <b>Paving.</b></p> <p>18 Q. Okay. And what -- did he say why he is a</p> <p>19 proponent of chad?</p> <p>20 <b>A. It's the most functional product for dust</b></p> <p>21 <b>control.</b></p> <p>22 Q. What does chad mean? What is it?</p> <p>23 <b>A. Limestone.</b></p> <p>24 Q. Okay. Just -- just a mineral; is that</p> <p>25 right?</p> <p>Page 51</p>	<p>1 application?</p> <p>2 <b>A. I do. Based on what the -- I have seen</b></p> <p>3 <b>the county do with their own property and the people</b></p> <p>4 <b>in the industry suggest it is the best method based</b></p> <p>5 <b>on tracked equipment.</b></p> <p>6 MR. GUBLER: I think I'm about done here,</p> <p>7 give me just (indiscernible.)</p> <p>8 HEARING OFFICER: Okay.</p> <p>9 MR. GUBLER: Can we take a quick break</p> <p>10 about --</p> <p>11 HEARING OFFICER: Okay.</p> <p>12 MR. GUBLER: -- about 10 minutes.</p> <p>13 HEARING OFFICER: It's 10:14, we'll come</p> <p>14 back in five minutes.</p> <p>15 MR. GUBLER: Thank you.</p> <p>16 (Recess at; 10:14 a.m. to 10:21 a.m.)</p> <p>17 BY MR. GUBLER:</p> <p>18 Q. Has the railroad company ever had any</p> <p>19 other terminals?</p> <p>20 <b>A. We -- we have.</b></p> <p>21 Q. Where -- where?</p> <p>22 <b>A. We've had one in EV Nevada, Elko, Nevada.</b></p> <p>23 <b>We've had one in Golconda, Nevada. We've had one in</b></p> <p>24 <b>Wendover, Nevada, and also Wendover, Utah.</b></p> <p>25 Q. In any of those -- in any of those</p> <p>Page 53</p>
<p>1 <b>A. Just limestone, yeah.</b></p> <p>2 Q. And did he expound on that or anything</p> <p>3 else?</p> <p>4 <b>A. He's not politically correct, so I -- I</b></p> <p>5 <b>won't say what he said.</b></p> <p>6 Q. Okay. So do you believe that the chad and</p> <p>7 the Rotor Mill are the best practical methods for</p> <p>8 the Railroad company and ETON?</p> <p>9 <b>A. For the people in the industry that I've</b></p> <p>10 <b>asked that have practical experience over sometimes</b></p> <p>11 <b>50, 60 years, they're still in business. I believe</b></p> <p>12 <b>their professional opinion is that that is the best</b></p> <p>13 <b>solution. As I've looked around and see what the</b></p> <p>14 <b>county has done with its properties, particularly</b></p> <p>15 <b>over North West Vegas airport, where it's quite</b></p> <p>16 <b>visible, the county also must agree with them</b></p> <p>17 <b>because they have applied Roto rMilling to the</b></p> <p>18 <b>properties adjacent to either the county air or</b></p> <p>19 <b>county (indiscernible) who runs the airport. That</b></p> <p>20 <b>department of the county has extensively over a</b></p> <p>21 <b>couple hundred -- maybe a hundred acres out there,</b></p> <p>22 <b>but their prospect is very important.</b></p> <p>23 Q. Similar question. Do you believe, the</p> <p>24 Rotor Mill chad are reason -- are the reasonable</p> <p>25 available methods for the Railroad and ETON's</p> <p>Page 52</p>	<p>1 terminals, did you have any regulatory people come?</p> <p>2 <b>A. We did. We had the county people come out</b></p> <p>3 <b>in -- in all of them.</b></p> <p>4 Q. And what did they say, if anything?</p> <p>5 <b>A. We pre-met them before we actually started</b></p> <p>6 <b>business and finding out what they wanted for</b></p> <p>7 <b>regulatory compliance to their respective county,</b></p> <p>8 <b>and we complied. And all of them wanted some sort</b></p> <p>9 <b>of dust abatement, coming in as a new facility. And</b></p> <p>10 <b>they all accepted ROTO-MILL as the dust pallet that</b></p> <p>11 <b>they accepted as best practical, or most best</b></p> <p>12 <b>practicable, I think, is the term they used of that</b></p> <p>13 <b>nature that would suffice them.</b></p> <p>14 Q. Did you have any other issues with them?</p> <p>15 <b>A. No. They would come up -- oh, after we</b></p> <p>16 <b>got commissioned, they would come out and go through</b></p> <p>17 <b>and check to make sure we're in compliance and they</b></p> <p>18 <b>would come by every six months or so.</b></p> <p>19 Q. Now, going back, if we had -- we -- we had</p> <p>20 talked about credentials quite a bit last time. I</p> <p>21 believe your testimony was -- is that nobody had</p> <p>22 ever presented credentials to you; is that right,</p> <p>23 from the county?</p> <p>24 <b>A. From the -- from the Air Quality Control?</b></p> <p>25 Q. Correct.</p> <p>Page 54</p>





<p>1 <b>A. Nobody came through and said, my name is</b> 2 <b>so and so, here is my credentials. Nobody came with</b> 3 <b>-- with that (indiscernible).</b> 4 Q. Okay. If they had requested to come on 5 the property and presented their credentials, would 6 you have let them on? 7 <b>A. Yes. That's what the statute or the code</b> 8 <b>that I signed stated. And yes, I would let them on.</b> 9 MR. GUBLER: I'm going to pass the 10 witness. 11 HEARING OFFICER: Okay. Thank you. 12 Counsel, cross. 13 MS. JORGENSEN: Thanks. 14 EXAMINATION 15 BY MS. 16 Q. Could we go to exhibit -- let me make sure 17 I get this right. This is part of Air Quality's 18 reply, Exhibit A, the dust control operating permit. 19 Okay. Mr. Truman, do you recognize what this 20 document is? 21 <b>A. Yeah.</b> 22 Q. And could you go ahead and please scroll 23 through the whole thing. And feel free to, Mr. 24 Truman, have her stop whenever you'd like. Okay. 25 Before you continue on. So, Mr. -- go ahead and</p> <p>Page 55</p>	<p>1 Q. And then who's the responsible official? 2 <b>A. Myself.</b> 3 Q. And when was this issued or when did it 4 become effective, I guess, is a better way to say 5 it? 6 <b>A. Based on the document, it says on August</b> 7 <b>30th.</b> 8 Q. Do you have any reason to believe that it 9 should be something different? 10 <b>A. Not a sheer document. So I -- I don't</b> 11 <b>have any reason to believe.</b> 12 Q. But this is -- isn't this your ETON's dust 13 control operating permit? 14 <b>A. It is, but I -- I just don't know where I</b> 15 <b>signed it, so that's a little bit of a quandary.</b> 16 Q. Okay. So you don't -- you don't recall 17 applying for a dust permit? 18 <b>A. I applied. I know I applied for one, I</b> 19 <b>just don't know if the dates are correct. I mean,</b> 20 <b>there's no -- there's no subject on my end.</b> 21 Q. Okay. So since this isn't signed, you 22 don't -- you don't believe that this is necessarily 23 correct? 24 <b>A. I'm not arguing with you about that, I</b> 25 <b>just don't know that it's -- it's -- the dates are</b></p> <p>Page 57</p>
<p>1 stop there. Mr. Truman, do you recognize what that 2 document is? 3 <b>A. I -- I've not seen it in that format</b> 4 <b>before. I would imagine it's equal to the one that</b> 5 <b>was electronically on your website.</b> 6 Q. Okay. Could you go to the first page? 7 Okay. So you're saying you haven't seen this actual 8 format yet? 9 <b>A. The one I thought I saw when I was there</b> 10 <b>was when we were on your website and we did</b> 11 <b>everything electronically on the website.</b> 12 Q. So what do you recognize this to be? 13 <b>A. A pulled off version of what was on your</b> 14 <b>website?</b> 15 Q. Of what? 16 <b>A. Of a dust permit? The DCOP.</b> 17 Q. And does the DCOP, is this the one -- is 18 the permit ETON? 19 <b>A. Yes. That's what it says on the document.</b> 20 Q. And is this a permit you applied for on 21 behalf of ETON? 22 <b>A. It is.</b> 23 Q. And who's the designated onsite 24 representative? 25 <b>A. Most probably myself.</b></p> <p>Page 56</p>	<p>1 <b>right, but I believe it's your document.</b> 2 Q. So what authority did you have to perform 3 any dust or perform any construction on the site 4 under the Air Quality regulations? 5 <b>A. I acknowledge I -- I applied for one, I</b> 6 <b>just don't remember what dates are correct. But if</b> 7 <b>there was a signature that I would've signed and put</b> 8 <b>a date by it, then I would've known for sure that</b> 9 <b>this is the correct document.</b> 10 Q. What dates do you think they could have 11 been if these aren't the correct dates? 12 <b>A. You know, I don't know.</b> 13 Q. Okay. Could you scroll down just a little 14 on this first page? Mr. Truman, could you -- I 15 don't know if this is -- well, do you recall -- 16 actually, could we go to the third page? And I 17 believe you stated that -- or recognized that you're 18 the responsible official; is that correct? 19 <b>A. Correct.</b> 20 Q. Okay. And I believe it's that second 21 paragraph down. 22 <b>A. Can I make a comment?</b> 23 Q. You want to make a comment? 24 <b>A. We -- I ordered, excuse me, I -- I did two</b> 25 <b>dust control permits, one for a property over on</b></p> <p>Page 58</p>



<p>1 Jones, and for this one. So that's why I am --</p> <p>2 there was a time frame that we were going to move on</p> <p>3 to Jones, that property fell through, so that's why</p> <p>4 I'm -- I'm little bit --</p> <p>5 Q. Okay. So you applied for them both at the</p> <p>6 same time or approximately the same time?</p> <p>7 A. About a month -- month and a half</p> <p>8 difference between the two of them. So that's why I</p> <p>9 --</p> <p>10 Q. Okay.</p> <p>11 A. -- I hesitate to tell you for sure that</p> <p>12 this is the date.</p> <p>13 Q. Okay. That second paragraph says, "By</p> <p>14 submitting this commitment application</p> <p>15 electronically, the user responsible official</p> <p>16 acknowledges the following." And I'm reading B. "In</p> <p>17 accordance with the DCOP and the AQRs, the applicant</p> <p>18 and the permittee shall consent to inspection of the</p> <p>19 site during normal hours of operation, by Division</p> <p>20 of Air Quality, DAQ, staff without prior notice to</p> <p>21 determine compliance with the terms and conditions</p> <p>22 of the DCOP and the AQRs." Do you recall that</p> <p>23 particular acknowledgement?</p> <p>24 A. Based on, again, that your requirements</p> <p>25 would be met firsthand, that your people would show</p> <p style="text-align: right;">Page 59</p>	<p>1 I'm asking you --</p> <p>2 A. Your website did.</p> <p>3 Q. That's what I'm asking. So your --</p> <p>4 A. Your website presented that the -- there's</p> <p>5 the -- the code, and the people who would show up</p> <p>6 would present credentials and ask to come on site.</p> <p>7 Q. And that it -- your testimony is that you</p> <p>8 researched that prior to submitting this</p> <p>9 application?</p> <p>10 A. Correct.</p> <p>11 Q. So back in -- sometime in August 2023, you</p> <p>12 went and reviewed the Clark County Air Quality</p> <p>13 Regulations --</p> <p>14 A. It was probably --</p> <p>15 Q. -- and determined that -- that that would</p> <p>16 be required?</p> <p>17 A. Probably in June when we looked at the</p> <p>18 other piece of property.</p> <p>19 Q. And when you say, "we," who do you mean?</p> <p>20 A. Myself. Sorry.</p> <p>21 Q. Okay. So when -- on -- on January 8th,</p> <p>22 when Ms. Rowsell, came on site, I believe you had</p> <p>23 testified that you were notified that there was an</p> <p>24 intruder on site; is that correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 61</p>
<p>1 up, present credentials and ask to go on the site.</p> <p>2 Q. And --</p> <p>3 A. Based on your own -- based on your own</p> <p>4 code, is what I signed that, that you would do that</p> <p>5 first.</p> <p>6 Q. So it's your testimony today that you did</p> <p>7 some research, found that, and then you felt</p> <p>8 comfortable signing this document?</p> <p>9 A. We live in the country based on rule of</p> <p>10 law, yes, ma'am.</p> <p>11 Q. So does this document -- does it state in</p> <p>12 that particular section that they would need to</p> <p>13 request entry and present credentials based on this</p> <p>14 dust control operating permit provision?</p> <p>15 MR. GUBLER: Objection. Document speaks</p> <p>16 for itself.</p> <p>17 THE WITNESS: Do I respond?</p> <p>18 HEARING OFFICER: I'll allow.</p> <p>19 MS. JORGENSEN: Please go ahead.</p> <p>20 HEARING OFFICER: Yeah. Respond.</p> <p>21 THE WITNESS: I signed it based on the</p> <p>22 information that you presented before I signed this.</p> <p>23 So this is how it would go down.</p> <p>24 BY MS. JORGENSEN:</p> <p>25 Q. Well, I didn't present any information.</p> <p style="text-align: right;">Page 60</p>	<p>1 Q. And when you -- did you locate her?</p> <p>2 A. Yes.</p> <p>3 Q. And where was she?</p> <p>4 A. She was at the back part of the property,</p> <p>5 so I have to say the east -- northeast part of the</p> <p>6 property?</p> <p>7 Q. Okay. And what did you do?</p> <p>8 A. I went up to try find out why she was</p> <p>9 there. Tried to open her door, her door was locked.</p> <p>10 And then she rolled her door down and -- and then I</p> <p>11 asked her, what are you doing here?</p> <p>12 Q. And what did she say?</p> <p>13 A. She told me that she was with some agency.</p> <p>14 Q. She didn't mention which agency it was?</p> <p>15 A. I -- I -- I can't recall what agency she</p> <p>16 told me --</p> <p>17 Q. Okay.</p> <p>18 A. -- at this time.</p> <p>19 Q. Did she give you a business card?</p> <p>20 A. Can't remember.</p> <p>21 Q. Was she in a vehicle with a -- any sort of</p> <p>22 logo with insignia on it?</p> <p>23 A. Didn't even look.</p> <p>24 Q. Okay. And what else -- so she said she's</p> <p>25 with some agency, and what did you do next?</p> <p style="text-align: right;">Page 62</p>



1 **A. Asked her to leave -- asked her to sign in**  
2 **and then -- hold on, let me rephrase this in my**  
3 **mind. Open up the door up there, rolled the window**  
4 **down. We had the dialogue of -- we have a hazardous**  
5 **material here in the back. And then she tells me**  
6 **that she's qualified because her husband has some**  
7 **hazardous material training. I said, that doesn't**  
8 **work for me or the -- the feds. And I said, you**  
9 **know what, you need to sign in, and then dialog goes**  
10 **something of that nature, then she leaves.**  
11 Q. Did she sign in?  
12 **A. No, she didn't.**  
13 Q. And did you call the police?  
14 **A. I know she left the property.**  
15 Q. If she had stayed longer, would you have  
16 called the police?  
17 **A. Absolutely.**  
18 Q. So on January 9th, when you received a  
19 call that there were intruders on the property,  
20 you've testified that you received that information  
21 from, I believe it's Mr. Stickler (phonetic)?  
22 **A. Oh, Billy? Yeah.**  
23 Q. Why don't you tell me about that  
24 encounter?  
25 **A. Got a call, Nextel. Went out and we saw a**

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1 **gentleman. I remember seeing him leave his car, go**  
2 **to the restroom and came back out the restroom. And**  
3 **I approached the three of them. Wanted to know what**  
4 **they -- what they were doing.**  
5 Q. And what did they tell you?  
6 **A. He said he was from the government agency**  
7 **and I -- I --**  
8 Q. Again, you had no idea what government  
9 agency?  
10 **A. No. The sustainability, you've changed**  
11 **the name. So I -- I probably didn't pay attention**  
12 **to what he was, but I got that he was from --**  
13 **probably from the county. Want to know why I tried**  
14 **to open the door of his employee or somebody has**  
15 **oversight of. And I let her know and she was backed**  
16 **by some material that was hazardous, that she had no**  
17 **business being back there. She didn't check in.**  
18 **And then we had the altercation of he had**  
19 **any training, and then we go back to -- force open**  
20 **of the (indiscernible). And then I said, okay. So**  
21 **you're telling me that you can just walk into the**  
22 **Nevada test site and just get onsite without having**  
23 **to go through the clearance process? And he says,**  
24 **yes.**  
25 **And then I said, okay. Do you have a Q**

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1 **clearance? And he says, yes. I asked him, could**  
2 **you produce that? And then he backtracks on his**  
3 **ability to have a Q clearance. And then I remind**  
4 **him, I said, by the way, do you know that the test**  
5 **site is in Nye County? And Clark County has no**  
6 **authority in Nye County? And he just looks stupid**  
7 **at me.**  
8 Q. So during this entire conversation, you  
9 had no idea they are from Air Quality?  
10 **A. I knew he was there from the county.**  
11 Q. Did you have any idea that they were there  
12 based on the dust control operating permit that you  
13 had applied for and received?  
14 **A. Never presented any credentials to me,**  
15 **ma'am.**  
16 Q. No. I'm just asking, did you have any  
17 idea that they were relayed there for Air Quality?  
18 **A. No.**  
19 Q. Did you see their vehicle that they were  
20 in?  
21 **A. All I recall, it was a dual cab Ford.**  
22 Q. And do you recall seeing any sort of  
23 insignia on the -- on the car itself?  
24 **A. Wasn't looking for one, so I did not see**  
25 **it.**

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1 Q. Did you happen to see that they had badges  
2 around their necks?  
3 **A. They -- if I did, they were not**  
4 **outstanding enough to call my attention to them.**  
5 **Like a -- a police officer is -- no, I did not**  
6 **notice that they had badges around their necks.**  
7 Q. Okay. And did -- did you recall that Mr.  
8 Dean gave you a business card?  
9 **A. I do not.**  
10 Q. Is that site, the Stratford site, similar  
11 to the Nevada test site?  
12 **A. Secured facility, yes, ma'am.**  
13 Q. So do all of your employees -- what did  
14 you call it, a Q?  
15 **A. That's not part of our -- our security**  
16 **plan, but the --**  
17 Q. So then it's different from the Nevada  
18 test site then?  
19 **A. Everybody has their uniqueness of their**  
20 **site.**  
21 Q. So what is stored on that site?  
22 **A. On our site?**  
23 Q. Yeah.  
24 **A. From time to time we have ammonium per**  
25 **clay, we have ammonium nitrate, we've had chlorine,**

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<p>1 we've had caustic soda, we've had depleted uranium, 2 we've had americium. 3 Q. And who's in charge of that? 4 A. It comes and goes. We're a trucking 5 company on the ETON site, so we're for hire. So if 6 the -- if anybody wants to hire us, well, we hire to 7 them and we hold their products for them. 8 Q. So ETON owns vehicles -- owns trucks? 9 A. Yes. That's what the trucking company 10 does. 11 Q. How many trucks does ETON own? 12 A. Less than 40, maybe. 13 Q. And does ETON have authorization to be on 14 the property, the -- the Stratford property? 15 A. Yes. There's a lease. 16 MS. JORGENSEN: Okay. Could we go to 17 that. Lease? 18 THE CLERK: Five? 19 MS. JORGENSEN: It's under response number 20 -- Exhibit 5. 21 THE CLERK: (Indiscernible) the same. 22 MS. JORGENSEN: No. I'm sorry, it's under 23 response. Under ETON's response. Oh, yeah. Put a 24 written explanation and then scroll down to number 25 5. Yeah. Okay.</p> <p>Page 67</p>	<p>1 MS. JORGENSEN: Go ahead and scroll 2 wherever he would like you to go. 3 THE WITNESS: Go down. Let's find out 4 where the -- hold on. So this one truncated on 5 December 31st. 6 BY MS.(inaudible)? 7 Q. Well, it does say, "Should the tenant 8 remain in possession of the premises with the 9 consent of the landlord, after the natural 10 expiration of this lease, a new tenancy for 11 month-to-month will be created between the landlord 12 and tenant." 13 A. Okay. 14 Q. So I'm just -- so is this lease expired? 15 Is that your position? 16 A. Term -- term ends upon 12:00 noon of 17 December 31st -- 18 Q. Okay. 19 A. -- of '23. A new one was issued between 20 Tonopah and ETON -- ETON Corporation. There's two 21 different companies. There's ETON, which is 22 Environmental Transportation Nevada, and there's 23 another corporation called ETON Corporation. One's 24 an LLC. The ETON is an LLC and the other one's a 25 corporation.</p> <p>Page 69</p>
<p>1 BY MS. JORGENSEN: 2 Q. And if you could take a look at this, Mr. 3 Truman. Is this the lease -- a copy of the lease 4 you're referring to? 5 A. No. There would be one that follows up on 6 this one. 7 Q. I'm sorry, say that again? 8 A. There'll be a -- a secondary one that 9 follows up on this one. 10 Q. So there's a lease that -- there's another 11 lease? 12 A. Correct. It wasn't germane to the -- the 13 case, so we didn't present it or I didn't present it 14 to -- to counsel. 15 Q. Oh, okay. So when did that lease become 16 effective? 17 A. It would've gone -- would've gone the next 18 day, but it went from ETON to ETON Transportation 19 Company. So it was -- the name was changed. 20 Q. Okay. Wait. So let me -- so you have 21 another lease with Tonopah and Tidewater or you have 22 another lease or this -- is this lease still in 23 effect? 24 A. No. I think it truncated. Let's go back 25 and look at the --</p> <p>Page 68</p>	<p>1 Q. So which one applied for the dust control 2 operating permit? 3 A. ETON. 4 MS. JORGENSEN: Could you scroll to the 5 top of that lease? Okay. 6 BY MS. JORGENSEN: 7 Q. So which lease -- who's the ETON in this 8 lease? 9 A. The Environmental Transportation --- 10 Environmental Transportation Nevada is the acronym 11 for -- for ETON. 12 Q. Don't they both have a -- I have -- let's 13 see -- 14 A. So ETON has a DOT number, ETON or ETON 15 Corporation does not have a DOT number. It's -- 16 Q. So Environmental Transportation Nevada 17 LLC. DBA ETON? 18 A. Correct. 19 Q. And then there is Environmental 20 Transportation Nevada. Oh, no. That's the DBA one 21 again. 22 A. And then if you were coming up -- 23 Q. Then ETON Transportation Corporation? 24 A. And then there's the -- yes. 25 Q. So there's two or there's three?</p> <p>Page 70</p>



1 **A. There's two different companies.**  
2 Q. Okay.  
3 **A. This one is ETON, is Environmental**  
4 **Transportation Nevada.**  
5 Q. And how do you know that?  
6 **A. Because I -- I did the -- the -- the thing**  
7 **on the website for the dust control.**  
8 Q. No. I mean how do you know how -- from  
9 the -- from this commercial lease, how do you know  
10 which one it is?  
11 **A. The other one is the ETON Corp. That's**  
12 **how we keep them separate in terms of -- for tax and**  
13 **for leases.**  
14 Q. Okay. So it's your testimony that this  
15 lease is related to --  
16 **A. The LLC.**  
17 Q. -- the LLC?  
18 **A. Uh-huh.**  
19 Q. Okay. This is the lease. And then it's  
20 your testimony that subsequent to December 31st,  
21 2023 --  
22 **A. Three.**  
23 Q. -- that the Corp --  
24 **A. Entered into --**  
25 Q. -- entered into a separate lease with --

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1 **A. Tonopah and Tidewater.**  
2 Q. -- Tonopah Tidewater. Okay.  
3 **A. It was the end of the tax year.**  
4 Q. So when you amend or as the responsible  
5 official sought to revise the dust control operating  
6 permit, was that as the LLC or the corporation?  
7 **A. So the LLC pulled the dust permit.**  
8 Q. Okay. Pulled the dust permit. And then  
9 who revised the permit?  
10 **A. The LLC.**  
11 Q. So does the LLC -- does the -- so this is  
12 the LLC, right, the -- the permit or the lease that  
13 expired in December 31st?  
14 **A. Okay. Are we talking about this document**  
15 **here?**  
16 Q. I'm just trying to figure out --  
17 **A. So the LLC did the -- did the construction**  
18 **work on the Stratford property.**  
19 Q. So the LLC -- and the LLC also had this  
20 particular lease?  
21 **A. Correct.**  
22 Q. Okay. And then this lease expired. Did  
23 the LLC have authority to be on that property after  
24 December 31st, 2023?  
25 **A. The LLC had no equipment.**

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1 Q. But didn't the LLC pull -- revise the dust  
2 control operating permit?  
3 **A. That's correct. But it owns no equipment**  
4 **--**  
5 Q. No. I'm just saying, did they have  
6 authority to be on that property?  
7 **A. After the date?**  
8 Q. After December 31st, 2023.  
9 **A. What I'm trying to tell you is they were**  
10 **gone.**  
11 Q. So when you revised the dust control  
12 operating permit on behalf of the LLC, no one --  
13 ETON wasn't -- the LLC wasn't there anymore?  
14 **A. Restate the -- the questions again,**  
15 **please.**  
16 Q. Okay. So let me make sure I understand.  
17 So ETON LLC and then ETON Corp. ETON LLC entered  
18 into the permit, dust control operating permit, as  
19 well as this commercial lease that expired on  
20 December 31st, 2023?  
21 **A. Correct.**  
22 Q. Okay. So that's DCOP and lease with  
23 Tonopah Tidewater through 12/31/23.  
24 **A. So --**  
25 Q. And then it's your testimony that after

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1 12/31/23, ETON Corp entered into a lease with  
2 Tonopah and Tidewater effective what, January 1st,  
3 2024?  
4 **A. Correct.**  
5 Q. Okay.  
6 **A. But the LLC still had to finish its scope**  
7 **of work until the dust permit was done.**  
8 Q. Okay. So the LLC has authority to -- had  
9 during -- well, does ETON LLC have authority to be  
10 on the Tonopah and Tidewater property right now?  
11 **A. It -- yes.**  
12 Q. Okay. And what is that based on, an oral  
13 agreement? Is that based on a written agreement?  
14 **A. Just month-to-month rental of -- of yard**  
15 **-- of truck spaces, as we call them.**  
16 Q. Okay. Month-to-month rental. And is that  
17 based on a written document?  
18 **A. No. It's just -- well...**  
19 Q. And when did it become month-to-month?  
20 **A. Through the first of the year '24.**  
21 Q. So can you scroll down to that -- let's  
22 see. Scroll down again. So keep scrolling. So  
23 under term it says, "The term of the lease commences  
24 at noon on September 1st, and ends noon on December  
25 31st?"

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<p>1 And then under 6 it says, "Should the</p> <p>2 tenant remain in possession of the premises with the</p> <p>3 consent of the landlord after the natural expiration</p> <p>4 of the lease, a new tenancy for month-to-month will</p> <p>5 be created between the landlord and tenant, which</p> <p>6 will be subject to all the terms and conditions of</p> <p>7 this lease, but will be terminable upon either party</p> <p>8 giving one month's notice to the other party." So is</p> <p>9 it your testimony that the LLC is not continuing to</p> <p>10 operate under this lease?</p> <p>11 <b>A. Yes. Just like number 5 says, it ended on</b></p> <p>12 <b>noon.</b></p> <p>13 Q. Right. But didn't -- it says, "The tenant</p> <p>14 remain in possession of the premises with the</p> <p>15 consent of the landlord, then a new tenancy for</p> <p>16 month to month will be created." So you're saying</p> <p>17 that didn't occur?</p> <p>18 <b>A. It did not occur.</b></p> <p>19 Q. Did anything change from December 31st,</p> <p>20 2023 to January 1st, 2024 with respect to how ETON,</p> <p>21 LLC. Operated?</p> <p>22 <b>A. No. They just went to -- to</b></p> <p>23 <b>month-to-month on per truck basis.</b></p> <p>24 Q. But that is just something that's --</p> <p>25 there's nothing in writing about that?</p> <p>Page 75</p>	<p>1 <b>into the agreement to -- to do, is go ahead and do</b></p> <p>2 <b>the dust permit.</b></p> <p>3 Q. Okay. Is there another document that</p> <p>4 talks about agreement for the dust permit? Because</p> <p>5 I don't believe there's anything in this lease that</p> <p>6 talks about the dust permit.</p> <p>7 <b>A. No.</b></p> <p>8 Q. So that was also just an oral agreement?</p> <p>9 <b>A. It was just company -- corporate notes</b></p> <p>10 <b>between the two companies. Corporate -- you have</b></p> <p>11 <b>your corporate meetings, you have your corporate --</b></p> <p>12 <b>there's a term you use when you go through and</b></p> <p>13 <b>somebody writes the notes in the corporate meetings.</b></p> <p>14 <b>Corporate --</b></p> <p>15 Q. Like the minutes.</p> <p>16 <b>A. Thank you.</b></p> <p>17 Q. Okay. I don't know if you -- if you</p> <p>18 recall, but in the response that ETON submitted in</p> <p>19 response to these two notices of violation, it</p> <p>20 states that ETON did -- had no right to be on the</p> <p>21 property after December 31st, 2023. Is that a true</p> <p>22 statement?</p> <p>23 <b>A. In the -- in the position that they --</b></p> <p>24 <b>first position they had, that is correct. That came</b></p> <p>25 <b>back in the second position just as month-to-month</b></p> <p>Page 77</p>
<p>1 <b>A. No. Just internal.</b></p> <p>2 Q. Internal?</p> <p>3 <b>A. Uh-huh.</b></p> <p>4 Q. What do you mean by internal?</p> <p>5 <b>A. It's -- it's a common ownership between</b></p> <p>6 <b>all the companies.</b></p> <p>7 Q. So between the two different -- the two</p> <p>8 same owners, they've agreed with themselves that</p> <p>9 it's going to be month-to-month?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Okay. But nothing changed between this</p> <p>12 one and -- and the oral agreement?</p> <p>13 <b>A. So this lease was terminated on the set</b></p> <p>14 <b>date.</b></p> <p>15 Q. So where it says, "Rent \$10,000," what is</p> <p>16 the rent amount now?</p> <p>17 <b>A. Again, it's by the truck that's parked on</b></p> <p>18 <b>the property.</b></p> <p>19 Q. So how much per truck?</p> <p>20 <b>A. It's \$400 per truck, per month.</b></p> <p>21 Q. And is there -- and there was an agreement</p> <p>22 to allow ETON, LLC. To hold a dust control</p> <p>23 operating permit for the Tonopah and Tidewater water</p> <p>24 property?</p> <p>25 <b>A. Correct. That's what they were entering</b></p> <p>Page 76</p>	<p>1 <b>customer.</b></p> <p>2 Q. So they did have a right to be there for</p> <p>3 purposes of the dust control operating permit?</p> <p>4 <b>A. Say that again.</b></p> <p>5 Q. They did have a right to be there for</p> <p>6 purposes of the dust control operating permit?</p> <p>7 <b>A. In my mind that is --</b></p> <p>8 MR. GUBLER: I'm just going to -- I'm</p> <p>9 going to object as to -- it's the -- the question's</p> <p>10 vague. What time frame are we talking about?</p> <p>11 BY MS. JORGENSEN:</p> <p>12 Q. Well, let's actually, let's go to the --</p> <p>13 the document. Let's go to the response. Sorry,</p> <p>14 just give me a second (indiscernible). Okay. Could</p> <p>15 you go to page 4? I'm sorry. Go to the bottom of</p> <p>16 page 3. Okay. So number 6, it says, "ETON obtained</p> <p>17 a dust control permit for grubbing effective August</p> <p>18 31st -- August 30th, 2023. And that's ETON, LLC.;</p> <p>19 is that correct?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. Okay. And then if we go to number 7.</p> <p>22 During its occupancy, ETON performed services for</p> <p>23 the railroad company," that's referencing Tonopah</p> <p>24 and Tidewater, "at the property in the assistance of</p> <p>25 its business of moving goods across state lines and</p> <p>Page 78</p>



1 interstate commerce." Is that a true statement?  
2 **A. Yes.**  
3 Q. "The lease concluded on December 31st,  
4 2023"; is that correct?  
5 **A. Yes.**  
6 Q. And then since January 1st, 2024, the  
7 railroad company has occupied the property, the  
8 railroad company never applied for or executed a  
9 dust control permit; is that correct?  
10 **A. Correct.**  
11 Q. And -- but is it also correct that ETON  
12 applied for and executed a dust control permit on  
13 behalf of, or for the purpose of Tonopah and  
14 Tidewater property; is that correct?  
15 **A. So there's a -- there was -- in our -- we**  
16 **would term it -- there was a commercial transaction**  
17 **between Tonopah and Tidewater to the LLC company to**  
18 **do a scope of work, which was to go through and get**  
19 **the dust permit, get the site ready for the**  
20 **transaction, or the sunseting of the dust permit**  
21 **was what they were employed to do.**  
22 **So there's two transaction. One is the**  
23 **lease to the property, two is the -- the**  
24 **construction or the transaction that's necessary to**  
25 **go ahead and get the site in compliance with**

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1 **respective statewide plan.**  
2 Q. Okay. So when did they -- so when did  
3 ETON complete its responsibilities under the dust  
4 control operating permit for Tonopah and Tidewater?  
5 **A. I think when it sunsetted sometime in --**  
6 **whatever the -- the gear period would've come around**  
7 **from its inception and the material, the ROTO-MILL,**  
8 **was put on site.**  
9 Q. Okay. So ETON did have authority to be on  
10 the property after December 31st, 2023 for purposes  
11 of the dust control operating permit?  
12 **A. I'm confused how you're -- you're --**  
13 **you're co-joining the equipment side and the action**  
14 **of the dust permit. Can we break them apart?**  
15 Q. I'm trying to figure out what's going on  
16 with respect to these.  
17 **A. Can we break them apart, because they're**  
18 **not aligned, they're broken apart.**  
19 Q. Sure. Sure. Go ahead.  
20 **A. You have -- the dust control permit is a**  
21 **function that has nothing to -- to do -- to -- to --**  
22 **to get it, to pay the fine -- to pay the fees to go**  
23 **ahead and do that part. And then the**  
24 **transportation, you're trying to conjoin it in my**  
25 **mind --**

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1 Q. I'm just trying to -- I'm just kind of  
2 following along with this. So I just -- let me just  
3 -- I'll ask it one more time, see if I -- we can  
4 settle on something. So the entire time that -- so  
5 ETON has authority to be on the -- on the Tonopah  
6 and Tidewater property. I'm just -- just generally,  
7 they have authority to be there.  
8 **A. So on the -- on -- on the trucking side or**  
9 **the -- the dust permit side? Because we need to**  
10 **sort of break them apart.**  
11 Q. Okay.  
12 **A. Does that make sense?**  
13 Q. Sure. The trucking side, they have  
14 authority to be there?  
15 **A. After the 31st, it was month-to-month.**  
16 Q. Okay. And then with regard to the dust  
17 control operating permit?  
18 **A. They could be there wherever they need it**  
19 **to be, to go through -- so --**  
20 Q. Until it's -- until it's finished up  
21 closed out, it is -- they have authority to be on  
22 there for purposes of the dust control operating  
23 permit?  
24 **A. Yes.**  
25 Q. Okay.

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1 Q. Does that make sense that we separate the  
2 two functions?  
3 Q. Sure. Sure.  
4 MS. JORGENSEN: Okay. Could we go back to  
5 Exhibit A of the reply -- of Air Quality's reply?  
6 And if you could scroll to the end of that, there  
7 were some emails. Okay. Could you go to the  
8 beginning of those emails? Okay. Right there. So  
9 could you kind of just scroll through, so Mr. Truman  
10 has a chance to look at those?  
11 BY MS. JORGENSEN:  
12 Q. Mr. Truman, could you -- do the -- do you  
13 recognize these emails?  
14 **A. Yes. Sort of.**  
15 Q. And what do you recognize them to be?  
16 **A. Came from me on the 30th. Some questions**  
17 **and answer with their specialist. She asked a**  
18 **question, I answer.**  
19 Q. Okay. And so one of the last questions  
20 was, is this parcel going to be developed in the  
21 future? And then how did you respond?  
22 **A. So that was questioned on 239. I**  
23 **responded on 247. There were some trees to be taken**  
24 **down. So foundation for a water truck -- water tank**  
25 **trash.**

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<p>1 Q. Actually, I'm sorry, I think it goes the</p> <p>2 other direction. Make sure. Can you scroll? Yeah.</p> <p>3 So she asked the question at 237, you responded at</p> <p>4 247.</p> <p>5 <b>A. So do we need to go on?</b></p> <p>6 Q. Yeah. So it starts ---</p> <p>7 <b>A. Okay. So we're ---</b></p> <p>8 Q. -- reverse order.</p> <p>9 <b>A. So there's some trees we've taken down.</b></p> <p>10 <b>The site needs to be cleared to let the survey crew</b></p> <p>11 <b>to start coming down. We're going (indiscernible)</b></p> <p>12 <b>plan. And so we're going to go back up.</b></p> <p>13 Q. Yeah. You need to scroll back up.</p> <p>14 <b>A. Is the partial going to be build in the</b></p> <p>15 <b>future? Yes.</b></p> <p>16 Q. Okay. And what was -- on August 30th when</p> <p>17 you responded yes, what was the purpose of -- what</p> <p>18 did you mean by developed in the future? What was</p> <p>19 going to be developed?</p> <p>20 <b>A. Just a rail yard. Just a rail support</b></p> <p>21 <b>yard.</b></p> <p>22 Q. And did you ever amend your permit to</p> <p>23 indicate that it was going to become a rail yard or</p> <p>24 rail support yard?</p> <p>25 <b>A. Did she respond back with -- with another</b></p> <p style="text-align: right;">Page 83</p>	<p>1 <b>with anything the railroad does. Doesn't come out</b></p> <p>2 <b>and look at their rail specs, doesn't come out and</b></p> <p>3 <b>find out the -- the rail ties on them --</b></p> <p>4 Q. Okay. Is there anything on this property</p> <p>5 on -- I keep forgetting the name.</p> <p>6 <b>A. Stratford.</b></p> <p>7 Q. Thank you. On the Stratford property,</p> <p>8 that is indicative that it's a railroad or are there</p> <p>9 any tracks on that property?</p> <p>10 <b>A. If you look at state statutes --</b></p> <p>11 Q. No. I'm just asking about the property</p> <p>12 itself. Is there anything on there that ---</p> <p>13 <b>A. Yeah. There's some issues the equipment</b></p> <p>14 <b>that supports rail, transloading.</b></p> <p>15 Q. Is there any -- are there any tracks on</p> <p>16 that property that are laid down?</p> <p>17 <b>A. No.</b></p> <p>18 Q. And I - I want to make sure that I get a</p> <p>19 yes or no answer on this. Is this -- is Tonopah and</p> <p>20 Tidewater a federally recognized railroad?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Okay.</p> <p>23 <b>A. It's been given an exemption.</b></p> <p>24 Q. So is ETON -- I'm sorry?</p> <p>25 <b>A. It's been given an exemption from -- from</b></p> <p style="text-align: right;">Page 85</p>
<p>1 <b>question?</b></p> <p>2 Q. No. I'm just asking you, when did you</p> <p>3 intend to develop it in the future?</p> <p>4 <b>A. Not that I know of. And the other --</b></p> <p>5 <b>other facilities we've dealt with, they're</b></p> <p>6 <b>considered or treated like a utility, and the county</b></p> <p>7 <b>typically doesn't give the water district or Nevada</b></p> <p>8 <b>Power or any of the utilities oversight. They --</b></p> <p>9 <b>they push that back or give that to the utilities to</b></p> <p>10 <b>maintain their own issues.</b></p> <p>11 <b>Just like Nevada or Southwest Gas, you</b></p> <p>12 <b>don't have a -- a crew or people going through and</b></p> <p>13 <b>look at their -- their workmanship or what they do.</b></p> <p>14 <b>You treat them as utilities. And --</b></p> <p>15 Q. So is is ETON a utility?</p> <p>16 <b>A. Tonopah and Tidewater is a railroad.</b></p> <p>17 Q. Is Tonopah and Tidewater a railroad under</p> <p>18 federal law?</p> <p>19 <b>A. Federal, no. State.</b></p> <p>20 Q. So it's -- okay. So it's your testimony,</p> <p>21 Tonopah and Tidewater is a state recognized</p> <p>22 railroad?</p> <p>23 <b>A. And just like the -- the county, when the</b></p> <p>24 <b>railroad brings a -- or builds up a shoo fly or puts</b></p> <p>25 <b>another bridge over, the county doesn't get involved</b></p> <p style="text-align: right;">Page 84</p>	<p>1 <b>oversight, but go ahead.</b></p> <p>2 Q. Oh, wait. So when did that happen?</p> <p>3 <b>A. It's in the federal register. That's</b></p> <p>4 <b>where we put an issue for exemption. It was a Class</b></p> <p>5 <b>III railroad.</b></p> <p>6 Q. Okay. So I believe that exemption -- Can</p> <p>7 we go to exhibit -- let's see. This is back to --</p> <p>8 well, let's look -- it's back to the NRF. The --</p> <p>9 <b>A. No. It -- it'll be the federal register.</b></p> <p>10 Q. No, I'm sorry. I'm trying to help her</p> <p>11 find where it's located. Let's see. It's back to</p> <p>12 ETON's Response Exhibit 3, I believe. Under written</p> <p>13 explanation?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Oh, thank you. Okay.</p> <p>16 <b>A. The --</b></p> <p>17 Q. So this is when you're referencing that</p> <p>18 this -- that the Tonopah and Tidewater became a --</p> <p>19 <b>A. No.</b></p> <p>20 Q. Okay. So which one are you talking about?</p> <p>21 <b>A. This is where we request exemption from</b></p> <p>22 <b>oversight from the FRA. That's what the -- the --</b></p> <p>23 <b>the whole exemption is.</b></p> <p>24 Q. Can you scroll to the top of the second</p> <p>25 column? So it says, "TTRR will become a Class III</p> <p style="text-align: right;">Page 86</p>



1 rail carrier. TTR certifies that it's projected  
2 revenues" -- okay. It goes on talks about Class  
3 III. So this notice is about becoming a Class III  
4 railroad; isn't that correct?  
5 **A. No. Again, Class III railroad is --**  
6 **Q. Okay. Why don't we scroll down to the**  
7 **beginning of this. And why don't you go ahead and**  
8 **read that for us.**  
9 **A. For the beginning?**  
10 **Q. Where it says to Tonopah and Tidewater**  
11 **Railroad Company, a non-carrier has filed a verified**  
12 **-- go ahead and read that file.**  
13 **A. "Valid verified notes of exemption from**  
14 **49CFR 1130.31 to lease from Pan Western Corporation,**  
15 **parenthesis Pan Western operated approximately 2.6**  
16 **miles of private rail lines owned by the Pan**  
17 **Western, extending from mile post 0.0 to mile post**  
18 **2.66 in Clark County, Nevada Pan Western to lease**  
19 **the railroad lines TTR. So the TTR may initiate and**  
20 **provide common carrier rail operations on and over**  
21 **lines. TTR will become a Class III railroad**  
22 **carrier. TTR certifies its projected revenues are**  
23 **not expected to exceed those of the Class III**  
24 **railroad carrier -- carrier or 5 million annually.**  
25 **The transaction was due to consummate on or about**  
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1 **September 9th, 2004. The effective date of the**  
2 **exemption, seven days after" --**  
3 **Q. Okay. You can -- you can go ahead and**  
4 **stop there. So isn't this about Tonopah and**  
5 **Tidewater becoming Class III rail carrier?**  
6 **A. No, ma'am.**  
7 **Q. Oh, what is this about then?**  
8 **A. It's exemption from oversight by the**  
9 **Federal Railroad Administration. The Federal**  
10 **Railroad Administration looks at the railroad**  
11 **revenue streams and classifies you by a Class II,**  
12 **Class I based on your railroad revenues. So this**  
13 **has nothing to do with that other than an exemption**  
14 **that the oversight from the FRA is truncated.**  
15 **Q. So don't you become -- to get that exempt,**  
16 **isn't this exemption in order to become a Class III**  
17 **rail carrier --**  
18 **A. No.**  
19 **Q. -- through -- so you're saying that**  
20 **beginning part when it says that by entering into**  
21 **this lease agreement with Pan Western, then you**  
22 **become a Class III rail carrier, and then it says --**  
23 **and then seven days -- so isn't this a notice of**  
24 **exemption? At the very beginning it says, "A non**  
25 **carrier has filed a notice -- a verified notice of**  
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1 exemption." So you're saying that's not what it  
2 means, it means something different?  
3 **A. It means that we asked the -- the STB that**  
4 **Tonopah and Tidewater does not have to meet all the**  
5 **requirements of 49 CFRs that regulates Class Is and**  
6 **Class IIs.**  
7 **Q. Right. So you become a Class III?**  
8 **A. But -- but they don't tell us that.**  
9 **Q. That says exactly right there.**  
10 **A. The FRA, by revenue stream, tells you what**  
11 **you are.**  
12 **Q. It says, "TTRR will become a Class III**  
13 **rail carrier. TTRR certifies that its projected**  
14 **revenues are not expected to exceed those of a Class**  
15 **III rail carrier or 5 million annually."**  
16 **A. Okay. The exemption that we requested was**  
17 **from oversight of the Federal Railroad**  
18 **Administration. You can read what you want, but**  
19 **from a --**  
20 **Q. No. I'm reading --**  
21 **A. -- from a rail -- from a rail guy --**  
22 **Q. Believe me I'm not -- I'm just reading**  
23 **what it says.**  
24 **A. It's ask for exemption from having to do**  
25 **with 49 CFRs.**  
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1 **Q. And isn't that have to do with a verified**  
2 **notice of exemption, so you become a Class III rail**  
3 **carrier as opposed to a II or -- a I or a II?**  
4 **You're saying that's not what this says?**  
5 **A. No. We're asking for exemption from 49**  
6 **CFR 1150.31.**  
7 **Q. Well, no, it's -- the exemption is**  
8 **authorized under 49 CFR 1150.**  
9 **A. Well, we're asking to be authorized**  
10 **underneath that.**  
11 **Q. Right. And this provided said, you enter**  
12 **into this lease, then you're authorized?**  
13 **A. Yes.**  
14 **Q. Okay. Did you ever enter -- did Tonopah**  
15 **and Tidewater ever enter a lease with Pan Western?**  
16 **A. It did.**  
17 **Q. Do you have a copy of that lease?**  
18 **A. Not with me. We'll have to go through the**  
19 **records and find it.**  
20 **Q. So it's your testimony that there actually**  
21 **was a lease at one point, but your -- you or -- or**  
22 **your counsel did not provide that for this hearing**  
23 **today?**  
24 **A. We did because that's the only way that**  
25 **the State of Nevada PUC did not come regulate us.**  
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<p>1 <b>Otherwise State of Nevada PUC --</b></p> <p>2 Q. No. I'm asking, there is -- so you're</p> <p>3 saying there is a lease. Does that --</p> <p>4 <b>A. For this transaction, yes, there would</b></p> <p>5 <b>have -- there was ---</b></p> <p>6 Q. Okay. Well, let's go to the next -- the</p> <p>7 next exhibit, Exhibit 4. Okay. So this is from</p> <p>8 2006. There's a footnote. I'm looking at -- can</p> <p>9 you scroll down just a little bit more. And can you</p> <p>10 make it a little bit bigger? And -- and let's look</p> <p>11 at the footnote. Okay. So that footnote, I'm going</p> <p>12 to go ahead and read it?</p> <p>13 It say's, "The verified notice of</p> <p>14 exemption was originally filed under the name of</p> <p>15 UPL" -- go to -- I'm sorry, Footnote 2. It says,</p> <p>16 "This line was a subject of a notice of exemption</p> <p>17 that according to the current verified notice was</p> <p>18 never consummated." See Tonopah and Tidewater lease</p> <p>19 and operation citing back to that one. So you're</p> <p>20 saying it was consummated that there was a lease?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And when did that lease occur?</p> <p>23 <b>A. Time frame before we actually put the --</b></p> <p>24 <b>the first notice in.</b></p> <p>25 Q. What -- what -- I'm sorry.</p> <p>Page 91</p>	<p>1 <b>to begin with for the original one, a lease for them</b></p> <p>2 <b>to go forward. I don't know if they filed it or</b></p> <p>3 <b>not.</b></p> <p>4 Q. So you're saying that the Footnote 2 is</p> <p>5 wrong?</p> <p>6 <b>A. Based on what we provided to Wilson Hines</b></p> <p>7 <b>in the beginning, correct.</b></p> <p>8 Q. Okay. Well, I -- all right. So when</p> <p>9 Nevada Pacific Railroad Corporation wanted to lease</p> <p>10 for Pan Western that same rail line, were they going</p> <p>11 to take it over from Tonopah and Tidewater?</p> <p>12 <b>A. The goal was to go through and do a name</b></p> <p>13 <b>change to go through for marketing reasons. And</b></p> <p>14 <b>that's where we went with back to Wilson and Hines</b></p> <p>15 <b>to do that and they squashed that. So they went</b></p> <p>16 <b>back to the business as usual after the UP filed --</b></p> <p>17 <b>UP filed the protest.</b></p> <p>18 Q. What do you mean, business as usual?</p> <p>19 <b>A. Tonopah and Tidewater were still running</b></p> <p>20 <b>the -- the -- the line.</b></p> <p>21 Q. Okay. I'm sorry. I still can't get over</p> <p>22 the fact that this says that Tonopah and Tidewater</p> <p>23 never entered into that lease with Pan Western. And</p> <p>24 your testimony is that they did?</p> <p>25 <b>A. Yeah. Because it --</b></p> <p>Page 93</p>
<p>1 <b>A. If you go back to Exhibit 3 before that</b></p> <p>2 <b>date, we would've provided that -- that lease to</b></p> <p>3 <b>counsel out of Thompson Hine.</b></p> <p>4 Q. Okay. So you're saying that the -- oh,</p> <p>5 let's go back to 2006. So you're saying sometime</p> <p>6 before September 30th, 2004, Tonopah and Tidewater</p> <p>7 entered into agreement with Pan Western to become as</p> <p>8 -- as authorized in that notice?</p> <p>9 <b>A. Yes. To file an exemption, yes.</b></p> <p>10 Q. Okay. So under -- under the second</p> <p>11 footnote where it says, "This line was the subject</p> <p>12 of notice of exemption. According to the current</p> <p>13 verified notice, was never consummated." So is that</p> <p>14 -- is that wrong?</p> <p>15 <b>A. So we would've provided with Thompson</b></p> <p>16 <b>Hines, our counsel back in D.C., a copy of the</b></p> <p>17 <b>lease.</b></p> <p>18 Q. But I'm telling you, this says right here,</p> <p>19 the line -- that -- it says that line -- that was a</p> <p>20 -- that was subject to the notice of exemption</p> <p>21 according to the current verified. So the one from</p> <p>22 2006. It's saying that one that was referenced in</p> <p>23 2004 was never consummated. There was never a lease</p> <p>24 according to this.</p> <p>25 <b>A. I just know that we provided Wilson Hines</b></p> <p>Page 92</p>	<p>1 Q. And it's also your testimony that there's</p> <p>2 no copy of that lease in any of the exhibits today?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. Okay.</p> <p>5 <b>A. We -- we can bring that forward.</b></p> <p>6 Q. Okay. All right. So let's go back to</p> <p>7 exhibit -- this is back to Air Quality's reply,</p> <p>8 Exhibit B. Okay. Mr. Truman, what is this document</p> <p>9 of -- can you tell?</p> <p>10 <b>A. Looks like it's where we -- I had to add</b></p> <p>11 <b>acreage to the original document.</b></p> <p>12 Q. Okay. And did you make any other changes</p> <p>13 with respect to the project?</p> <p>14 <b>A. No. Somebody brought to -- to my</b></p> <p>15 <b>attention that I admitted and -- and I thought</b></p> <p>16 <b>everything was one -- on one APN number when I</b></p> <p>17 <b>originally did that. And then I found out there was</b></p> <p>18 <b>two additional APNs penned into that. And then we</b></p> <p>19 <b>went through in good faith, revised it based on the</b></p> <p>20 <b>adding the two new APN numbers.</b></p> <p>21 Q. Okay. Could you scroll to the next page.</p> <p>22 Where it says project description, could you please</p> <p>23 describe what that is or look at it and -- and then</p> <p>24 tell me what the purpose of the revision was?</p> <p>25 <b>A. "M1 equals plus or minus 1.8</b></p> <p>Page 94</p>



1 (indiscernible) site bring in fill survey, get  
2 drainage study, get zoning, bring -- bring in chat  
3 on top of base, roll and compact and shoot with AC  
4 30 parking lot base.  
5 Q. Okay. So the project when you revised it  
6 on behalf of ETON was to get it paved?  
7 A. Correct.  
8 Q. Okay. And could you scroll to the end of  
9 the document where there's the emails? Okay. And  
10 go ahead and scroll through those and -- and then,  
11 Mr. Truman, I have some questions about those  
12 emails. So do you recognize these emails?  
13 A. It went pretty quickly. I didn't read all  
14 of them. But in general, sort of, yes.  
15 Q. Okay. And in this email chain, did you  
16 confirm that it -- that the area was going to be  
17 paved?  
18 A. It looks like I did.  
19 Q. What changed?  
20 A. Got counsel involved and looked at the  
21 opportunities of what was available that was done in  
22 other facilities, and saw that there was a  
23 disconnect of what the county wanted us to do, where  
24 we didn't operate necessarily in the county, but we  
25 operated more generally as an interstate commerce

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1 carrier. And questioned their ability to go  
2 through.  
3 And one is that there's a -- a court case  
4 down in California of we belong to an associate of  
5 the railroad as a associated group in the State of  
6 California, and our association clashed over a south  
7 coast, I think it's South Coast Air Quality.  
8 Q. Let me just stop you real quick. So if I  
9 understand correctly, you're -- you're saying that  
10 because Tonopah and Tidewater is a railroad, it is  
11 on the same par as that railroad that was the  
12 subject of that lawsuit in that case in California?  
13 A. No. I'm saying because we're engaged in  
14 interstate commerce, whether the railroad or the  
15 transportation, the STB gathers us the same.  
16 Q. Doesn't the STB regulate railroads?  
17 A. They do.  
18 Q. And just railroads?  
19 A. No. Transportation.  
20 Q. So we looked at the -- what I think it's  
21 the interstate commerce.  
22 A. It was changed to STB. There's a couple  
23 iterations.  
24 Q. Right. And you believe that that is more  
25 than just railroads?

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1 A. It's -- yes, I do.  
2 Q. Okay.  
3 A. It's -- it's all to do with things to deal  
4 with the commerce clause. So can I finish my  
5 testimony or you're going to --  
6 Q. No. I -- I don't think we need to get  
7 into that because we have a --  
8 A. Oh, I'd like to --  
9 Q. -- we have a fundamental -- I mean, your  
10 -- your -- your -- attorney can --  
11 A. Well, you asked a question, Counsel.  
12 HEARING OFFICER: Your attorney can do --  
13 Hold on. She ask a question, if you answer it. You  
14 can't do commentary. So ask --  
15 MS. JORGENSEN: Yeah. I'm -- yeah.  
16 THE WITNESS: So let me finish the  
17 question she asked me.  
18 MS. JORGENSEN: No, there's -- you're not  
19 answering my question. You're just going on and on  
20 about, and then your attorney --  
21 THE WITNESS: Ma'am, you asked me a  
22 question.  
23 MS. JORGENSEN: Your attorney can do  
24 follow up when he does redirect.  
25 THE WITNESS: Okay.

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1 HEARING OFFICER: Yeah.  
2 BY MS. JORGENSEN:  
3 Q. So did you ever have -- after you had  
4 indicated to Air Quality that you were going to pave  
5 the facility or pave the -- the Stratford site, did  
6 you ever have further discussions with Air Quality  
7 about, no, I think it should be something different.  
8 Here's why?  
9 Did you -- did you ever have that  
10 conversation with the Air Quality? Look, I've  
11 changed my mind. I don't think this is appropriate.  
12 I think I should be able to do something different.  
13 A. Could I talk now?  
14 Q. I'm asking if you had those conversations  
15 with Air Quality?  
16 A. I said, does it -- can I get to answer  
17 now?  
18 Q. Yes.  
19 A. Not that I know of.  
20 Q. The -- you -- as part of those exhibits  
21 and your testimony, you testified that you spoke  
22 with, I believe it starts with Exhibit 10. We can  
23 go back to the response. Not -- not Air Quality's  
24 reply. Yeah. Let's scroll down and see if this is  
25 the first one?

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<p>1 Okay. Actually could you scroll a little</p> <p>2 bit more? Okay. So we have what, Exhibits 10</p> <p>3 throug, is it 16 or -- let me just look and make</p> <p>4 sure I have that right. No. Yeah. Let's look at</p> <p>5 15. No. Let's go to 14.</p> <p>6 Okay. So Exhibit 10, we go back up to</p> <p>7 that. Joe Miller. Let's go to -- that's Exhibit</p> <p>8 10. Let's look at Exhibit 11. Paul Harbour</p> <p>9 (phonetic), who else do we have for 12? David</p> <p>10 McDonough. 13, it's Floyd Meldrum. And then 14 is</p> <p>11 Michael. How do you say his last name?</p> <p>12 <b>A. Onetendan (phonetic).</b></p> <p>13 Q. Onetendan. And I believe you also</p> <p>14 testified that you had a conversation with Jay</p> <p>15 Smith; is that correct?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. And -- but you don't have an affidavit</p> <p>18 from Jay Smith? I'm just asking.</p> <p>19 <b>A. He's afraid of you guys.</b></p> <p>20 Q. So you don't have an affidavit from him?</p> <p>21 <b>A. No. It was a personal conversation with</b></p> <p>22 <b>him.</b></p> <p>23 Q. Okay. And when did you have these</p> <p>24 conversations with these five individuals plus Mr.</p> <p>25 Smith?</p> <p>Page 99</p>	<p>1 <b>A. With Jay, no. Because Jay's -- had</b></p> <p>2 <b>ongoing conversations with him from an early --</b></p> <p>3 <b>early standpoint. So, you know, without going</b></p> <p>4 <b>through and looking at my exchange and find out when</b></p> <p>5 <b>the email started, I -- or I'm under oath, I got to</b></p> <p>6 <b>tell you, I can't tell you right now.</b></p> <p>7 Q. Okay. Could you go ahead and keep</p> <p>8 scrolling down till we get to pictures? Okay. So</p> <p>9 the Boulder City Railroad, I believe these and the</p> <p>10 -- the subsequent ones are ones that you testified</p> <p>11 you've been to these personally and you see -- and I</p> <p>12 think your testimony was also that there's areas</p> <p>13 that are unpaved roads and unpaved parking area. Is</p> <p>14 that a --</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. -- a correct statement? Okay. For this</p> <p>17 particular one, the Boulder City one, is this</p> <p>18 located in the Las Vegas Valley?</p> <p>19 <b>A. It's -- it's not the airshed of Las Vegas</b></p> <p>20 <b>town, it's in Boulder City.</b></p> <p>21 Q. So do you know the airshed numbers? Do</p> <p>22 you know what --</p> <p>23 <b>A. I don't know.</b></p> <p>24 Q. Area 212?</p> <p>25 <b>A. I do -- do not know the airshed, but --</b></p> <p>Page 101</p>
<p>1 <b>A. Probably the first two weeks of September.</b></p> <p>2 Q. And when did you lay down the rotomilling?</p> <p>3 <b>A. That's a good question. I honestly -- I</b></p> <p>4 <b>don't -- honestly don't have a date. I'm sorry.</b></p> <p>5 Q. I believe there's -- well, was the</p> <p>6 rotomilling laid down before you had these</p> <p>7 conversations with these five individuals plus Mr.</p> <p>8 Smith? And I believe there was testimony last time</p> <p>9 from the Air Quality inspectors that they observed</p> <p>10 rotomilling in August.</p> <p>11 <b>A. I don't want to -- I can't honestly --</b></p> <p>12 Q. So is it possible that you -- it was laid</p> <p>13 down before you had the conversations with these</p> <p>14 individuals plus Mr. Smith?</p> <p>15 <b>A. I'm trying to find a reference number. My</b></p> <p>16 <b>-- my -- my memory to go through and -- and</b></p> <p>17 <b>reference with all this. One is, I would have to</b></p> <p>18 <b>get some skill tickets from Las Vegas Paving and</b></p> <p>19 <b>when we bought the RotoMill from them. And then</b></p> <p>20 <b>two, I'd have to go back and -- and look at emails I</b></p> <p>21 <b>sent out to all the parties, to find out when we had</b></p> <p>22 <b>this discussions with them.</b></p> <p>23 Q. Okay. So I'm just asking, is it possible</p> <p>24 that the rotomilling was laid down before you had</p> <p>25 those conversations?</p> <p>Page 100</p>	<p>1 Q. Okay. But you know that this is not in</p> <p>2 the Las Vegas Valley airshed?</p> <p>3 <b>A. Correct. It's in Water Bridge, yes.</b></p> <p>4 Q. Okay. Do you know if this area's been</p> <p>5 designated as non-attainment for PM10?</p> <p>6 <b>A. I do not.</b></p> <p>7 Q. Do you know if this area has a stationary</p> <p>8 source prevent?</p> <p>9 <b>A. I do not.</b></p> <p>10 Q. Do you know what the condition of this</p> <p>11 site was or of this -- of this unpaved road before</p> <p>12 June of 2000?</p> <p>13 <b>A. I did not.</b></p> <p>14 Q. Okay. Let's go to the next one. And</p> <p>15 which one's this again? Oh, this is the Department</p> <p>16 of Aviation?</p> <p>17 <b>A. Uh-huh.</b></p> <p>18 Q. So this is in the Clark County. I mean,</p> <p>19 this is the Las Vegas Valley; is that right?</p> <p>20 <b>A. It's in our shed -- the -- the airshed --</b></p> <p>21 Q. The 212?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. Do you know if Clark County</p> <p>24 Aviation has a stationary source permit?</p> <p>25 <b>A. Not that I found.</b></p> <p>Page 102</p>



1 Q. Do you know what the condition of this  
2 unpaved road was prior to June of 2000?  
3 **A. I do not.**  
4 Q. Okay. Let's go to the next one. Okay.  
5 This is more like public works. And I believe your  
6 concerns were, was it a road that's being used? Is  
7 that what -- I think you have the clicker so you  
8 could --  
9 **A. So the railroad always has a road next to**  
10 **the railroad. So if something happens then they can**  
11 **get it to facilitate itself.**  
12 Q. Okay. And so how is this similar to the  
13 Stratford property?  
14 **A. Well, ours has rotomilling on it.**  
15 Q. No. I mean, is there a railroad on the  
16 Stratford property?  
17 **A. Doesn't matter but --**  
18 Q. No. I'm just asking you, is there one?  
19 **A. No.**  
20 Q. Okay. And do you know what condition of  
21 this road was before June of 2000?  
22 **A. I do not.**  
23 Q. Okay. Let's go to the next one. Okay.  
24 And I believe your concerns were, again, was it  
25 railroad?

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1 **A. Correct.**  
2 Q. Okay. And do you know what the condition  
3 of this site was prior to June of 2000?  
4 **A. Wasn't there. The -- the railroad was put**  
5 **in after that.**  
6 Q. When was it put in?  
7 **A. Mid 2000, 2005, 2006.**  
8 Q. And do you have any knowledge -- did you  
9 pull any information about this other than this  
10 aerial photo? And I believe you're -- I -- assuming  
11 it's your memory of the 2005, 2006?  
12 **A. No. We -- we -- we brought in the ballast**  
13 **to this facility, so that's how we knew it was new**  
14 **construction.**  
15 Q. Okay. So your testimony, 2005, 2006, and  
16 prior to that it was just desert?  
17 **A. It was native.**  
18 Q. Okay. Let's go to the next one. And then  
19 what are your concerns about this site?  
20 **A. Same as we've mentioned, we have a -- a**  
21 **unpaved --**  
22 Q. Unpaved where? Around the railroad?  
23 **A. Next to the railroad.**  
24 Q. Okay. Any idea what the site was around  
25 the railroad prior to June 2006?

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1 **A. On this one I --**  
2 Q. I mean, I'm sorry, 2000?  
3 **A. I don't know.**  
4 Q. Okay. Let's go to the next one. Hidden  
5 Valley, where is this located?  
6 **A. Different airshed. It's in the --**  
7 Q. So 216. Also there's -- there's 212,  
8 which is the Las Vegas Valley. And then 216, 217,  
9 that are part of the Apex.  
10 **A. So it's further in Apex.**  
11 Q. Okay.  
12 **A. It's on Nevada Power and --**  
13 Q. Oh, Nevada Power. Do you know if this  
14 site has a -- a stationary source operating permit?  
15 **A. It -- it had when the Apex, both commodity**  
16 **had a transfer facility out there that subsequently**  
17 **they've -- they've taken down.**  
18 Q. And do you know what the condition of this  
19 area was before June of 2000?  
20 **A. Before, no.**  
21 Q. Okay. Let's go to the next one. And  
22 where's this? This is within -- no, this is outside  
23 of 212, 216, 217. Is that --  
24 **A. That's even further. That's Logandale.**  
25 Q. Okay. And any idea what the condition of

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1 the site was before June of 2000?  
2 **A. It was native because they put the rail**  
3 **line in late -- early 2002, 2003.**  
4 Q. Okay. Let's go to the next one. Enlost,  
5 that's -- that's within it; isn't it?  
6 **A. That's Apex.**  
7 Q. And do you know if this site has a -- a  
8 stationary source operating permit?  
9 **A. I do not.**  
10 Q. And do you know what the condition of the  
11 site was prior to June of 2000?  
12 **A. We brought ballast into this late 2010-ish**  
13 **when they put some new rail line in.**  
14 Q. Okay. And -- but again, you have no idea  
15 if this is a -- a site that's covered by a  
16 stationary source permit?  
17 **A. I do not, but I would assume it does where**  
18 **they have baking lime.**  
19 Q. Can you just go to the next one? Nevada  
20 Ready Mix. Does this site have a stationary source  
21 operating permit? Did you know?  
22 **A. I do not know.**  
23 Q. And what was condition of the site prior  
24 to June of 2000?  
25 **A. Fly over. I, you know, I don't -- I don't**

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<p>1 <b>know what happened before that time.</b></p> <p>2 Q. Okay. Let's go to the next one. And</p> <p>3 where's this located?</p> <p>4 <b>A. In our airshed. It's over off from</b></p> <p>5 <b>Ponderosa and Lake Russell.</b></p> <p>6 Q. Okay. Over by Jake's Crane Rigging.</p> <p>7 Q. And what is it? It's...</p> <p>8 <b>A. It's an oil terminal.</b></p> <p>9 Q. Okay. Does this site -- do you know if</p> <p>10 this site has a stationary source permit?</p> <p>11 <b>A. I -- I do not.</b></p> <p>12 Q. And what -- what about the condition of</p> <p>13 the site prior to June of 2000?</p> <p>14 <b>A. It wasn't there.</b></p> <p>15 Q. Okay. Go ahead. PABCO, does this have a</p> <p>16 stationary source permit that you know of?</p> <p>17 <b>A. I do not know.</b></p> <p>18 Q. And the condition of site prior to June</p> <p>19 2000?</p> <p>20 <b>A. I don't know.</b></p> <p>21 Q. Okay. Let's go to the next one. And is</p> <p>22 -- this is -- this is outside of --</p> <p>23 <b>A. It's -- it's -- it's up -- up at the lake.</b></p> <p>24 <b>It's paved.</b></p> <p>25 Q. Okay. So not in 212, 216, or 217?</p> <p>Page 107</p>	<p>1 <b>A. Would've been our -- our airshed.</b></p> <p>2 Q. In 212, and then what's your concern on</p> <p>3 this one?</p> <p>4 <b>A. Again, the unpaved road.</b></p> <p>5 Q. Is that -- are those rail lines?</p> <p>6 <b>A. They are.</b></p> <p>7 Q. So any idea what the condition was prior</p> <p>8 to June of 2000?</p> <p>9 <b>A. Native.</b></p> <p>10 Q. And how do you know that?</p> <p>11 <b>A. Because it is native dirt that the</b></p> <p>12 <b>railroad drove across. So did the road exist before</b></p> <p>13 <b>2000? Is that --</b></p> <p>14 Q. When -- when were the rail lines put in;</p> <p>15 do you know?</p> <p>16 <b>A. The rail lines would've been -- been put</b></p> <p>17 <b>in 1908. The --</b></p> <p>18 Q. Okay. So it's possible that they were</p> <p>19 driving over that prior -- sometime after 1908?</p> <p>20 <b>A. Maybe, but --</b></p> <p>21 Q. Okay. Let's go to the next one. And</p> <p>22 where's this?</p> <p>23 <b>A. In front of -- it should come down the</b></p> <p>24 <b>hill going into more upper Valley.</b></p> <p>25 Q. Okay. So outside is 216 -- outside of Las</p> <p>Page 109</p>
<p>1 <b>A. No.</b></p> <p>2 Q. Okay. Pioneer Americas?</p> <p>3 <b>A. Henderson, so it's in our airshed.</b></p> <p>4 Q. Within 212? Okay. Does the site have a</p> <p>5 stationary source permit, if you know?</p> <p>6 <b>A. The -- the site or the APM?</b></p> <p>7 Q. Well, whatever your concern is.</p> <p>8 <b>A. Not that I know of.</b></p> <p>9 Q. Okay. And do you know what the condition</p> <p>10 was prior to June of 2000?</p> <p>11 <b>A. There at the bottom was native.</b></p> <p>12 Q. I'm sorry?</p> <p>13 <b>A. In the bottom it was native.</b></p> <p>14 Q. The bottom, which part? And is that --</p> <p>15 are there rail lines?</p> <p>16 <b>A. There are.</b></p> <p>17 Q. Do you know when those rail lines were put</p> <p>18 in?</p> <p>19 <b>A. They did a plan expansion sometime mid --</b></p> <p>20 <b>mid 2005 again.</b></p> <p>21 Q. And it's your understanding, so that's</p> <p>22 part of Pioneer America?</p> <p>23 <b>A. It is.</b></p> <p>24 Q. Okay. Can you scroll? And where's this</p> <p>25 located? This is Clark County.</p> <p>Page 108</p>	<p>1 Vegas Valley and Apex?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay. Let's keep going. Elko clearly</p> <p>4 outside of 216, 217 and 212? Outside of Clark</p> <p>5 County?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Okay. Ely, same thing outside of Clark</p> <p>8 County?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Okay. And Fernley, outside of Clark</p> <p>11 County?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. Again, Fernley outside of Clark County?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Reno outside of Clark County?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. Okay. Do you know if any of those areas</p> <p>18 outside of Clark County have ever been designated as</p> <p>19 non-attainment for PM10?</p> <p>20 <b>A. I do not.</b></p> <p>21 Q. Okay. Are you aware that Clark County</p> <p>22 area 212 has been designated as non-attainment for</p> <p>23 PM10, and is currently in maintenance for that --</p> <p>24 for that particular standard?</p> <p>25 <b>A. I have heard, but I don't know for sure.</b></p> <p>Page 110</p>





1 Q. Okay. When you -- so I believe you -- you  
2 testified on June 8th, sorry, January 8th and  
3 January 9th, when the Air Quality people came, that  
4 you didn't know that they were from Air Quality; is  
5 that right?  
6 **A. Correct. They never presented me with**  
7 **their credentials.**  
8 Q. So you had no idea why they were on your  
9 -- on the -- the Tonopah and Tidewater or the ETON  
10 property?  
11 **A. Correct.**  
12 Q. And did you ever call the police on them?  
13 **A. Again, I testified I did not.**  
14 Q. On any of those dates that they came?  
15 **A. No. I -- I testified --**  
16 Q. And -- and why -- why wouldn't you, since  
17 you had no idea who they were?  
18 **A. They left peaceably.**  
19 Q. Okay. And on July 17th, 2000, I'm sorry,  
20 2024, at that point, did they -- if you recall, did  
21 they come and -- to the office and request to be  
22 allowed in? And this would've been Andrew Kirk and  
23 Canduella Rowsell?  
24 **A. Some folks showed up, but they presented**  
25 **no credentials to me and then they requested** Page 111

1 **entrance, so --**  
2 Q. Did you let them in?  
3 Q. Pardon?  
4 Q. Did you let them in on the 17th?  
5 **A. One day.**  
6 Q. So why did you let them in?  
7 **A. I erred.**  
8 Q. What do you mean you erred?  
9 **A. I -- I again, went against our security**  
10 **plan. I was on the phone, I let them in. That was**  
11 **an absolute mistake on my side of our security plan.**  
12 Q. But why did you let him in?  
13 **A. I just told you I made a mistake.**  
14 Q. I know you made a mistake, but what --  
15 what was the basis of the mistake?  
16 MR. GUBLER: Objection. Asked and  
17 answered.  
18 MS. JORGENSEN: I don't think he has.  
19 MR. GUBLER: He didn't answer it how she  
20 wanted it.  
21 MS. JORGENSEN: No. He just said he  
22 erred. I want to know why he let them in.  
23 THE WITNESS: I made a mistake.  
24 BY MS. JORGENSEN:  
25 Q. What was the basis of the mistake? Page 112

1 **A. I was --**  
2 MR. GUBLER: It was asked and answered.  
3 THE WITNESS: I was busy on the phone. To  
4 expedite going back to the phone, I let them on. I  
5 made a mistake with our security plan.  
6 BY MS. JORGENSEN:  
7 Q. Didn't you instruct them to go get their  
8 hard hats and vests before you would let them go  
9 onto the property?  
10 **A. I don't recall that.**  
11 Q. And since I think the last date of the --  
12 of the second notice violation is August 14th, but  
13 there's been testimony that they did come onto the  
14 -- that they returned after August 14th; is that  
15 correct?  
16 **A. I -- I can't -- I can't testify the dates**  
17 **that I know that.**  
18 Q. Okay. Do you -- so do you -- you don't  
19 recall -- well, do you recall whether or not anybody  
20 appeared from Air Quality on August 28th?  
21 **A. Not that I recall. They would've showed**  
22 **credentials that showed they were with your -- that**  
23 **department you mentioned.**  
24 Q. You mean -- you mean Division of Air  
25 Quality? Page 113

1 **A. Yes.**  
2 Q. So is it your testimony -- so since -- so  
3 on August 20 -- if I submit to you that August 28th,  
4 that you allowed them to go onto the property, as  
5 long as they put their cameras away and did not  
6 bring them onto the property that you allowed them  
7 on.  
8 **A. When was the date?**  
9 Q. August 28th.  
10 **A. Was there two of them or three of them?**  
11 Q. I believe -- well, I'll submit to you,  
12 there was two.  
13 **A. At one time three of them came by. Had a**  
14 **-- a trainee.**  
15 Q. Do you recall having a discussion with  
16 them about, as long as they didn't bring their  
17 cameras with them, that you would allow them on?  
18 **A. Yes.**  
19 Q. And why did you allow them on?  
20 **A. Well, again, I -- I erred in my security**  
21 **plan.**  
22 Q. Well, why -- again, what was the basis of  
23 that err?  
24 **A. If you tripped, you tripped. I erred.**  
25 Q. I understand that you're saying that you Page 114



1 made a mistake, but I want to know why did you think  
2 it was okay at the time?  
3 MR. GUBLER: Objection. Misstates  
4 testimony. I don't think he's testified to that.  
5 HEARING OFFICER: Well, I just -- I want  
6 to understand. He said before he was on the phone.  
7 So the claim was that he was busy and not paying  
8 attention. And this time is another date. So what  
9 was behind that? What's the difference? If I'm  
10 understanding that correctly, because that's what I  
11 --  
12 MS. JORGENSEN: I'm -- yeah. I'm trying  
13 to figure out why was it okay on August 28th to  
14 allow them on to do an inspection as long as they  
15 put their cameras away.  
16 HEARING OFFICER: I -- I get you're saying  
17 you erred. Because earlier in your testimony,  
18 you're saying if -- if they requested, you would've  
19 allowed them on the property. I have that in my  
20 notes, yes.  
21 THE WITNESS: With credentials. If they  
22 would've presented credentials, I think I testified.  
23 MS. JORGENSEN: Okay.  
24 THE WITNESS: I probably just got tired of  
25 dealing with them.

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1 BY MS. JORGENSEN:  
2 Q. But why would you tell them they had to  
3 put their cameras away?  
4 A. Because I got tired of dealing with them.  
5 They just wore me down.  
6 Q. And on all these visits that they came,  
7 you had no idea where they were from?  
8 A. Again, they never presented any  
9 credentials.  
10 Q. I totally understand that that's your  
11 testimony. I'm asking whether you understood where  
12 they were from?  
13 MR. GUBLER: Objection. Asked and  
14 answered.  
15 MS. JORGENSEN: That was not answered.  
16 MR. GUBLER: It was but no arguing.  
17 HEARING OFFICER: I think it's a different  
18 question because he's -- the claim is, they didn't  
19 present proper credentials, but then you let people  
20 on your property or trespassers on 8/28. So I mean,  
21 that's the question I would want to know and  
22 understand. It's -- it's not flowing logically.  
23 But --  
24 THE WITNESS: So again, I --  
25 BY MS. JORGENSEN:

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1 Q. So is it your testimony that you -- during  
2 all those visits that they went there, you had no  
3 idea where they were from?  
4 A. Okay. There's two things. There's a  
5 hunch, and then there was --  
6 Q. I -- your hunch or belief or whatever,  
7 just did you have any idea where they were from?  
8 A. I maybe had a hunch, but again --  
9 Q. No. A hunch that they were from where?  
10 A. Can I finish?  
11 Q. I want you to answer my question.  
12 A. Hunch they're from where? But I thought  
13 they might be from the county.  
14 Q. Anything to do with air quality and the  
15 dust control operating permit?  
16 A. Not necessarily, no.  
17 Q. Okay?  
18 HEARING OFFICER: I -- I -- yeah. We can  
19 move along.  
20 MS. JORGENSEN: Yeah. Okay.  
21 HEARING OFFICER: I get it.  
22 BY MS. JORGENSEN:  
23 Q. If we could go to the reply, not Air  
24 Quality's, but ETON's -- ETON's. If you go to  
25 Exhibit 21. And, Mr. Truman, if you could take a

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1 look at this and tell me what it is?  
2 A. It's a lease agreement between Paving and  
3 Tonopah and Tidewater.  
4 Q. And when was it entered into?  
5 A. Looks like the 6th of March.  
6 Q. 2008?  
7 A. Correct.  
8 Q. And it was to allow Tonopah Tidewater onto  
9 Las Vegas Pavings land?  
10 A. Yes. There was rail lines laid on the Pan  
11 Western piece of property, and there's rail lines  
12 that were laid on the Las Vegas Paving piece of  
13 property in a big loop.  
14 Q. So this was allowing the connection  
15 between the two?  
16 A. Access to -- to get on the Las Vegas  
17 Paving piece to use the rail, yes.  
18 Q. Okay. And if you can scroll down a bit  
19 further. The license fee. So the licensee will pay  
20 the license or a license fee composed of, California  
21 Portland Cement will pay Las Vegas Paving 50,000  
22 every month for rent on behalf of Tonopah and  
23 Tidewater. Did Tonopah and Tidewater have a -- an  
24 agreement with CalPortland?  
25 A. Through sister company, Pan Western.

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<p>1 Q. So CalPortland had a -- an agreement with 2 Pan Western, and as part of that agreement, Tonopah 3 and Tidewater would pay Las Vegas Paving 50,000? 4 <b>A. No.</b> 5 Q. Okay. 6 <b>A. California Portland paid -- paid Las Vegas</b> 7 <b>Paving \$50,000. In exchange for that, CalPortland</b> 8 <b>got to use the -- the property for their rail line.</b> 9 Q. Which property? 10 <b>A. The Las Vegas Paving piece. So there are</b> 11 <b>two rail lines that go across Las Vegas Paving</b> 12 <b>piece. One owned by CalPortland and one owned by</b> 13 <b>Pan -- Pan Western/ Tonopah and Tidewater Railroad.</b> 14 <b>So if you look at the pictures, there is four rail</b> 15 <b>lines that go across the Las Vegas Paving piece, and</b> 16 <b>then there's some straight track. CalPortland is --</b> 17 <b>has rail line too on -- on both -- both pieces of</b> 18 <b>the property. And --</b> 19 Q. So why would CalPortland pay on behalf of 20 Tonopah Tidewater? 21 <b>A. Because they had free access to a switch</b> 22 <b>off the main line.</b> 23 Q. CalPortland had free access? 24 <b>A. Yeah. That was part of the transaction is</b> 25 <b>the switch was put in by Las Vegas Paving and Pan</b> Page 119 </p>	<p>1 <b>agreement with Las Vegas Paving.</b> 2 Q. And does CalPortland have an agreement 3 with any of the, I guess, sister companies that 4 might be related to Tonopah and Tidewater? 5 <b>A. Not that I know of.</b> 6 Q. So is CalPortland still paying Las Vegas 7 Paving on behalf of Tonopah and Tidewater? 8 <b>A. They are.</b> 9 Q. Based on what? 10 <b>A. Well, they paid it on behalf of</b> 11 <b>themselves.</b> 12 Q. I know. So what -- why -- 13 <b>A. They were beneficiary of that.</b> 14 Q. -- why would they be needing something for 15 Tonopah and Tidewater? 16 <b>A. We're the beneficiary of that payment.</b> 17 Q. So if CalPortland decided to stop paying, 18 could Tonopah Tidewater enforce this agreement? 19 <b>A. No.</b> 20 Q. And I think you mentioned there's an 21 underlying agreement between CalPortland and Pan 22 Western; is that right? 23 <b>A. Yes.</b> 24 Q. And is that agreement still in effect? 25 <b>A. No.</b> Page 121 </p>
<p>1 <b>Western to get off the rail line -- the main line</b> 2 <b>onto the property.</b> 3 Q. Okay. But what -- what was Tonopah and 4 Tidewater providing to CalPortland in order to have 5 CalPortland pay 50,000 for them to be on Las Vegas 6 Pavings property? 7 <b>A. Switching services.</b> 8 Q. Switching services? 9 <b>A. We switched the cars -- the railroad cars.</b> 10 Q. Was there an agreement that said that? 11 I'm sorry, an agreement in writing? 12 <b>A. Yeah. There's -- there's one. Maybe we</b> 13 <b>can go ahead and bring that forward.</b> 14 Q. Does Tonopah and Tidewater -- is this 15 agreement still in place? 16 <b>A. I understand that it is.</b> 17 Q. What does that mean, you understand that 18 it is? 19 <b>A. It's not been revoked by the Las Vegas</b> 20 <b>Paving.</b> 21 Q. I'm sorry, say it again. 22 <b>A. It's not been revoked by Las Vegas Paving.</b> 23 Q. And does CalPortland still have an 24 agreement with Pan Western? 25 <b>A. The -- they do not, but they still have an</b> Page 120 </p>	<p>1 Q. And that was the basis for the 50,000? 2 <b>A. No. The basis was that they got to use</b> 3 <b>the switching services.</b> 4 Q. Is Tonopah and Tidewater still providing 5 those switching services to CalPortland? 6 <b>A. As -- as needed.</b> 7 Q. And how -- how do you access those 8 switching services? 9 <b>A. Just with the switch engine?</b> 10 Q. No. I'm -- could we scroll to the map? I 11 think you keep scrolling, I'm not sure exactly where 12 it is. Go to 23. Okay. 13 <b>A. So here's the terminal in CalPortland.</b> 14 Q. Okay. 15 <b>A. These cars are what needs to get moved.</b> 16 <b>There's 1, 2, 3, there's 4 tracks there, two owned</b> 17 <b>by CalPortland and two owned by Tonopah and</b> 18 <b>Tidewater Railroad.</b> 19 Q. Wait, wait. Tonopah and Tidewater owns 20 tracks? 21 <b>A. They own the track. They bought it from</b> 22 <b>Pan Western. So the track --</b> 23 Q. But isn't that Las Vegas Pavings property? 24 <b>A. It's a real property. The property here</b> 25 <b>is owned by -- the track is owned by Pan -- by Pan</b> Page 122 </p>



<p>1 <b>Western, sold to Tonopah and Tidewater Railroad.</b></p> <p>2 <b>That's what the lease is, is to go ahead and give</b></p> <p>3 <b>Tonopah and Tidewater leasing to -- to run around</b></p> <p>4 <b>tracks, but we go ahead and see fit that we have</b></p> <p>5 <b>business for.</b></p> <p>6 Q. So you -- so Tonopah and Tidewater owns</p> <p>7 tracks on Las Vegas Pavings land?</p> <p>8 <b>A. That's what the lease is.</b></p> <p>9 Q. No.</p> <p>10 <b>A. It indicates.</b></p> <p>11 Q. No. That lease is -- it's a license</p> <p>12 agreement to use the tracks.</p> <p>13 <b>A. Sorry. But yes. The track is owned by</b></p> <p>14 <b>Tonopah and Tidewater Railroad.</b></p> <p>15 Q. So if we called Las Vegas Paving to</p> <p>16 testify, they would say that track's owned by</p> <p>17 Tonopah and Tidewater?</p> <p>18 <b>A. Okay.</b></p> <p>19 Q. No. I'm asking.</p> <p>20 <b>A. Say that again.</b></p> <p>21 Q. So if we called Las Vegas -- someone from</p> <p>22 Las Vegas Paving to testify, they would say that</p> <p>23 Tonopah and Tidewater own that track on their land?</p> <p>24 <b>A. And they said?</b></p> <p>25 Q. No. I'm asking if that's what they would</p> <p>Page 123</p>	<p>1 land belongs Tonopah and Tidewater?</p> <p>2 <b>A. Not that I know of.</b></p> <p>3 MS. JORGENSEN: I don't have any further</p> <p>4 questions.</p> <p>5 HEARING OFFICER: Okay. Next witness or</p> <p>6 rebuttal.</p> <p>7 MR. GUBLER: Just a few questions.</p> <p>8 HEARING OFFICER: My apologies. Redirect.</p> <p>9 EXAMINATION</p> <p>10 BY MR. GUBLER:</p> <p>11 Q. Look at Exhibit 1, please. I believe</p> <p>12 there might have been a question whether or not the</p> <p>13 property at Stratford had any indication that any</p> <p>14 connection to the railroad company. Do you remember</p> <p>15 that testimony for those questions?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Going back to this, we looked at this</p> <p>18 before. Who's the owner of -- of this property at</p> <p>19 Stratford?</p> <p>20 <b>A. Tonopah and Tidewater Railroad Company in</b></p> <p>21 <b>Nevada corporation.</b></p> <p>22 Q. Okay. So -- and this -- this is -- this</p> <p>23 document is recorded with Clark County?</p> <p>24 <b>A. Could you go down to the ---</b></p> <p>25 Q. Can you scroll up a little bit.</p> <p>Page 125</p>
<p>1 say?</p> <p>2 <b>A. Yeah.</b></p> <p>3 Q. And do you have any agreements showing</p> <p>4 that that track that you're saying is -- belongs to</p> <p>5 Tonopah and Tidewater, do you have any agreements</p> <p>6 showing that that -- that this is Tonopah and</p> <p>7 Tidewater's track?</p> <p>8 <b>A. So we have an agreement where Pan Western</b></p> <p>9 <b>sold their track to Tonopah and Tidewater Railroad.</b></p> <p>10 Q. Okay. Let's go to that one. Exhibit 22,</p> <p>11 go ahead and look through that, Mr. Truman, tell me</p> <p>12 what this is?</p> <p>13 <b>A. Purchase agreements of 2010.</b></p> <p>14 Q. Okay. And is this the purchase agreement</p> <p>15 you're talking about between Pan Western and Tonopah</p> <p>16 and Tidewater?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And is there any indication in this</p> <p>19 agreement where that track is located?</p> <p>20 <b>A. Could you scroll down, please? Scroll</b></p> <p>21 <b>once more. Some more, please. Some more. Some</b></p> <p>22 <b>more. Some more. It does not, that I see.</b></p> <p>23 Q. Okay. And are you aware of any agreement</p> <p>24 between Las Vegas Paving and Tonopah and Tidewater</p> <p>25 that indicates that the track on Las Vegas Pavings</p> <p>Page 124</p>	<p>1 <b>A. --- bottom or to -- yes, it's recorded.</b></p> <p>2 Q. So who owns the -- the property of</p> <p>3 Stratford?</p> <p>4 <b>A. One more time, the Tonopah and Tidewater</b></p> <p>5 <b>Railroad Company.</b></p> <p>6 Q. Okay. Go ahead to Exhibit 2. Again, you</p> <p>7 recognize this -- this document, correct?</p> <p>8 <b>A. It looks like it's from the state of</b></p> <p>9 <b>Nevada's Secretary of State ---</b></p> <p>10 Q. Okay. And when was Tonopah and Tidewater</p> <p>11 formed?</p> <p>12 <b>A. It shows 2004.</b></p> <p>13 Q. Okay. Does Tonopah and Tidewater Railroad</p> <p>14 Company hold itself out as a Railroad company?</p> <p>15 <b>A. It does.</b></p> <p>16 Q. Has it since its formation?</p> <p>17 <b>A. It has.</b></p> <p>18 Q. And does it operate rail lines?</p> <p>19 <b>A. Not presently.</b></p> <p>20 Q. Okay. It owns rail lines?</p> <p>21 <b>A. It does.</b></p> <p>22 Q. And it has access to them?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. Does it maintain them?</p> <p>25 <b>A. It does.</b></p> <p>Page 126</p>



<p>1 Q. So at any time, Tonopah and Tidewater can</p> <p>2 go to these rail lines and use them?</p> <p>3 <b>A. If the business is there, yes.</b></p> <p>4 Q. Okay. Let's go to Exhibit 4. You were</p> <p>5 asked about this -- this exhibit in Nevada Pacific</p> <p>6 Railroad Corporation. Do you remember those</p> <p>7 questions?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Now, you -- you had -- you had sort of</p> <p>10 mentioned that there was some type of a name change;</p> <p>11 is that right?</p> <p>12 <b>A. We -- we tried to go through and start a</b></p> <p>13 <b>new corporation, and then take that new corporation</b></p> <p>14 <b>and go through and put it in position of the Nevada</b></p> <p>15 <b>-- sorry, this is the Nevada Pacific. So yes, we</b></p> <p>16 <b>tried to go through and start a new rail line with a</b></p> <p>17 <b>new name.</b></p> <p>18 Q. Okay. And what happened?</p> <p>19 <b>A. There was a -- the Union Pacific Railroad</b></p> <p>20 <b>filed a -- a issue where they contested the -- the</b></p> <p>21 <b>name is too close to their name.</b></p> <p>22 Q. Okay. So what did you do?</p> <p>23 <b>A. We -- we dropped a request for a</b></p> <p>24 <b>exemption.</b></p> <p>25 Q. And when you say, we, who's we?</p> <p style="text-align: right;">Page 127</p>	<p>1 <b>A. Correct.</b></p> <p>2 Q. I believe that there was some -- some</p> <p>3 information about -- or some questions about the STB</p> <p>4 and regulating interstate commerce. Do you recall</p> <p>5 that?</p> <p>6 <b>A. I do.</b></p> <p>7 Q. And do you recall there was a question</p> <p>8 that you felt like you wanted to explain yourself;</p> <p>9 is that right?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. What was that question, do you remember?</p> <p>12 <b>A. She asked about STB and its authorization,</b></p> <p>13 <b>and I was trying to bring up a case -- case law in</b></p> <p>14 <b>Southern California on the federal side where the</b></p> <p>15 <b>Association of Railroads sued South Coast Air</b></p> <p>16 <b>Quality, and it ended up into the federal court</b></p> <p>17 <b>jurisdiction.</b></p> <p>18 <b>And the federal court ruled, in my</b></p> <p>19 <b>language, that STB had the ability to regulate</b></p> <p>20 <b>Railroads, and the Railroads had the ability to go</b></p> <p>21 <b>through and have the Commerce Clause of the</b></p> <p>22 <b>Constitution to go through and have a happy medium</b></p> <p>23 <b>between state regulatory issues and federal</b></p> <p>24 <b>regulatory issues.</b></p> <p>25 <b>And they found out that the surface</b></p> <p style="text-align: right;">Page 129</p>
<p>1 <b>A. Myself.</b></p> <p>2 Q. Okay. And so did Nevada Pacific Railroad</p> <p>3 Corporation, did it move forward?</p> <p>4 <b>A. It -- it did not.</b></p> <p>5 Q. So is it still a business?</p> <p>6 <b>A. No. It's never been in business.</b></p> <p>7 Q. Okay. So -- so who -- when we talk about</p> <p>8 these -- these rail lines, who uses them?</p> <p>9 <b>A. Tonopah and Tidewater Railroad.</b></p> <p>10 Q. Okay. So what -- so if I understand your</p> <p>11 -- your testimony, UP, meaning the Union Pacific,</p> <p>12 objected to a certain name change; is that right?</p> <p>13 <b>A. Correct. Not -- not to a name change, but</b></p> <p>14 <b>to a name to go through and -- and operate as a</b></p> <p>15 <b>railroad.</b></p> <p>16 Q. And so there was an objection, and so you</p> <p>17 didn't move forward with that -- that company with</p> <p>18 that name; is that right?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. And so instead you went with -- you</p> <p>21 utilized which company as a railroad company?</p> <p>22 <b>A. We fell back to Tonopah and Tidewaters</b></p> <p>23 <b>operating railroad company.</b></p> <p>24 Q. And so moving forward you -- you used</p> <p>25 Tonopah and Tidewater Railroad Company?</p> <p style="text-align: right;">Page 128</p>	<p>1 <b>transfer -- the South Coast Air Quality had a higher</b></p> <p>2 <b>standard of EPA compliance than the State of</b></p> <p>3 <b>California did. And the federal court found that</b></p> <p>4 <b>for compliance with the Commerce Clause, that the</b></p> <p>5 <b>state had to have a statewide plan that any place --</b></p> <p>6 <b>because any place that Railroad or Railroads worked</b></p> <p>7 <b>in the State of California, it should have a common</b></p> <p>8 <b>regulatory set of rules to abide by.</b></p> <p>9 <b>And where the state of -- or the South</b></p> <p>10 <b>Coast Air Quality had the ability to regulate the</b></p> <p>11 <b>citizens who did work within that airshed or that</b></p> <p>12 <b>quality, it had that ability to go through and</b></p> <p>13 <b>regulate them. But it was precluded from a stricter</b></p> <p>14 <b>standard than the state plan for those people</b></p> <p>15 <b>engaged in interstate commerce.</b></p> <p>16 MS. JORGENSEN: I object to that</p> <p>17 representation. If -- if they want to actually put</p> <p>18 on and say what the case says, they should present</p> <p>19 the case. It shouldn't be just a recitation by the</p> <p>20 witness.</p> <p>21 HEARING OFFICER: Correct. Because</p> <p>22 there's different interpretations. I mean, that's</p> <p>23 his interpretation of -- and it's not -- it should</p> <p>24 have been presented in this that we could have</p> <p>25 responded. There could have been a response, but</p> <p style="text-align: right;">Page 130</p>





<p>1 ---</p> <p>2 MR. GUBLER: I believe it was. You're</p> <p>3 talking about ---</p> <p>4 MS. JORGENSEN: Factual case --- so</p> <p>5 reference to the case -- the case was not included.</p> <p>6 What I object to is the testimony from the witness</p> <p>7 explaining what the case says.</p> <p>8 HEARING OFFICER: Yeah. Yeah. I mean,</p> <p>9 his interpretation of the case, I mean, that's --</p> <p>10 yeah.</p> <p>11 MS. JORGENSEN: As a witness, he's not</p> <p>12 confident to testify as to what a case is.</p> <p>13 HEARING OFFICER: I -- I agree. Because</p> <p>14 he got a different interpretation of what that is.</p> <p>15 I mean, in terms -- that's the argument so --</p> <p>16 MR. GUBLER: So -- so we'll move on.</p> <p>17 HEARING OFFICER: Okay. Thank you.</p> <p>18 MR. GUBLER: Sure. Yep.</p> <p>19 BY MR. GUBLER:</p> <p>20 Q. Was there anything else that you felt like</p> <p>21 you weren't able to explain that you were asked the</p> <p>22 question for?</p> <p>23 <b>A. Not that I can recall.</b></p> <p>24 Q. There's a mention of --of something that</p> <p>25 happened on August 28th, do you recall that? A</p> <p>Page 131</p>	<p>1 HEARING OFFICER: Back on the record. We</p> <p>2 took a short break. It is now 12:16 and we are</p> <p>3 going back on the record. And, Counsel, you may</p> <p>4 call your next witness.</p> <p>5 MR. GUBLER: We're going to call, Ms.</p> <p>6 Canduella Rowsell.</p> <p>7 HEARING OFFICER: Okay. We're going to</p> <p>8 have you raise your right hand.</p> <p>9 CANDUELLA ROSWSELL</p> <p>10 having been first duly sworn to testify to the</p> <p>11 truth, the whole truth, and nothing but the truth,</p> <p>12 was examined and testified as follows:</p> <p>13 HEARING OFFICER: Okay. Counsel, you want</p> <p>14 to ask questions.</p> <p>15 EXAMINATION</p> <p>16 BY MR. GUBLER:</p> <p>17 Q. Ms. Rowsell, I'll try to keep this brief.</p> <p>18 Thank you. I believe last time we did ask you</p> <p>19 about, you know, specifically what -- what happened</p> <p>20 when you went up to the property. When I say the</p> <p>21 property, I'm referring to the property at</p> <p>22 Stratford. Could you -- how long have you -- you</p> <p>23 worked for Air Quality?</p> <p>24 <b>A. Two years and three months.</b></p> <p>25 Q. And -- and what is your education</p> <p>Page 133</p>
<p>1 visit by you thought that they were county</p> <p>2 officials?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Okay. Inclination, I don't know exactly</p> <p>5 the words you used. To your knowledge, is the 28th</p> <p>6 subject of this hearing today?</p> <p>7 <b>A. Not that I know of.</b></p> <p>8 MR. GUBLER: I'm -- I'm finished with the</p> <p>9 witness --</p> <p>10 HEARING OFFICER: Okay.</p> <p>11 MR. GUBLER: -- now. So --</p> <p>12 HEARING OFFICER: Any further redirect --</p> <p>13 re-cross?</p> <p>14 MS. JORGENSEN: Just one question.</p> <p>15 Actually, I don't.</p> <p>16 HEARING OFFICER: Okay.</p> <p>17 HEARING OFFICER: Can we take a</p> <p>18 five-minute break and then we will -- you can call</p> <p>19 -- we'll get ready to start calling your next</p> <p>20 witness.</p> <p>21 MR. GUBLER: Yeah. That's fine.</p> <p>22 HEARING OFFICER: Okay. All right. And</p> <p>23 we're going off the record. It's 12:04. We'll come</p> <p>24 back on at 12:10.</p> <p>25 (Recess at; 12:04 p.m. to 12:16 p.m.)</p> <p>Page 132</p>	<p>1 background?</p> <p>2 <b>A. I have a bachelor's degree in</b></p> <p>3 <b>environmental science from UNLV.</b></p> <p>4 Q. And when did you obtain that?</p> <p>5 <b>A. 2012.</b></p> <p>6 Q. Before you worked at Air Quality, did you</p> <p>7 work anywhere else?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Where was that?</p> <p>10 <b>A. Albertsons and Mall.</b></p> <p>11 Q. Had -- I believe that I may have asked</p> <p>12 you, I don't know if it was you or others, but you</p> <p>13 have had some training with Air Quality since you've</p> <p>14 -- you've worked for Air Quality; is that right?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. And have you ever had training on</p> <p>17 presenting your credentials?</p> <p>18 <b>A. We show up in with our uniform and our</b></p> <p>19 <b>badge around our neck. And I don't understand what</b></p> <p>20 <b>you're saying.</b></p> <p>21 Q. So have you actually had a class on how to</p> <p>22 present your credentials?</p> <p>23 <b>A. It's not a class, but we're told to</b></p> <p>24 <b>introduce ourselves, and who we work for and why</b></p> <p>25 <b>we're there.</b></p> <p>Page 134</p>





1 Q. Okay. Does that -- do you role play in  
2 that?  
3 **A. No. We're just told, when we go on site,**  
4 **if we're asked who we are, we introduce ourselves**  
5 **and give them a business card.**  
6 Q. Okay. Any other instructions?  
7 **A. I don't understand. We had a lot of**  
8 **instructions.**  
9 Q. As far as your training goes with -- with  
10 presenting your credentials, have -- did you have  
11 any other instructions?  
12 **A. No. But I can get on Creech Air Force**  
13 **Base with my credentials I have right now.**  
14 Q. Okay. Have you ever had any training as  
15 far as -- I mean, let me back up. You -- I mean,  
16 you work for a government entity. Would you agree  
17 with that?  
18 **A. Yes.**  
19 Q. And have you had -- had any training on --  
20 on Fourth Amendment issues?  
21 **A. Specifically the Fourth Amendment, no.**  
22 Q. Have you had any training as far as  
23 searches and seizures?  
24 **A. No.**  
25 Q. What -- what is your understanding of the

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1 Fourth Amendment?  
2 **A. Of what?**  
3 Q. Of the Fourth Amendment.  
4 **A. I'd have to read it because I don't have**  
5 **it in my mind right now.**  
6 Q. So when -- when you go onto a property,  
7 and we're going to be specific, to the Stratford  
8 property, what authority do you have to -- to go  
9 onto the property?  
10 **A. Per the permit that he signed and he**  
11 **authorized, we have the right to go out there and**  
12 **conduct an inspection without asking, unless it's**  
13 **specifically noted with a sign which it was not.**  
14 Q. So as far as -- have you read the  
15 regulations -- the Air Quality regulations before?  
16 **A. Yes.**  
17 Q. Regulation 94.5. Are you aware of the --  
18 of the, now this is entitled permit requirements.  
19 Have you read that section before?  
20 **A. Yes.**  
21 Q. And are you aware in that section, it  
22 says, no person shall refuse access if the control  
23 officer requests entry for the inspection and  
24 presents appropriate credentials. Are you aware of  
25 that?

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1 **A. Yes.**  
2 Q. And -- and so I think we've already gone  
3 over what your credentials look like. I won't go  
4 over that again. But I -- so you've also -- have  
5 you ever -- do you ever receive what they call  
6 personnel directives from Clark County, from the  
7 county manager?  
8 **A. Regarding?**  
9 Q. It's just personal directives. Do you  
10 ever get those?  
11 **A. We get all kinds of stuff from our**  
12 **management team.**  
13 Q. Are there documents? Have you ever seen  
14 this document before?  
15 **A. I believe I have, yes. We review when we**  
16 **are hired.**  
17 Q. So would you agree that -- that this --  
18 one of the purposes is to ensure that employees  
19 operate to uphold public trust in the actions of the  
20 county, are you aware of that?  
21 **A. Yes.**  
22 Q. Okay. And -- and that it is expected that  
23 all employees shall conduct the operations of the  
24 government with loyalty to the law. Is that -- is  
25 that your understanding as well?

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1 **A. Yes.**  
2 Q. Okay. So -- so based on your trainings  
3 and -- and of course the regulation that I read to  
4 you, what -- the 94.5, what is the government's  
5 protocol of having to present your credentials  
6 before you enter the property?  
7 **A. We don't have to present our credentials**  
8 **unless there's a sign at the front gate stating who**  
9 **we are.**  
10 Q. And that's from your training; is that  
11 right?  
12 **A. It's per the permit and the training, and**  
13 **the -- the regulations.**  
14 Q. So if you can't find anybody to present  
15 your credentials to, you can just go on the  
16 property; is that your understanding?  
17 **A. As long as it's not posted, correct.**  
18 Q. Okay.  
19 **A. Because you signed the permit allowing**  
20 **that access.**  
21 Q. So you -- your -- your testimony is that  
22 you've never seen -- you never saw any signs to  
23 check in at the Stratford property; is that right?  
24 HEARING OFFICER: Which dates?  
25 BY MR. GUBLER:

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<p>1 Q. Well, we'll start with January 8th.</p> <p>2 <b>A. No.</b></p> <p>3 Q. How about January 9th?</p> <p>4 <b>A. I wasn't there on the 9th.</b></p> <p>5 Q. How about any time after January 9th?</p> <p>6 <b>A. Yeah. There was after a while.</b></p> <p>7 Q. Okay. Is it -- is it possible that it was</p> <p>8 there and you didn't see it or you just didn't see</p> <p>9 it when you went the first time?</p> <p>10 <b>A. I took photos of the entire area. It was</b></p> <p>11 <b>not there when I went the first time, and I have</b></p> <p>12 <b>photos that could show.</b></p> <p>13 Q. So you went -- did you present those</p> <p>14 today?</p> <p>15 <b>A. I did not.</b></p> <p>16 MR. GUBLER: I'm going to have her look at</p> <p>17 Exhibit 28, which -- let's see. Who did I give</p> <p>18 those to? It's not going to be up there.</p> <p>19 BY MR. GUBLER:</p> <p>20 Q. On January 8th, were you -- did you see</p> <p>21 any of these two signs that say, office?</p> <p>22 <b>A. I did.</b></p> <p>23 Q. Did you check in?</p> <p>24 <b>A. I did not have to. I knew we were posted</b></p> <p>25 <b>to check in.</b></p> <p>Page 139</p>	<p>1 <b>So I went and I turned my camera and my phone into</b></p> <p>2 <b>my truck, and then I came back with my hard hat and</b></p> <p>3 <b>my vest and he allowed me on site.</b></p> <p>4 Q. And -- and did you -- did you show him any</p> <p>5 type of badge?</p> <p>6 <b>A. My badge is always around my neck where he</b></p> <p>7 <b>can see it clearly.</b></p> <p>8 Q. Did you discuss that badge with him on</p> <p>9 that day?</p> <p>10 <b>A. No. He didn't ask for it.</b></p> <p>11 Q. Okay. So you didn't have any conversation</p> <p>12 as to whether that allowed you into the building at</p> <p>13 Clark County?</p> <p>14 <b>A. At Clark County?</b></p> <p>15 Q. Yeah. Any Clark County building, like</p> <p>16 access?</p> <p>17 <b>A. The date that I was there on site with</b></p> <p>18 <b>him?</b></p> <p>19 Q. Yeah. On the 28th.</p> <p>20 <b>A. Why would I discuss my badge?</b></p> <p>21 Q. I was asking, did you?</p> <p>22 <b>A. No.</b></p> <p>23 Q. What does the word density mean to you?</p> <p>24 <b>A. I'm sorry, what word?</b></p> <p>25 Q. The word density. What is density?</p> <p>Page 141</p>
<p>1 Q. So the answer is no?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Now, did you go out to the property on</p> <p>4 August 28th?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And -- and you -- and you went on --</p> <p>7 actually, went into the -- the property; is that</p> <p>8 right?</p> <p>9 <b>A. After Mr. Eton allowed us on the property,</b></p> <p>10 <b>yes.</b></p> <p>11 Q. Mr. Eton?</p> <p>12 <b>A. I'm sorry. Mr. Truman. I'm sorry.</b></p> <p>13 Q. Yeah. I think we all understood that.</p> <p>14 But that's ---</p> <p>15 <b>A. Yep.</b></p> <p>16 Q. Yeah. Perfectly understands. Did Mr.</p> <p>17 Truman ask -- ask you to see your credentials up on</p> <p>18 that day?</p> <p>19 <b>A. No. He asked me for my camera and my</b></p> <p>20 <b>phone. He wanted -- he had a cardboard box that he</b></p> <p>21 <b>held out to us and he stated he would allow us</b></p> <p>22 <b>access to the site if we would turn over our cameras</b></p> <p>23 <b>and our phones, and I stated to him that I will not,</b></p> <p>24 <b>because it's Clark County property. That I would go</b></p> <p>25 <b>put it in my county vehicle. And he said, go ahead.</b></p> <p>Page 140</p>	<p>1 <b>A. Like kind of like volume amount, depending</b></p> <p>2 <b>upon how it's used.</b></p> <p>3 Q. Do you know the difference between the</p> <p>4 density of different materials that's used in -- in</p> <p>5 the -- in Clark County?</p> <p>6 <b>A. Well, like what -- what material are you</b></p> <p>7 <b>talking about?</b></p> <p>8 Q. I'm just asking you ---</p> <p>9 <b>A. Milk, water?</b></p> <p>10 Q. --- can you look at material, dirt and</p> <p>11 determine what type of material that is?</p> <p>12 <b>A. Absolutely not. You have to go through</b></p> <p>13 <b>the scientific.</b></p> <p>14 Q. Okay. Are you able to tell its density</p> <p>15 just by looking at dirt material?</p> <p>16 <b>A. No. You have to use testing.</b></p> <p>17 Q. Now, would you agree with me that the</p> <p>18 issue here is -- is fugitive dust?</p> <p>19 <b>A. The issue is unstable soils that could</b></p> <p>20 <b>cause fugitive dust, and a violation of the permit</b></p> <p>21 <b>that he signed.</b></p> <p>22 Q. So if material is denser than, I guess,</p> <p>23 the material that causes fugitive -- fugitive dust,</p> <p>24 would it leave the property?</p> <p>25 <b>A. Can you please repeat that question?</b></p> <p>Page 142</p>



<p>1 Q. I -- yeah, I'll try. Okay. So fugitive</p> <p>2 dust is -- is a -- would it -- would it be a lighter</p> <p>3 denser material?</p> <p>4 <b>A. It depends on the wind -- the strength of</b></p> <p>5 <b>the wind.</b></p> <p>6 Q. Okay.</p> <p>7 <b>A. Any item can go airborne. Look at</b></p> <p>8 <b>tornadoes, hurricanes.</b></p> <p>9 Q. And so is that the type of test that</p> <p>10 you're testing when you go out there, is -- is</p> <p>11 tornado strength?</p> <p>12 <b>A. No. I'm testing for unstable soil.</b></p> <p>13 Q. Okay. So if -- if -- if material is</p> <p>14 unstable, will it cause fugitive dust?</p> <p>15 <b>A. It can.</b></p> <p>16 Q. Okay. Now, if it's denser, if -- if a</p> <p>17 material is denser, will it -- will it still cause</p> <p>18 fugitive dust based on your testing?</p> <p>19 <b>A. It can with the winds.</b></p> <p>20 Q. Now -- now, I'm looking at your testing</p> <p>21 not necessarily the wind, right? Or -- or is that</p> <p>22 part of the test, it's the wind?</p> <p>23 <b>A. If the soils are unstable and they're not</b></p> <p>24 <b>a solid crust, they can cause fugitive dust with the</b></p> <p>25 <b>wind.</b></p> <p style="text-align: right;">Page 143</p>	<p>1 next witness.</p> <p>2 MS. JORGENSEN: She can stay here now.</p> <p>3 HEARING OFFICER: Okay.</p> <p>4 THE WITNESS: Can I go get my backpack?</p> <p>5 MS. JORGENSEN: Yeah.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. GUBLER: We'll just go with Katrinka</p> <p>8 Byers. We could call somebody else if you would</p> <p>9 like.</p> <p>10 HEARING OFFICER: We said you can call</p> <p>11 somebody else. That's up to you.</p> <p>12 MR. GUBLER: Andrew Kirk? We can do</p> <p>13 Andrew Kirk.</p> <p>14 HEARING OFFICER: Okay. You can raise</p> <p>15 your right hand please, Ms. Byers.</p> <p>16 KATRINKA BYERS</p> <p>17 having been first duly sworn to testify to the</p> <p>18 truth, the whole truth, and nothing but the truth,</p> <p>19 was examined and testified as follows:</p> <p>20 HEARING OFFICER: Go ahead, Counsel.</p> <p>21 EXAMINATION</p> <p>22 BY MR. GUBLER:</p> <p>23 Q. Ms. Byers, thanks for coming. Could you</p> <p>24 just tell us a little bit, do you have any</p> <p>25 educational background, what that is?</p> <p style="text-align: right;">Page 145</p>
<p>1 Q. Okay. And is it more or less likely to</p> <p>2 leave the property if -- if the -- if the material</p> <p>3 is denser?</p> <p>4 <b>A. It just depends on the wind, again. It's</b></p> <p>5 <b>less likely the lighter the material the more it'll</b></p> <p>6 <b>blow, correct.</b></p> <p>7 Q. Okay. Did anybody turn ETON or Arizona or</p> <p>8 Tonopah and Tidewater in for fugitive destinations?</p> <p>9 <b>A. I don't believe. Mine were unstable</b></p> <p>10 <b>soils. I don't believe so, no. But I'd have to</b></p> <p>11 <b>look at everyone else's inspections.</b></p> <p>12 Q. But -- but did any other third parties out</p> <p>13 signed?</p> <p>14 <b>A. Oh, no. It was not a complaint, it was a</b></p> <p>15 <b>routine inspection.</b></p> <p>16 Q. Did -- did you or anybody you know report</p> <p>17 my -- my client Eaton to Osha?</p> <p>18 <b>A. Not that I'm aware of.</b></p> <p>19 Q. So you did not; correct?</p> <p>20 <b>A. I did not.</b></p> <p>21 MR. GUBLER: I have no other questions.</p> <p>22 HEARING OFFICER: Okay. Any cross?</p> <p>23 MS. JORGENSEN: I don't have any</p> <p>24 questions.</p> <p>25 HEARING OFFICER: Okay. You can call your</p> <p style="text-align: right;">Page 144</p>	<p>1 <b>A. Yes. I have a bachelor degree in</b></p> <p>2 <b>environmental science.</b></p> <p>3 Q. Okay. And when did -- where did you</p> <p>4 obtain that?</p> <p>5 <b>A. The University of Oregon.</b></p> <p>6 Q. When was that?</p> <p>7 <b>A. I graduated, I believe, in 2005.</b></p> <p>8 Q. And how long have you worked for Air</p> <p>9 Quality?</p> <p>10 <b>A. A little over 11 years now.</b></p> <p>11 Q. And what is your position now?</p> <p>12 <b>A. I'm a senior air quality specialist.</b></p> <p>13 Q. Now -- now, Air Quality does some training</p> <p>14 with -- with the employees; is that right?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Could you tell us what training Air</p> <p>17 Quality has done -- what training you have received,</p> <p>18 excuse me, when it comes to presenting credentials?</p> <p>19 <b>A. Sure. So when I was first hired onto</b></p> <p>20 <b>Clark County Air Quality, the first thing you're</b></p> <p>21 <b>given is a badge. It allows you to generally access</b></p> <p>22 <b>the site. It also allows you to access the Kronos</b></p> <p>23 <b>time clock, and it allows you to get onto job sites</b></p> <p>24 <b>as an inspector.</b></p> <p>25 Q. Okay. And -- and so I want to -- you said</p> <p style="text-align: right;">Page 146</p>



1 you were given a badge?  
2 **A. Uh-huh.**  
3 Q. And so did somebody just tell you this,  
4 Hey, this is to get you on sites, this is -- shows  
5 you're an inspector. Is that what it -- is that  
6 what the training entails?  
7 **A. I mean, yes. That it's a credential, not**  
8 **only the badge, but also my card, my county logo**  
9 **shirt, my county vehicle with the county logo and it**  
10 **says Air Quality.**  
11 Q. Now -- now, I understand all that. Is  
12 there actually training that you receive as to how  
13 to present your credentials?  
14 **A. I've never had a class that told me how to**  
15 **present a credential of a card, no. It's -- it's**  
16 **pretty common sense.**  
17 Q. Okay. Have you ever had any type of  
18 training on the Fourth Amendment?  
19 **A. Go ahead and please tell me what the**  
20 **Fourth Amendment is.**  
21 Q. It's -- so I'm going to say probably not.  
22 **A. Well, would you please tell me what the**  
23 **Fourth Amendment says.**  
24 Q. As far as unlawful searches and seizures?  
25 **A. I've never had training on that.**

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1 Q. Okay.  
2 **A. I've never had to have training on that.**  
3 **I'll rephrase that.**  
4 Q. So we're going to -- again, we're going to  
5 get specific here. We're going to talk about the  
6 Stratford property. Okay. But I guess this is more  
7 general, but what is your understanding, what  
8 authority do you have to go onto a property?  
9 **A. What authority do I have to go on a**  
10 **property or to ETON's property?**  
11 Q. Well, yeah, let's just stick with ETON.  
12 That's fine.  
13 **A. So as a -- as an inspector for Clark**  
14 **County Air Quality, when a permittee applies for a**  
15 **dust control operating permit, it's very clear in**  
16 **the permit it says that we have the authority to go**  
17 **on and inspect the site without notification, to**  
18 **make sure that the site is in compliance with all**  
19 **Air Quality regulations.**  
20 Q. Okay. So that's -- you're going off based  
21 on the permit; is that right?  
22 **A. That's correct.**  
23 Q. So you -- you've read the Air Quality  
24 Regulations; is that right?  
25 **A. Yes.**

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1 Q. 94.5 permit requirements. Are you aware  
2 of those?  
3 **A. Yes.**  
4 Q. Okay. Are you -- are you aware that it  
5 says that no person shall refuse access if the  
6 control officer requests entry for inspection and  
7 presents appropriate credentials? Are you aware of  
8 that?  
9 **A. Yes. I'm looking at that up on the**  
10 **monitor now.**  
11 Q. Great. And that is part of the permit  
12 requirements; is that right?  
13 **A. Yes.**  
14 Q. So based on the -- so based on the  
15 government's protocol, having to present your  
16 credentials before you enter the property, if you  
17 can't find anybody to present your credentials to,  
18 how do you proceed?  
19 **A. Again, I --**  
20 MS. JORGENSEN: Objection. I have an  
21 objection. I think it mischaracterizes the  
22 regulation and also mischaracterizes her testimony.  
23 HEARING OFFICER: Okay. Restate the --  
24 the question, Counsel?  
25 BY MR. GUBLER:

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1 Q. So if you go onto a property and nobody is  
2 there to present your credentials to, or to request  
3 to go onto the property, how do you proceed?  
4 **A. Well, the dust control operating permit**  
5 **says I don't have to show credentials. If they have**  
6 **a dust control operating permit, I can show up**  
7 **unannounced or I can show up announced.**  
8 Q. The same permit where I just read the  
9 regulations saying that you need to present  
10 credentials?  
11 MS. JORGENSEN: That's not what it says.  
12 BY MR. GUBLER:  
13 Q. So I -- I -- I want you to point out here  
14 or I'll point out that it says, if the control  
15 officer requests entry, that's -- that's affirmative  
16 on the control officer, and presents, that's  
17 affirmative on the control officer, is it not? I'm  
18 asking her a question.  
19 MS. JORGENSEN: I know you're asking a  
20 question. You're asking a question about the law,  
21 and we can now have an argument about the law.  
22 HEARING OFFICER: Yeah. Let's just --  
23 MS. JORGENSEN: It says, no person shall  
24 refuse access.  
25 MR. GUBLER: If --

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1 MS. JORGENSEN: Right. But you're missing  
2 the whole first part of it. This is directed at the  
3 permittee.  
4 HEARING OFFICER: Let's -- let's move  
5 along. I see where you're headed and just let's  
6 move along with the questions.  
7 BY MR. GUBLER:  
8 Q. So what is -- how do you proceed? Did you  
9 answer that question?  
10 A. I would proceed to the site and I would  
11 look for the conditions that I usually look for on  
12 all sites. The kind of actual permit boundaries,  
13 making sure they're not going outside the permit  
14 boundaries. I look for a proper desk sign that it's  
15 valid, and upstate and current and public view. I'd  
16 make sure the site are also -- or crusted and  
17 stable.  
18 And I would try to find a site supervisor  
19 or someone on the job site to speak with regarding  
20 just compliance and mitigation issues with the  
21 control measures for water trucks, that kind of  
22 thing. Verify desk cards. And again, if nobody's  
23 on the site, which I've inspected many sites with  
24 nobody on site, I just proceed with my -- going  
25 through my checklist and then I -- and then I leave.

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1 I document my findings.  
2 Q. So you just go on to the site; is that  
3 right?  
4 A. Correct.  
5 Q. And if there is somebody there, what do  
6 you do?  
7 A. I just told you. I would speak with them.  
8 You're talking about like --  
9 Q. Are you -- do you speak to them after you  
10 -- you do your inspection or before?  
11 A. If I see them, I would definitely let them  
12 know who I am, yes. I proceed to follow up with  
13 them and let them know I'm with Air Quality. Again,  
14 I should present my badge. I usually hand them one  
15 of my business cards and let them know why I'm on  
16 site.  
17 Q. So what -- let me ask you this, if I could  
18 have you look at -- there's an Exhibit 28. I  
19 believe it should still be there. Yeah. Now, how  
20 many times did you go out to the property?  
21 A. I've been out to the site, I believe for  
22 sure, one time.  
23 Q. So -- so probably January 9th and possibly  
24 the 17th of January, does that sound about right?  
25 A. Yes.

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1 Q. Okay. When you went out there, did you --  
2 did you notice -- looking at these two pages, did  
3 you notice either of these two office signs?  
4 A. I can't remember seeing that office sign,  
5 but I know we looked for one because Canduella said  
6 that, during her first site, Mr. Eton tried to open  
7 her door. He asked us to check in with the office.  
8 So I know we had tried to find the office when we  
9 pulled in and parked first. I don't remember seeing  
10 the sign though. No.  
11 Q. And -- and pulled in where?  
12 A. The front -- soon as we pulled in, we took  
13 a left, and there was several big, large bays where  
14 they were doing maintenance work. Maybe a small  
15 little -- I honestly don't even know if it was a  
16 trailer.  
17 Q. So -- and -- and just for clarification  
18 for the record, you said Mr. Eton. Who are you  
19 referring to?  
20 A. Mr. Moe Eton.  
21 Q. Mr. Truman?  
22 A. I'm sorry. Yes. I apologize. Yes. Mr.  
23 Moe -- Moe Truman. I apologize.  
24 Q. Did you -- do you know what the word  
25 density means?

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1 A. Yes.  
2 Q. What is it?  
3 A. It refers to dense -- dense particles. It  
4 just depends on your perspective of what you're  
5 asking me. Density of what?  
6 Q. We're talking about dirt here.  
7 A. Okay.  
8 Q. Okay.  
9 A. Yeah.  
10 Q. So are you able to tell the difference of  
11 the density of different dirt materials?  
12 A. So in my profession, we don't look for the  
13 density. We look to see if the site soils are moist  
14 or crusted 24/7. So I look for dry, loose and  
15 pottery site soils. Not so much the density of the  
16 soil, no.  
17 Q. Okay. So what would the drop ball test  
18 tell me?  
19 A. The drop ball is a soil crust  
20 determination that would tell you if the site soils  
21 had an actual crust to -- usually conduct those to  
22 show if the site was crusted or not.  
23 Q. Okay. So -- so the -- the drop ball test  
24 is used to tell whether a material is crusted; is  
25 that right? Is that what your testimony is?

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1 **A. That -- that's correct, yes.**  
2 Q. Okay. Did -- did anybody outside of Air  
3 Quality turn my client in for fugitive test, like a  
4 complaint?  
5 **A. You know, I would have to look at all the**  
6 **complaints submitted. I'm sorry, I don't know that.**  
7 **Possibly.**  
8 Q. Did -- do you -- did you or anybody, you  
9 know, turn my client into OSHA?  
10 **A. Did I or anybody I know?**  
11 Q. Correct.  
12 **A. I'm not familiar with that, no. No.**  
13 Q. Just -- just briefly, as far as the office  
14 signs, did -- did anybody point to you after the  
15 fact the office signs?  
16 **A. Point to me.**  
17 Q. Yeah. I asked you about -- sorry, I'll  
18 ask you about that picture, Exhibit 28, just looking  
19 at that again. You -- you had testified earlier  
20 that you did not see those signs when you entered  
21 the property; is that right?  
22 **A. I don't remember seeing the sign, that's**  
23 **correct. And I don't remember -- re spoke with**  
24 **Eton, I'm sorry, we spoke with Mr. Moe Truman when**  
25 **we pulled in, and he may or may not have pointed**  
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1 **them to us. It's been almost a year, sir. So I**  
2 **don't remember.**  
3 Q. Did you ever remember seeing these signs?  
4 **A. I don't remember, no.**  
5 MR. GUBLER: Okay. I don't have any other  
6 questions for you.  
7 HEARING OFFICER: Okay.  
8 MS. JORGENSEN: One question.  
9 EXAMINATION  
10 BY MS. JORGENSEN:  
11 Q. Ms. Byers, for drop ball or to determine  
12 whether or not a site has a sufficient crust or is  
13 dry, loose and powdery, do you have to perform a  
14 drop ball test?  
15 **A. No. That's not necessary, especially when**  
16 **you can visually see that it's dry, loose, and**  
17 **powdery. When you go to drop the drop ball and**  
18 **conduct a test, if you can visually see that the**  
19 **loose, the drop ball will be basically surrounded by**  
20 **loose particles. Then the drop ball test is --**  
21 **there's no point in dropping the ball because I**  
22 **would lose the ball most likely in a dry pottery**  
23 **site soils.**  
24 Q. And is it -- how big is the drop ball?  
25 **A. It's 5-8 inch steel ball.**  
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1 Q. Okay. And just round?  
2 **A. It's pretty small, yeah.**  
3 Q. And is the drop ball test -- when is the  
4 drop ball test most useful?  
5 **A. It's most useful when we go to sites that**  
6 **want to close out, they're -- they -- we -- we want**  
7 **to make sure that they meet BNT 11. So sometimes**  
8 **sites will block an area and they will cross it over**  
9 **with the water or a dust palliative. And in that**  
10 **situation, we can conduct the drop ball test and**  
11 **just confirm that it does have a nice sufficient**  
12 **crust. It's going to last for long term.**  
13 MS. JORGENSEN: Okay. Thank you. Nothing  
14 further.  
15 HEARING OFFICER: Okay. Redirect?  
16 BY MR. GUBLER:  
17 Q. Did you perform the drop ball test?  
18 **A. I would have to pull up the inspection, if**  
19 **that's okay.**  
20 Q. To your knowledge no, correct?  
21 **A. No, I believe on -- I believe on Mr.**  
22 **Eton's site, the drop off test was conducted that**  
23 **day. But I can -- I'd have to look at my notes and**  
24 **--**  
25 Q. Do you have those here?  
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1 **A. Yeah.**  
2 MS. JORGENSEN: Are you talking about  
3 January 9th?  
4 MR. GUBLER: Yes.  
5 MS. JORGENSEN: Okay. Let me go to the  
6 notice of violation 9994, I believe. January 9th  
7 Exhibit -- the Exhibit -- would it be H. No, that's  
8 the 17th.  
9 THE WITNESS: January 9th. That's mine.  
10 January 9th is mine.  
11 MS. JORGENSEN: Okay.  
12 THE WITNESS: Yep. We did a follow up.  
13 And if you go down to BNP compliance, you can do --  
14 you can see that the drop ball soil crust  
15 termination, it did fail. That means it was done  
16 that day. It does say observed driverless and power  
17 site soils with no available back.  
18 We observed several areas on the site that  
19 day. There was 1.76 acres that was disturbed  
20 outside the permit boundary. I believe we did it  
21 out there just to confirm it was crusted or not, and  
22 it did fail.  
23 BY MR. GUBLER:  
24 Q. Where does it say the drop ball test?  
25 I've not seeing that.  
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<p>1 <b>A. If you go under BMP compliance, it's</b> 2 <b>highlighted in bold. It'll say, site soils were --</b> 3 <b>project soils were unstable. There was</b> 4 <b>approximately 1.5 acres, so as size of instability.</b> 5 <b>Track out control device was not needed or sorry,</b> 6 <b>no, it was needed. And however, there was no track</b> 7 <b>out.</b> 8 <b>And then it says, mitigation equipment, it</b> 9 <b>was inadequate. There was no water truck on site to</b> 10 <b>-- or anything to mitigate the dry, loose powdery</b> 11 <b>site soils that we observed. And it says soil crust</b> 12 <b>determination fail.</b> 13 Q. Sorry, I'm still trying to see where it 14 says you did the drop ball test. And where does 15 that say that? 16 <b>A. Fail.</b> 17 Q. Where does it say that you used the drop 18 ball test? 19 <b>A. It doesn't give a specific location. On</b> 20 <b>the farm it doesn't give a specific location.</b> 21 <b>Within the areas of disturbed soil is where we</b> 22 <b>would've conducted the drop ball stabilization test.</b> 23 Q. Do you actually recall performing the drop 24 ball test? 25 <b>A. I don't recall it. So I was there with</b></p> <p style="text-align: right;">Page 159</p>	<p>1 Q. And where did you obtain that? 2 <b>A. I was at State University of New York,</b> 3 <b>Plattsburgh.</b> 4 Q. And what year was that that you obtained 5 that degree? 6 <b>A. Did you say what year?</b> 7 Q. Yes. 8 <b>A. 1997.</b> 9 Q. How long have you worked for Air Quality? 10 <b>A. Just over 10 years.</b> 11 Q. In -- in that 10 years, have you had any 12 training on presenting credentials? 13 <b>A. Yes. During our first year when we're in</b> 14 <b>our original training. When we go onto sites and</b> 15 <b>things, we're told to wear our badges and our shirts</b> 16 <b>and drive the company vehicles.</b> 17 Q. And is there any -- any other training on 18 actually presenting your credentials? 19 <b>A. I don't remember exactly.</b> 20 Q. Have you ever had any training on Fourth 21 Amendment, searches and seizures? 22 <b>A. Not that I can recall.</b> 23 Q. So what's your understanding -- what -- 24 what authority do you have when you go onto a 25 property? And we're specifically talking about</p> <p style="text-align: right;">Page 161</p>
<p>1 <b>several other coworkers, and I just know that during</b> 2 <b>that time I wrote it up. I believe another coworker</b> 3 <b>did it. I did not do it.</b> 4 Q. So you didn't do it? 5 <b>A. I did not conduct it. I just know the</b> 6 <b>form says we did.</b> 7 MR. GUBLER: Okay. No other questions. 8 Thank you. 9 HEARING OFFICER: Thank you. Any further? 10 MS. JORGENSEN: No. 11 HEARING OFFICER: Okay. You can call your 12 next witness. It was Mr. Kirk, I believe. Okay. 13 Thanks. Yeah. That's fine. Okay. Mr. -- please 14 raise your right hand. 15 <b>ANDREW KIRK</b> 16 having been first duly sworn to testify to the 17 truth, the whole truth, and nothing but the truth, 18 was examined and testified as follows: 19 HEARING OFFICER: Okay. Counsel. 20 <b>EXAMINATION</b> 21 <b>BY MR. GUBLER:</b> 22 Q. Mr. Kirk, thank you for coming. Could you 23 describe your education background, please? 24 <b>A. I have a four-year bachelor's degree in</b> 25 <b>environmental science.</b></p> <p style="text-align: right;">Page 160</p>	<p>1 ETON, the -- the -- the property at Stratford. 2 <b>A. The authority that I have by the dust</b> 3 <b>control operating permit.</b> 4 Q. Okay. And so if -- if you go into a 5 property and nobody's there, how do you proceed? 6 <b>A. I just do our inspection.</b> 7 Q. You just go on the property; is that 8 right? 9 <b>A. Unless there's signage or something that</b> 10 <b>says not to or to check in.</b> 11 Q. If -- if there's anybody there, how do you 12 proceed? 13 <b>A. I just do the inspection, and then when</b> 14 <b>I'm done I usually when try and meet with someone to</b> 15 <b>explain what I found. Especially if there's</b> 16 <b>deficiencies, we have to call the responsible</b> 17 <b>official and let them know what was found.</b> 18 Q. Now, real quick, what -- let's just review 19 this briefly. What -- what days were you on the 20 Stratford property? Do you recall that? 21 <b>A. Not at the top of my head. Pretty much</b> 22 <b>every day in the first interview except the first</b> 23 <b>one.</b> 24 Q. So the 9th and 17th? 25 <b>A. 9th and 17th, yes.</b></p> <p style="text-align: right;">Page 162</p>



<p>1 Q. Okay.</p> <p>2 <b>A. And then July 17th and 25th, I believe.</b></p> <p>3 Q. Any other days that you're aware of?</p> <p>4 <b>A. No. Not that I can recall.</b></p> <p>5 Q. I'd like you to look at -- I'd like you to</p> <p>6 look at Exhibit 28. There's two pictures that's</p> <p>7 involved with this. Did you ever see these -- these</p> <p>8 signs when you went on the property on any of those</p> <p>9 dates?</p> <p>10 <b>A. Did I receive these signs?</b></p> <p>11 Q. Did you ever see them?</p> <p>12 <b>A. Oh, see them?</b></p> <p>13 Q. Yeah.</p> <p>14 <b>A. I don't recall whether I -- I saw that or</b></p> <p>15 <b>not.</b></p> <p>16 Q. You don't remember?</p> <p>17 <b>A. I mean, I -- it -- it just -- it looks new</b></p> <p>18 <b>to me, so no, I did not see them.</b></p> <p>19 Q. You never did?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Did you look for them?</p> <p>22 <b>A. I wouldn't know to look for something like</b></p> <p>23 <b>that if it's -- it's pretty small, no. I was</b></p> <p>24 <b>looking for signage on the fence specifically where</b></p> <p>25 <b>you enter -- enter and exit the site, and there was</b></p> <p style="text-align: right;">Page 163</p>	<p>1 material and determine what the product is and it's</p> <p>2 density?</p> <p>3 <b>A. I don't believe you can figure out the</b></p> <p>4 <b>density just by looking at it, but sometimes you can</b></p> <p>5 <b>decide. You can determine what kind of soil it is.</b></p> <p>6 <b>But that -- I don't know. How is that relevant?</b></p> <p>7 Q. What is fugitive dust?</p> <p>8 <b>A. It's (indiscernible) of soil particles</b></p> <p>9 <b>that is usually kicked up from winds or vehicles</b></p> <p>10 <b>driving over unstable soils, things like that.</b></p> <p>11 Q. Does density play any part in -- in</p> <p>12 fugitive dust?</p> <p>13 <b>A. I'm not sure.</b></p> <p>14 Q. When -- you know what the drop ball test</p> <p>15 is?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. What is that?</p> <p>18 <b>A. It's a way to determine if it's soil</b></p> <p>19 <b>crust. It's actually called a soil crust</b></p> <p>20 <b>determination test. It's a way to determine whether</b></p> <p>21 <b>the soils have a crust that is good enough to</b></p> <p>22 <b>prevent loose particles from being dislodged.</b></p> <p>23 Q. At any time did you perform the -- the</p> <p>24 draw ball test?</p> <p>25 <b>A. I did not. I -- I did not. It was not</b></p> <p style="text-align: right;">Page 165</p>
<p>1 <b>no -- there was no documentation saying to sign in</b></p> <p>2 <b>or anything like that.</b></p> <p>3 Q. Did --</p> <p>4 <b>A. Even if I had seen it, which I don't</b></p> <p>5 <b>recall that I did, it just says office, that doesn't</b></p> <p>6 <b>-- that wouldn't -- that doesn't tell me anything.</b></p> <p>7 Q. Because you don't normally proceed, you</p> <p>8 just go into the -- the site first; is that right?</p> <p>9 <b>A. Correct. And then discuss what was found,</b></p> <p>10 <b>if there's just, you know, discrepancies or things</b></p> <p>11 <b>wrong with the site, we call the responsible</b></p> <p>12 <b>official or the superintendent that's on site to</b></p> <p>13 <b>discuss it.</b></p> <p>14 Q. Do you know what density means?</p> <p>15 <b>A. Density, the weight or something? Is that</b></p> <p>16 <b>what you --</b></p> <p>17 Q. When it comes -- when -- related to dirt,</p> <p>18 the density of a material?</p> <p>19 <b>A. I would just probably say the weight of</b></p> <p>20 <b>it. So like it's not.</b></p> <p>21 Q. Are there different densities of different</p> <p>22 materials, dirt?</p> <p>23 <b>A. Between like clays, silts and sands and</b></p> <p>24 <b>things like that, yes.</b></p> <p>25 Q. Okay. And are you able to just look at</p> <p style="text-align: right;">Page 164</p>	<p>1 <b>necessary because the pictures that we have and what</b></p> <p>2 <b>we saw was clear that the soils were loose, which is</b></p> <p>3 <b>the intent of the test.</b></p> <p>4 Q. Did anybody that you know of turn, you</p> <p>5 know, outside of Air Quality turn -- turn my client</p> <p>6 in for fugitive dust at all?</p> <p>7 <b>A. I -- I'm not aware of that.</b></p> <p>8 Q. And do you know if had -- did you or</p> <p>9 anybody you know turn my client in to OSHA?</p> <p>10 <b>A. I did not. I'm not familiar with that.</b></p> <p>11 MR. GUBLER: I don't have any other</p> <p>12 questions. Thank you.</p> <p>13 HEARING OFFICER: Okay. Cross?</p> <p>14 MS. JORGENSEN: Could we pull up the map?</p> <p>15 Probably a good map is, let's see, under Air</p> <p>16 Quality's reply Exhibit B. Yeah. Could be. And</p> <p>17 then scroll until you find a map. I don't know if</p> <p>18 that's the best one.</p> <p>19 EXAMINATION</p> <p>20 BY MS. JORGENSEN:</p> <p>21 Q. Okay. Mr. Kirk, could you describe what</p> <p>22 this document is?</p> <p>23 <b>A. That is a map covering the property in</b></p> <p>24 <b>question. The purple triangle I believe is the</b></p> <p>25 <b>original dust control permit that was pulled. There</b></p> <p style="text-align: right;">Page 166</p>



<p>1 <b>was two areas at the top that are in green, were not</b> 2 <b>included on the original dust control permit, but</b> 3 <b>were added later.</b> 4 Q. Okay. And do you recall on January 9th 5 how you entered the site? 6 <b>A. I do.</b> 7 Q. Where did you enter from? 8 <b>A. Up here.</b> 9 Q. Okay. 10 <b>A. There's a gate that was open.</b> 11 Q. And I don't know if you can estimate this, 12 but can you describe or can you estimate the length 13 of the frontage of this particular site on 14 Stratford? 15 <b>A. The actual length from here to here?</b> 16 Q. Yes. 17 <b>A. I don't know 500, 600 feet maybe.</b> 18 Q. Okay. And do you have any idea where the 19 office is located? 20 <b>A. I might do now, yes.</b> 21 Q. And where is it located? 22 <b>A. Around here.</b> 23 Q. Okay. 24 <b>A. Inside.</b> 25 MS. JORGENSEN: All right. And I don't</p>	<p>1 again, what is your position with Air Quality? 2 <b>A. Inspector.</b> 3 Q. And as an inspector, what are your duties? 4 <b>A. We do inspections on complaints that come</b> 5 <b>in. We go to construction job sites, inspect it</b> 6 <b>that they're following the AQ regulations.</b> 7 Q. Did -- did you receive any complaints 8 related to the Stratford property? 9 <b>A. No, sir.</b> 10 Q. In -- in your -- in your job, you -- you 11 received training; is that right? 12 <b>A. Yes.</b> 13 Q. Have you ever been trained in how to 14 present credentials? 15 <b>A. I didn't know there was training.</b> 16 Q. I'm just asking. Have you ever been 17 trained -- 18 <b>A. No.</b> 19 Q. -- how to present credentials? So no role 20 playing, nothing like that? 21 <b>A. No. It's --</b> 22 Q. Have you ever been trained with respect to 23 Fourth Amendment, searches and seizures? 24 <b>A. No.</b> 25 Q. So when you go and inspect a property,</p>
<p>1 have anything further. 2 HEARING OFFICER: Any further? 3 MR. GUBLER: No. 4 HEARING OFFICER: Okay. Thank you. And 5 next witness. 6 MR. GUBLER: Noel Crandall. 7 HEARING OFFICER: Mr. Crandall, please 8 raise your right hand. 9 NOEL CRANDALL 10 having been first duly sworn to testify to the 11 truth, the whole truth, and nothing but the truth, 12 was examined and testified as follows: 13 HEARING OFFICER: Okay. 14 EXAMINATION 15 BY MR. GUBLER: 16 Q. Mr. Crandall, thank you. Could you please 17 describe to me your education background? 18 <b>A. High school.</b> 19 Q. Any other type of education? 20 <b>A. No.</b> 21 Q. How long have you worked for Air Quality? 22 <b>A. Nineteen.</b> 23 Q. Nineteen years? 24 <b>A. Yes, sir.</b> 25 Q. In -- in your -- and -- and remind us</p>	<p>1 tell me what your understanding is and what 2 authority have to come onto the property. 3 <b>A. Well, when the committee permit pulls a</b> 4 <b>permit, it states that they're allowing us, the</b> 5 <b>inspectors, to come in on site unannounced, and they</b> 6 <b>must allow us entry to inspect the site.</b> 7 Q. Okay. And you have -- you've read the 8 regulations, haven't you? 9 <b>A. Yes.</b> 10 Q. And in the regulation of 94.5 permit 11 requirements, you've read that as well then? 12 <b>A. Well, not -- I don't quite remember right</b> 13 <b>now. You could -- if I have to look at it and I can</b> 14 <b>see.</b> 15 Q. You don't read that to go to sleep or 16 anything? 17 <b>A. No, sir.</b> 18 Q. Okay. So in the permit requirements, 19 you're aware that it says no person shall refuse 20 access if the control officer requests entry for 21 inspection and presents appropriate credentials, 22 you're aware of that? 23 <b>A. Which one is that?</b> 24 Q. 94.5 Subsection (f)(1). 25 <b>A. I'm aware of it, yes.</b></p>



<p>1 Q. Okay. So tell me what is the protocol,</p> <p>2 when you go onto a property -- when you go to a</p> <p>3 property and nobody's there, what do you do?</p> <p>4 <b>A. If we have access to it, we go in. If</b></p> <p>5 <b>there's no sign that states, you know, check in or,</b></p> <p>6 <b>you know, only authorize, you know, we're --</b></p> <p>7 <b>according to the permit, we're authorized to enter.</b></p> <p>8 Q. So otherwise you just go on in. So if</p> <p>9 there's -- there is somebody there, then what do you</p> <p>10 do?</p> <p>11 <b>A. We'll try to make contact with them if,</b></p> <p>12 <b>you know, find out if they're a super or responsible</b></p> <p>13 <b>official.</b></p> <p>14 Q. And you do that before you do any testing?</p> <p>15 <b>A. Not necessarily, no. Because sometimes</b></p> <p>16 <b>they don't request us to -- they don't call us over</b></p> <p>17 <b>or anything, and so we just go ahead and do our</b></p> <p>18 <b>inspection. And if they request -- if they call us</b></p> <p>19 <b>over, we'll go talk to them.</b></p> <p>20 Q. I'd like to look at that Exhibit 28.</p> <p>21 Before I do that, what -- what days were you at the</p> <p>22 property?</p> <p>23 <b>A. In the -- I think maybe the end of June,</b></p> <p>24 <b>and then the 7th, the 14th, the 21st and 28th, I</b></p> <p>25 <b>believe.</b></p> <p style="text-align: right;">Page 171</p>	<p>1 Q. So let's -- let's talk about dirt, right?</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. Density of material, dirt. What -- what</p> <p>4 is density, when you hear that?</p> <p>5 <b>A. Thickness. Hardness.</b></p> <p>6 Q. It -- it -- is density important in -- in</p> <p>7 what you do?</p> <p>8 <b>A. In?</b></p> <p>9 Q. In your job?</p> <p>10 <b>A. It depends, you know.</b></p> <p>11 Q. Okay. What does it depend on?</p> <p>12 <b>A. What we're talking about, you know, what</b></p> <p>13 <b>are we talking about, density of?</b></p> <p>14 Q. Density of material, dirt.</p> <p>15 <b>A. It, you know, it depends if, you know, if</b></p> <p>16 <b>certain regulations got to be a -- a thickness of</b></p> <p>17 <b>material to be approved by us or, you know, a</b></p> <p>18 <b>density of how much material needs to be applied to</b></p> <p>19 <b>meet our AQ regulations.</b></p> <p>20 Q. Okay. Can you -- can you look at material</p> <p>21 and determine what the product is and its density?</p> <p>22 <b>A. By looking at it, you can -- I can</b></p> <p>23 <b>somewhat tell, you know. If I don't go up there and</b></p> <p>24 <b>see it itself, you know, touch it, I can just</b></p> <p>25 <b>assume, you know, what it is, and I don't think</b></p> <p style="text-align: right;">Page 173</p>
<p>1 Q. So you were there July 25th, 31st, August</p> <p>2 7th, 14th and 28th?</p> <p>3 <b>A. I believe so.</b></p> <p>4 Q. Did -- when you were there, did you ever</p> <p>5 perform a drop ball test?</p> <p>6 <b>A. No. We were denied entry most of the days</b></p> <p>7 <b>we tried to get in.</b></p> <p>8 Q. So you never -- you never did; is that</p> <p>9 right?</p> <p>10 <b>A. I -- I myself, no.</b></p> <p>11 Q. Do you know if anybody else did?</p> <p>12 <b>A. No. Not that I could tell you.</b></p> <p>13 Q. Okay. Looking at that Exhibit 28, at any</p> <p>14 time while you were out there on any of those days,</p> <p>15 did you ever see any of these two signs that say,</p> <p>16 office? And -- and you have to look at the next</p> <p>17 page as well.</p> <p>18 <b>A. I can't recall. I just knew that prior to</b></p> <p>19 <b>my first day going there, they were refused, so we</b></p> <p>20 <b>-- I was told that we had to go check-in at the</b></p> <p>21 <b>front office.</b></p> <p>22 Q. Do you know what the word density is?</p> <p>23 <b>A. How is it used though? I mean, the</b></p> <p>24 <b>density could be the density of a material, density</b></p> <p>25 <b>of this, you know.</b></p> <p style="text-align: right;">Page 172</p>	<p>1 <b>there's anybody out that can just look at something</b></p> <p>2 <b>just -- and see the density by looking at it.</b></p> <p>3 Q. Do you know if -- if anybody turned my</p> <p>4 client in into OSHA, you or anybody that you know</p> <p>5 of?</p> <p>6 <b>A. Oh, I inquired.</b></p> <p>7 Q. What's that?</p> <p>8 <b>A. I -- I inquired.</b></p> <p>9 Q. To what?</p> <p>10 <b>A. OSHA.</b></p> <p>11 Q. You inquire to OSHA?</p> <p>12 <b>A. Yes, sir.</b></p> <p>13 Q. What did you inquire about?</p> <p>14 <b>A. Well, you know, we -- we work with other</b></p> <p>15 <b>agencies and, you know, we -- and we've talked to</b></p> <p>16 <b>other agencies when we, you know, we come across a,</b></p> <p>17 <b>you know, a hazard or -- or some type where we got</b></p> <p>18 <b>to find out some information from other entities.</b></p> <p>19 <b>We work with NDEP, EPA, you know, so...</b></p> <p>20 MR. GUBLER: I don't have any other</p> <p>21 questions.</p> <p>22 HEARING OFFICER: Okay. Cross?</p> <p>23 EXAMINATION</p> <p>24 BY MS. JORGENSEN:</p> <p>25 Q. Just follow. Mr. Crandall, were you at</p> <p style="text-align: right;">Page 174</p>



<p>1 the site -- so the notice of violation, the second</p> <p>2 one, the last site inspection date where you</p> <p>3 attempted to perform inspection was August 14th.</p> <p>4 Since that time, did you go to the site on August</p> <p>5 28th?</p> <p>6 <b>A. I believe so.</b></p> <p>7 Q. And do you recall whether you went with</p> <p>8 anybody?</p> <p>9 <b>A. I went with Canduella.</b></p> <p>10 Q. Okay. And when you went with her, do you</p> <p>11 remember if you were able to get onto the site?</p> <p>12 <b>A. I believe that day we did, but there was a</b></p> <p>13 <b>-- a certain condition we had to meet --</b></p> <p>14 Q. And what was that condition?</p> <p>15 <b>A. That we weren't allowed to bring any</b></p> <p>16 <b>cameras, like recording devices, that we had to</b></p> <p>17 <b>leave our phones. He wanted -- he had a box and he</b></p> <p>18 <b>wanted us to put our personal phones and work phones</b></p> <p>19 <b>inside there, and Canduella stated that, you know,</b></p> <p>20 <b>she wasn't giving it up because it was her</b></p> <p>21 <b>responsibility for the county phones. And so we</b></p> <p>22 <b>said we'll put in our trucks if that's okay, and Mr.</b></p> <p>23 <b>Truman agreed.</b></p> <p>24 MS. JORGENSEN: Okay. And I don't have</p> <p>25 anything further.</p> <p>Page 175</p>	<p>1 As you -- you've heard testimony that</p> <p>2 there was a dust control operating permit. Mr.</p> <p>3 Truman is the responsible official, he had -- and</p> <p>4 also he's the one who applied for the permit. He</p> <p>5 indicated that there would be grubbing and some</p> <p>6 demolition, and that the site would be developed</p> <p>7 further. When they got on site, it looked like it</p> <p>8 was a full-blown unpaved trucking yard.</p> <p>9 In addition to that, they found that there</p> <p>10 were additional areas that were not permitted that</p> <p>11 were also being used. There's photographs, there's</p> <p>12 site inspections, and I submit to you that based on</p> <p>13 the testimony that these sites were all -- all</p> <p>14 included some level of unstable soil.</p> <p>15 With regard to the second Notice of</p> <p>16 Violation 10078, there are two types of violations.</p> <p>17 One was a failure to implement dust control</p> <p>18 measures, and that's for the date of July 17th. And</p> <p>19 then the other -- on the other -- on three other</p> <p>20 dates, there was a -- a failure to allow access to</p> <p>21 the control officer for purposes of inspection, and</p> <p>22 that's July 31st, August 7th, and August 14th.</p> <p>23 On July 17th, Mr. Truman did allow them on</p> <p>24 the property. I believe at that point there's some</p> <p>25 testimony that they could no longer just enter,</p> <p>Page 177</p>
<p>1 HEARING OFFICER: Okay. Anything further?</p> <p>2 MR. GUBLER: No.</p> <p>3 HEARING OFFICER: All right. Next</p> <p>4 witness.</p> <p>5 MR. GUBLER: That is it.</p> <p>6 HEARING OFFICER: Okay.</p> <p>7 MR. GUBLER: No other witness.</p> <p>8 HEARING OFFICER: Closing arguments?</p> <p>9 MS. JORGENSEN: Sure.</p> <p>10 HEARING OFFICER: Okay.</p> <p>11 MS. JORGENSEN: Thanks. Ms. Hearing</p> <p>12 Officer, the -- there's two notes of violations that</p> <p>13 have been issued by Air Quality. One involves --</p> <p>14 well, they both involve the same site, the one</p> <p>15 that's on the picture today around the screen right</p> <p>16 now. The first one involves -- and if I may, this</p> <p>17 is closing argument to determine whether or not a</p> <p>18 violation occurred.</p> <p>19 HEARING OFFICER: Right.</p> <p>20 MS. JORGENSEN: Okay. So the first one</p> <p>21 has dates of violation of August -- January 8th,</p> <p>22 9th, and 17th, all involving failure to implement</p> <p>23 best available control measures, and comply with</p> <p>24 soil stabilization standards at the site on -- on</p> <p>25 those three dates.</p> <p>Page 176</p>	<p>1 those areas were blocked off where they had entered</p> <p>2 previously back earlier in the year. So they did</p> <p>3 speak with Mr. Truman and were granted access, did</p> <p>4 an inspection and determined that there was failure</p> <p>5 to implement dust control measures on the 17th.</p> <p>6 On the 25th, that's not a date that's in</p> <p>7 the -- that's one of the alleged violations. But on</p> <p>8 the 25th, Mr. Kirk appeared, and that's the first</p> <p>9 time Mr. Truman said, no, you can't enter. And Air</p> <p>10 Quality didn't cite -- include that as a violation</p> <p>11 because essentially, they're treating as sort of a</p> <p>12 one-off.</p> <p>13 And -- but then beginning on July 31st, he</p> <p>14 refused. August 7th, he refused. And again, on</p> <p>15 August 14th, he refused. There's been allegations</p> <p>16 that they didn't present appropriate credentials,</p> <p>17 but there's also been plenty of testimony that there</p> <p>18 was sufficient indicia that these individuals were</p> <p>19 from Clark County.</p> <p>20 They all had their badges. They all were</p> <p>21 in vehicles that either one or I don't know if</p> <p>22 there's more than one at a time, but vehicles with</p> <p>23 the county logo. They all had their Air Quality</p> <p>24 T-shirts, and at -- at different points in time,</p> <p>25 they provided business cards to Mr. Truman.</p> <p>Page 178</p>





<p>1 And we've also heard testimony that</p> <p>2 subsequent on August 28th, he also let them on the</p> <p>3 property again. So it just seems to be sort of a</p> <p>4 hit and miss, and at no time did Mr. Truman ever</p> <p>5 allege or ever state to them, to the inspectors who</p> <p>6 were there, I'm not letting you on the property</p> <p>7 because you don't have proper credentials.</p> <p>8 The excuses were, I need -- my -- my -- my</p> <p>9 attorney won't let me, or my attorney is working</p> <p>10 something out with Air Quality's attorney. It was</p> <p>11 never that there was any -- that he had any doubts</p> <p>12 that these were people from Air Quality.</p> <p>13 And so I would submit that there's</p> <p>14 sufficient evidence that -- demonstrating that Mr.</p> <p>15 Truman on behalf of ETON, which the -- the holder of</p> <p>16 dust control permit, had refused entry sufficient</p> <p>17 for finding a violation. Thank you?</p> <p>18 HEARING OFFICER: Thank you. Counsel?</p> <p>19 MR. GUBLER: Thank you. There's been some</p> <p>20 -- thank you. There's been some talk about this --</p> <p>21 this railroad company. In -- we show in Exhibit 2</p> <p>22 since 2004 Tonopah and Tidewater is -- is organized</p> <p>23 with the state of Nevada as the Tonopah and</p> <p>24 Tidewater Railroad Company.</p> <p>25 It's a domestic corporation under chapter</p> <p>Page 179</p>	<p>1 testified that was still current. That is the same.</p> <p>2 "This is an agreement to convey easement."</p> <p>3 And this is -- this is recorded with Clark County</p> <p>4 recorder. It's between Pan Western and Las Vegas</p> <p>5 Paving and gives them an easement right to access</p> <p>6 over the property that was owned by Pan Western.</p> <p>7 And -- and so that is all related.</p> <p>8 Tonopah and Tidewater has access to that. And then</p> <p>9 in Exhibit 21, we see that Tonopah and Tidewater has</p> <p>10 exclusive license to -- to a railroad to operate</p> <p>11 those rails. It says there in grant of lease</p> <p>12 exclusive license, and that Mr. Truman testified</p> <p>13 that that has not been revoked.</p> <p>14 And then as to Exhibit 22, we have the</p> <p>15 purchase agreement of the rails. Those are the same</p> <p>16 rails that are in Exhibit 23 as far as the -- that</p> <p>17 -- that are pictured in -- on that property. And</p> <p>18 they do connect to the main railroad line and able</p> <p>19 to transport in interstate commerce uses ETON to --</p> <p>20 to do so. And it's still there all to date.</p> <p>21 And in Exhibit 1, we also have the deed as</p> <p>22 far as the yard goes. That -- that is owned by</p> <p>23 Tonopah and Tidewater Railroad Company. It's --</p> <p>24 again, it's -- it's recorded with the county and</p> <p>25 Tonopah and Tidewater is -- it is related to a</p> <p>Page 181</p>
<p>1 -- NRS Chapter 78, formation dated, July 9th, 2004.</p> <p>2 It's -- it's held itself out as a railroad company,</p> <p>3 and -- and going to the -- the case, it's a 2019</p> <p>4 case in Bombardier Transport Holdings USA vs.</p> <p>5 Nevada Labor Commissioner.</p> <p>6 The Supreme Court looked at what the</p> <p>7 definition of a railroad company was and -- and</p> <p>8 actually determined that a statute did not actually</p> <p>9 say that even though Chapter 78 says that if the</p> <p>10 railroad company is -- is formed under this -- this</p> <p>11 chapter, then there -- there's certain rights.</p> <p>12 But the Supreme Court of Nevada looked up</p> <p>13 the definition in Black's Law dictionary, instead of</p> <p>14 corporation organized to construct, maintain and</p> <p>15 operate railroads. That -- that Tonopah and</p> <p>16 Tidewater Railroad Company does meet that. It -- it</p> <p>17 -- it -- it does -- it did construct, maintain, and</p> <p>18 operate and has those railroads.</p> <p>19 Now there's been some testimony as -- as</p> <p>20 to whether it operates it right now, it still has</p> <p>21 access and it's when as -- as needed, and so that is</p> <p>22 still current. As far as -- as far as the other</p> <p>23 information as to whether it even has rails, we --</p> <p>24 we point to Exhibit 20, and that there is an</p> <p>25 agreement to convey an easement that Mr. Truman</p> <p>Page 180</p>	<p>1 railroad company, and it's -- and it's held out as</p> <p>2 such. And that was in 2023 that that was recorded.</p> <p>3 Talking a little bit about the -- the SDB on the</p> <p>4 federal register, Tonopah and Tidewater did get an</p> <p>5 exemption under 49 CFR 1150.31.</p> <p>6 That is a grant of -- that grant of</p> <p>7 authority and -- and this is -- it's attached to the</p> <p>8 Air Quality's reply as Exhibit D. There's some --</p> <p>9 it -- it -- where it is said that the grant of</p> <p>10 authority is permissive. And so then after that,</p> <p>11 it's just between the -- the parties opportunity to</p> <p>12 go forward with any type of an agreement.</p> <p>13 Pan Western, Mr. Truman testified that --</p> <p>14 that they did -- Tonopah and Tidewater did enter</p> <p>15 into that agreement with -- with Pan Western. And</p> <p>16 then, you know, later they had -- they had tried a</p> <p>17 different business deal and -- but -- and -- and</p> <p>18 there was an objection from the Union Pacific.</p> <p>19 And that Union -- and the Union Pacific,</p> <p>20 because of their objection, Mr. Truman and -- and --</p> <p>21 and the owners of Tonopah and Tidewater decided to</p> <p>22 move forward with Tonopah and Tidewater. And -- and</p> <p>23 that's where you get those exhibits related to the</p> <p>24 easement with Las Vegas Paving with -- with the</p> <p>25 rails -- the purchase of the rails and everything,</p> <p>Page 182</p>





<p>1 which -- which occurred after the fact.</p> <p>2 And so it is a railroad company, and this</p> <p>3 -- it is allowed as a -- it is allowed as a yard.</p> <p>4 We heard some testimony or we looked at -- at a</p> <p>5 document talking about the purpose of the Clark --</p> <p>6 of -- of Clark County to establish ethical standards</p> <p>7 for appropriate and transparent behavior of all</p> <p>8 employees of the county, ensuring that the employees</p> <p>9 operate to uphold the public trust in the actions of</p> <p>10 the county.</p> <p>11 Its fiduciary responsibilities to the</p> <p>12 taxpayer citizens, and the manner by which the</p> <p>13 operations of county business are conducted. They</p> <p>14 expected that all employees, including elected</p> <p>15 officials, shall conduct the operations of the</p> <p>16 government with loyalty to the law -- loyalty to the</p> <p>17 law, and with integrity and impartiality.</p> <p>18 So we understand that -- that there are</p> <p>19 some regulations that -- to enforce, however that</p> <p>20 applies both ways. And -- and that comes to this --</p> <p>21 this 94.5 permit requirements. We heard testimony</p> <p>22 multiple times by the county employees that their</p> <p>23 authority to go on the property was -- was because</p> <p>24 of the signed permit.</p> <p>25 Now, conditions of that permit</p> <p>Page 183</p>	<p>1 After the first visit, it was well aware</p> <p>2 that my clients, the respondents, required that, and</p> <p>3 -- but that still wasn't followed. If there's -- if</p> <p>4 there were any, you know, looking at Exhibit 8, this</p> <p>5 is just downloaded from the EPA website. Because I</p> <p>6 mean, we are talking about the clean air act really,</p> <p>7 and -- and -- and the county's authority. The --</p> <p>8 the permit requirements say -- presents appropriate</p> <p>9 credentials.</p> <p>10 We submit that they're not appropriate</p> <p>11 credentials. And looking at this as the standard</p> <p>12 set by the EPA, there's -- there's no</p> <p>13 (indiscernible) seal, there's no chip. There's no</p> <p>14 -- there's no credential number to -- to call.</p> <p>15 There's no expiration date. There's no statement of</p> <p>16 authority. There's no signature on these -- on</p> <p>17 these -- these cards that -- that were around their</p> <p>18 neck, which were -- the testimony was -- is, they</p> <p>19 did not raise them to -- to show Mr. Truman.</p> <p>20 As -- as we go into the January 8th and</p> <p>21 9th, and even later, except for the 17th -- 17th of</p> <p>22 July, I believe that there were -- there was no</p> <p>23 request to enter was what the testimony was. And so</p> <p>24 the first prong -- the permit -- of the permit</p> <p>25 requirements that's on the government was not met.</p> <p>Page 185</p>
<p>1 requirements under 94.5 (f) does put affirmatively</p> <p>2 that on the county. That is -- that is very common</p> <p>3 with search and seizures. It's very common that the</p> <p>4 -- the -- well, the Fourth Amendment is -- is an</p> <p>5 outlier in looking at these because it's -- it's</p> <p>6 government oversight, and so the government is the</p> <p>7 one that is concerned to be careful about whether</p> <p>8 they follow certain procedures.</p> <p>9 And so these procedures are in there,</p> <p>10 which they haven't been trained on properly. And it</p> <p>11 says, "The person shall -- no person shall refuse</p> <p>12 access if the control officer requests entry for</p> <p>13 inspection and presents appropriate credentials".</p> <p>14 That puts the affirmative -- affirmative action on</p> <p>15 the county official.</p> <p>16 Whether it's -- it's under the Air</p> <p>17 Quality, I believe it's 4.1, or whether it's under</p> <p>18 the NRS 444 -- 445B. The requirement is the same,</p> <p>19 the language is very similar, it's the same. As far</p> <p>20 as -- one -- one comment on this was that everybody</p> <p>21 claims that they didn't see a check-in sign. Mr.</p> <p>22 Truman testified that it's been there for -- since</p> <p>23 before any of this started happening in January of</p> <p>24 2024. And it says, no trespassing and to check into</p> <p>25 the office.</p> <p>Page 184</p>	<p>1 Now, I -- I believe that what I'm, you</p> <p>2 know, what I'm -- what we're hearing is -- and well</p> <p>3 -- and then there was no presentation of credentials</p> <p>4 either. I believe what we're hearing here is -- is</p> <p>5 we're, you know, we're saying that, you know, I</p> <p>6 think the government's arguing substantial</p> <p>7 compliance.</p> <p>8 Normally with -- with credentials, every</p> <p>9 time it's almost like a script is what Mr. Truman's</p> <p>10 testimony was, is that they -- they show him their</p> <p>11 badge every time, whether they've been there or not.</p> <p>12 And -- and they -- they -- they say, this is who I</p> <p>13 am and this is what I'm here for. May I come to</p> <p>14 your property? May I ask you some questions?" And</p> <p>15 they state their purpose and they show them their</p> <p>16 credentials, and that was not done here. Now, why</p> <p>17 is that important here is -- is there -- there is --</p> <p>18 there are hazardous materials that come in and off</p> <p>19 the property. It's been the testimony.</p> <p>20 And so it is important to check-in. And</p> <p>21 that is federally mandated, which has a -- there is</p> <p>22 a -- in the supremacy clause that -- that the</p> <p>23 federal government -- federal law is superior to any</p> <p>24 state or local laws.</p> <p>25 Just -- just very briefly, Mr. Truman gave</p> <p>Page 186</p>



<p>1 testimony of different people that carry credentials 2 over the -- over the years. FEMA, the FBI, Nevada 3 Department of Taxation, the Clark County Coroner's 4 Office, the DEA, the fire department, OSHA, 5 Department of Energy, the dog catcher, FMSA, all of 6 them? 7 They've presented their credentials and -- 8 and that has not occurred. When -- when we -- last 9 time that we were here, what's -- what's kind of 10 interesting about this is that, when I first started 11 asking, and -- and that's why I had asked for the 12 witnesses to be separated. 13 But to me, I believe that it was pretty 14 obvious that they were listening to the answers, I 15 was asking very similar questions to the employees. 16 And at the beginning, we -- we -- we hear that, you 17 know, did you -- did you present any credentials? 18 And -- and didn't really know what that was. 19 You know, and then somebody started 20 saying, well, I -- I have a -- a -- a cut around my 21 neck. But -- but then -- by then there, you know, 22 when I asked the question, it was, yes, I presented 23 these. And according to how you stated it, I 24 presented these. 25 And clearly has not had proper</p> <p>Page 187</p>	<p>1 credentials, then no person shall approve. It's -- 2 it is a strict compliance because of the language, 3 also because of the subject matter. This is about 4 searches and seizures, it's about trespass, it's 5 about Fourth Amendment violations. 6 These are the things that we hold dear. 7 And, you know, that -- that life, liberty, pursuit 8 of happiness, all of that originally put in the 9 declaration of independence. And -- and that's why 10 those were -- were -- those amendments were added. 11 Trespass, I mentioned that. NRS 207.200, 12 trespassing is entering someone else's property 13 without permission or remaining on their property 14 after being instructed to leave. Carries a fine of 15 a \$1000 and six months in jail. 16 That corresponds to Exhibit 17 and 18 as 17 well. As far as trespasses -- trespassing on -- on 18 railroad property, on -- on -- in state -- in 19 general private property. I think the argument is, 20 well, we had -- we had permission based on the -- on 21 the permit. But that does not alleviate the dust -- 22 the permit requirements that are still in that 94.5. 23 Nowhere have I seen -- have they presented 24 anything that says that that is alleviated. Talked 25 about trespass, talk a little bit about Fourth</p> <p>Page 189</p>
<p>1 instruction. The government has not had proper 2 instruction from Clark County, as far as presenting 3 their credentials and that did not happen. And then 4 even if they did, they don't even have proper 5 credentials according to these -- this EPA standard. 6 Now, as far as this, I -- I did touch on 7 it for a minute and then I went off of it. But 8 substantial compliance statutes and rules require 9 strict compliance in this situation. Saticoy Bay 10 LLC vs. Nevada Association Services, 135 Nevada 180 11 2019 case says, "To determine whether a statute and 12 rule requires strict compliance or substantial 13 requirement or compliance, this court looks at the 14 language used in policy and equity considerations." 15 And -- and so doing this, court examines 16 whether the purpose of the statute or rule can be 17 adequately served in a manner other than by 18 technical compliance with the statutory rule 19 language. This court has recognized as a general 20 tenant, the time and manner requirements are 21 strictly construed, where substantial compliance may 22 be sufficient performed and content requirements. 23 Here, this is a manner requirement. The 24 -- the rule says, if the control officer requests 25 entry for inspection and presents appropriate</p> <p>Page 188</p>	<p>1 Amendment issues here. Requires having a suitable 2 warrant procedure to -- to effect unconsented 3 administrative entry and inspection of private 4 commercial premises that applies State of Seattle, 5 387 US 541 1967 case. 6 There's -- any tests that are conducted on 7 a premises would be considered unreasonable search 8 and seizure, if you don't have permission. If you 9 don't have -- even if the -- even if the owner -- it 10 was in the daylight knowledge consent, they had to 11 check in. There were signs there. 12 I know that that is disputed, but there 13 are signs there. We -- Mr. Truman brought in the 14 signs that had -- had dust on the signs, has been 15 there for a very long time, and he testified that 16 they were there way before January of 2024. And -- 17 as well as to the office the neon lights, they -- it 18 all -- it all corresponds, purchased those, those 19 were -- those were hung well before. 20 As far as -- again, going back to the -- 21 the county mandate purpose, these employees have a 22 duty to uphold the regulation both ways. And so we 23 -- we submit that any finding of violation because 24 either was it requested, wasn't presented properly, 25 is considered the fruit of the poisonous tree, and</p> <p>Page 190</p>



<p>1 should be extended to this as -- as a government 2 actor, Clark County.</p> <p>3 Talking a little bit about -- even if that 4 wasn't the case, so if -- if Mr. Truman let them on 5 ETON, let them on the property, there is nobody that 6 has recollection of performing the proper test. And 7 they say, oh, it can be -- I can see it. But that's 8 not what the regulation says. The regulation 94.12 9 talks about -- talks about the different types of 10 methods that can be implemented to maintain dust 11 control, this is subsection B.</p> <p>12 And it -- and it says, "On all disturbed 13 soils on construction sites and staging areas, to 14 the extent necessary, to pass the drop ball test 15 described in section 94.15.5." When I ask Ms. -- I 16 want to show her name. We can do that before -- Mr. 17 -- Ms. Russel. She -- she testified that she didn't 18 perform any tests.</p> <p>19 There was one testimony that said that she 20 didn't perform the test, but that there were some -- 21 some tests performed. I asked the others here 22 whether they had performed a test, a drop ball test, 23 and the answer was no. Again, that does not meet 24 the standard in order to find my client responsible 25 under these regulations?</p> <p>Page 191</p>	<p>1 promulgate EPA approved statewide plans under 2 federal environmental laws, such as a statewide 3 implementation plans, that's under the Clean Air 4 Act, that's how it defined the Clean Air Act. The 5 state -- if -- if it's -- if -- if state implemented 6 plans are not approved by the EPA, then they do not 7 have the force and effect of federal law. And 8 that's why different rules apply.</p> <p>9 You know, why our state implemented plan 10 is so vital in a case like this, it's because we 11 have carriers that engage in interstate commerce. 12 And so, a -- even if the -- it was a 13 county-implemented plan that would affect interstate 14 commerce, and that's why it's so important. And so 15 that it doesn't unreasonably burden railroad 16 activity and the -- or -- or interstate commerce.</p> <p>17 The EPA bypassed this whole requirement by 18 implementing -- not approving that statewide 19 program, the AQR -- when the AQR was approved. 20 That's section 52.1490, subsection 61 of Title 40 of 21 the CFR, shows that the plan that was approved by 22 the EPA, is with the Clark County board of 23 commissioners, it's not with the Nevada State 24 legislature.</p> <p>25 And that's what's being affected here, and</p> <p>Page 193</p>
<p>1 If you're not going to perform the test, 2 if you're too lazy to get out of the truck and 3 perform the test, then this is, again, a government 4 actor. You need to -- we need to be careful with 5 that and -- and they need to meet their obligations. 6 And I -- let me draw back on that. I apologize for 7 any -- for that comment, lazy.</p> <p>8 But either way, it still applies, and the 9 government has a -- has a duty to perform. Talking 10 about the supremacy clause a little bit with -- when 11 it comes to Interstate Commission Termination Act of 12 1995, applies to the railroad. We -- we established 13 that Tonopah and Tidewater is railroad and -- and 14 uses ETON for carrying materials interstate.</p> <p>15 And that also under 49 USC 10501, applies 16 to services and facilities of carriers, warehouses, 17 yards and property. Now, there was some discussion 18 about the Association of American Railroads v. The 19 South Coast Air Quality Management District case 622 20 F.3d 1094, Ninth Circuit, 2010 case?</p> <p>21 Where the -- the Ninth Circuit said, if an 22 apparent conflict exists between ICCTA and a state 23 or local law, usually what happens is general rules 24 apply -- different rules apply. The -- it -- that 25 case required, where that state and local agencies</p> <p>Page 192</p>	<p>1 -- and that of course is affecting interstate 2 commerce. It's not a state -- the AQR is not a 3 state implemented plan, it's a -- it's a county 4 implemented plan. And there's -- and there's 5 clearly differences. The 94.13 talks about 6 employing BAC and BACM, Best Available Control 7 Measures.</p> <p>8 And it -- and those mean control measures 9 that are best available with current technology for 10 reducing or eliminating the release of a particulate 11 matter in the atmosphere. Now, in contrast, in 12 Nevada, the state implemented plan would be -- it 13 has different language. It -- it's to require the 14 use of reasonably available methods, which is a lot 15 difference -- different than the best available 16 methods.</p> <p>17 Another -- another use of language in the 18 NAC against state regulations would be best 19 practical methods. And that includes things such as 20 chemical stabilization. We spent some time 21 presented evidence as -- as far as rotor milling, 22 Mr. Truman consulted with some professionals in the 23 -- in the area.</p> <p>24 HEARING OFFICER: No I -- and I -- I hate 25 to do this in your closing argument, but just to</p> <p>Page 194</p>



<p>1 shortcut the time. The testimony and evidence that</p> <p>2 I'm hearing and that was a big issue for me, is when</p> <p>3 was the rotor milling done? And that picture was</p> <p>4 not dated. And it seems to me that the rotor</p> <p>5 milling was done after all of these dates, if that's</p> <p>6 what I'm hearing from the testimony.</p> <p>7       So just -- just to let you know, going</p> <p>8 through this. And the -- the evidence that you were</p> <p>9 presenting, that rotor milling, you've gotten all</p> <p>10 these affidavits and, you know, that this is -- this</p> <p>11 is a, you know, that you shouldn't have had to pay,</p> <p>12 and you should have put the rotor milling down.</p> <p>13 What I was looking for is who made -- who made the</p> <p>14 requirements paid?</p> <p>15       And then I see the evidence is that, you</p> <p>16 listed that as a reason. And I'm hearing it and you</p> <p>17 said from your own testimony, you didn't contact</p> <p>18 them to -- so to me, the whole rotor milling now is</p> <p>19 a total distraction and took up a great deal of our</p> <p>20 time, because I was under the impression somehow air</p> <p>21 quality, the way the evidence was presented, is that</p> <p>22 rotor milling, you know, you would've done this,</p> <p>23 this would've taken care of this.</p> <p>24       And -- but that happened after the fact.</p> <p>25 And so, if you would've done that in the beginning</p> <p style="text-align: right;">Page 195</p>	<p>1 that's where I'm at with that.</p> <p>2       MR. GUBLER: So the rotor milling -- so</p> <p>3 the paving was required by them. That's -- that's</p> <p>4 what was -- was originally emailed to the</p> <p>5 respondents, but -- but that paving didn't work.</p> <p>6 And -- and so, yes, they -- they said that, but then</p> <p>7 that just doesn't work under these conditions. And</p> <p>8 --</p> <p>9       HEARING OFFICER: Okay. But he testified</p> <p>10 too that he didn't reach out to try and work</p> <p>11 something out differently. But the -- the thing is</p> <p>12 that, I just didn't want to spend a lot of time on</p> <p>13 that, because I think that is a way to do -- to take</p> <p>14 care of these issues, but it happened after the</p> <p>15 fact. It didn't -- I -- there's no dated picture.</p> <p>16 Like the dry, loose, powdery soil that I'm seeing</p> <p>17 from air qualities, I can see it, I -- I can see it.</p> <p>18 They've got well documented, they've got dated</p> <p>19 pictures.</p> <p>20       The rotor milling, there was -- it was not</p> <p>21 a dated picture. And what I'm hearing in the</p> <p>22 testimony presented that it happened either in</p> <p>23 August or September of this year. So I was waiting</p> <p>24 to hear what the date of that picture was, the</p> <p>25 Exhibit 9 and that was not presented. And that's</p> <p style="text-align: right;">Page 197</p>
<p>1 or worked with air quality, but the way it was</p> <p>2 presented, is that you were going to do paving, and</p> <p>3 that was what they followed along with.</p> <p>4       And reading the arguments, because I did</p> <p>5 go through all of this, Air quality did not require</p> <p>6 you to do that. That was something that you came up</p> <p>7 with. The rotor milling, great, everybody put up</p> <p>8 all these affidavits. Great. That's -- but that</p> <p>9 was done after the fact. And the pictures I see</p> <p>10 presented, there's loose powdery dry soils.</p> <p>11       So if you're going to spend time and that</p> <p>12 granted, you can do the closing argument, but we've</p> <p>13 been here for now half an hour, 45 minutes listening</p> <p>14 to that. I'm going to shortcut you right there,</p> <p>15 because to me, that was a big issue for me that</p> <p>16 wasn't dated. That -- it seems to me that that was</p> <p>17 done after these dates that happened, and which you</p> <p>18 would've done in the beginning, because then might</p> <p>19 not have been here to do this.</p> <p>20       So that's what I didn't understand from</p> <p>21 the whole argument, that you were presenting rotor</p> <p>22 miller, and to me, I was like, are they preventing</p> <p>23 you from doing that? No. It -- it was a way to do</p> <p>24 stuff, but it was because the plan and the project</p> <p>25 started from you, from the paving. So that's --</p> <p style="text-align: right;">Page 196</p>	<p>1 passing dates on like January. This is July, this</p> <p>2 is August. So I -- I mean, but I just didn't want</p> <p>3 to spend a lot of time because I -- I get that, but</p> <p>4 I mean, go ahead, continue.</p> <p>5       MR. GUBLER: So the -- the importance of</p> <p>6 it is -- is that it -- it doesn't matter because</p> <p>7 these other dates, there was no presentment, there</p> <p>8 was no request to be on there. And so you have --</p> <p>9 you have -- whether it was in August or September,</p> <p>10 it really doesn't matter because they don't meet</p> <p>11 their burden. You -- you mentioned the drop ball</p> <p>12 test, but that wasn't for -- or that -- they had</p> <p>13 pictures, but that wasn't performed. And that's</p> <p>14 what's in the regulation.</p> <p>15       HEARING OFFICER: Okay. I understand that</p> <p>16 and that's your argument. I just don't want to -- I</p> <p>17 -- I -- rotor milling was a way to address these</p> <p>18 issues. I just -- to me, it was done after the</p> <p>19 fact, so I just don't want to spend a lot of time on</p> <p>20 that. So I -- and I -- I got -- I read everything,</p> <p>21 I read all the affidavits saying that's the best way</p> <p>22 to do it, which is fine. But it's after these</p> <p>23 dates, is what I'm understanding that was done, if</p> <p>24 I'm correct, right? It was done after these dates.</p> <p>25 Am I -- am I correct? That the -- I was looking for</p> <p style="text-align: right;">Page 198</p>





<p>1 the date of that picture. The Exhibit 9.</p> <p>2 MS. JORGENSEN: Right. And I could</p> <p>3 clarify that yes, paving actually is required,</p> <p>4 unless there are reasons for it not to be paved.</p> <p>5 HEARING OFFICER: Okay.</p> <p>6 MS. JORGENSEN: And one of those reasons</p> <p>7 could be the tracked equipment and where does that</p> <p>8 tracked equipment go, but there's never been an</p> <p>9 opportunity for air quality to go on site and make</p> <p>10 that evaluation.</p> <p>11 HEARING OFFICER: Okay. Okay.</p> <p>12 MR. GUBLER: As far as -- as -- as far as</p> <p>13 the tracked equipment, Mr. Truman's testimony is</p> <p>14 that it -- it does go all over this -- this</p> <p>15 property. And -- and there's -- I appreciate that</p> <p>16 -- that you have read all the declarations. And so,</p> <p>17 it's -- we submit that it's not feasible for -- to</p> <p>18 have the paving that is -- is the requirement. And</p> <p>19 -- and that it is the -- that it does burden</p> <p>20 interstate commerce.</p> <p>21 HEARING OFFICER: Okay.</p> <p>22 MR. GUBLER: We submitted this at the</p> <p>23 beginning. I'll briefly touch on this. But again,</p> <p>24 we do not believe that this is the forum to have</p> <p>25 these decisions made. And the reason why is because</p> <p style="text-align: right;">Page 199</p>	<p>1 evidence, as to, you know, state mandate about water</p> <p>2 being a precious resource.</p> <p>3 And again, with track equipment, the best</p> <p>4 available control measure does -- is not</p> <p>5 appropriate, and as the track equipment goes all</p> <p>6 over that property. Talking about the -- the</p> <p>7 difficulties of -- of asphalt and making it, that's</p> <p>8 again, in Floyd Meldrum's Exhibit 13 declaration on</p> <p>9 the process of making that. Contributes to a lot of</p> <p>10 waste of resources, a lot of -- well, to water, to a</p> <p>11 lot of -- well, even as to global warming.</p> <p>12 The -- the product that was put down, the</p> <p>13 rotor milling, the -- the chart is -- and -- and if</p> <p>14 -- if -- if there is some consideration as far as</p> <p>15 mitigating, we would ask that -- that that be taken</p> <p>16 into consideration as well. That here, this rotor</p> <p>17 mill, the chart, is over a quarter of an inch,</p> <p>18 somewhere between quarter inch to 3 inches, which</p> <p>19 would meet the requirements.</p> <p>20 There -- there was testimony that there</p> <p>21 was no dust emissions, no plumes, clean the -- it</p> <p>22 would -- it would qualify as clean gravel dust</p> <p>23 suppressant, and that for this application, it works</p> <p>24 better. And it's sufficient for long-term</p> <p>25 stabilization. As far as anything else we -- we</p> <p style="text-align: right;">Page 201</p>
<p>1 of the Supreme Court cases in -- in Loper and Corner</p> <p>2 post that were issued earlier this year.</p> <p>3 Talk about whether agencies decide</p> <p>4 questions relevant to -- of law and interpret</p> <p>5 statutory provisions. There's many statutory</p> <p>6 provisions. Specifically, we had talked about the</p> <p>7 associated railroads, the -- the case that was cited</p> <p>8 earlier and, you know, the railroad issue and under</p> <p>9 the Clean Air Act, whether -- whether this was</p> <p>10 properly approved and related to interstate</p> <p>11 commerce.</p> <p>12 In those cases, the court reinforced that</p> <p>13 the courts, not agencies, will decide all relevant</p> <p>14 questions of law arising on review of agency action</p> <p>15 and -- and prescribed no deferential standards for</p> <p>16 courts to employ in answering those legal questions.</p> <p>17 It is a federal issue as it relates to the Clean Air</p> <p>18 Act under that -- under that Association of American</p> <p>19 Railroads, and it has to be a statewide plan.</p> <p>20 Again, the -- the burden on the interstate</p> <p>21 commerce, it -- the pavement, the asphalt's</p> <p>22 expensive. I believe that Mr. Truman had testified</p> <p>23 that it was expensive, causing burdens on the</p> <p>24 business, and that it wasn't responsible, was -- was</p> <p>25 also the response. We -- we've seen some -- some</p> <p style="text-align: right;">Page 200</p>	<p>1 also submit on Exhibit 15, talking about the</p> <p>2 different rail track or yards, whether they're paved</p> <p>3 or not, and again, that that would go to</p> <p>4 discrimination under the 14th amendment. We -- we</p> <p>5 ask the -- the Hearing Officer to reject the -- the</p> <p>6 -- the violations. And thank you.</p> <p>7 HEARING OFFICER: Okay. Thank you.</p> <p>8 MS. JORGENSEN: If I -- I'd like to adjust</p> <p>9 a couple of things.</p> <p>10 HEARING OFFICER: Okay.</p> <p>11 Thank you. ETON has submitted that the</p> <p>12 owner of the property, Tonopah and Tidewater is a</p> <p>13 railroad company. I think they're arguing that it's</p> <p>14 recognized under federal laws, railroad company.</p> <p>15 The testimony was they showed Exhibit 3, which is</p> <p>16 that first federal register notice from 2004, where</p> <p>17 it said they enter into the contract with Pan</p> <p>18 Western, they've become a Class III. And that is</p> <p>19 one of the ways -- the exemption under that</p> <p>20 particular CFR.</p> <p>21 Then you look at Exhibit 4, which is the</p> <p>22 2006 federal register. And it clearly states that</p> <p>23 that -- that that contract was never entered into --</p> <p>24 that -- that relationship was never consummated</p> <p>25 between Pan Western and Tonopah and Tidewater. The</p> <p style="text-align: right;">Page 202</p>



<p>1 testimony from Mr. Truman is, oh, no, no, that</p> <p>2 happened sometime before the 2006.</p> <p>3 Well, it clearly states in the federal</p> <p>4 register, based on the application that was provided</p> <p>5 by another company related to the Truman's, is that</p> <p>6 no, that didn't occur. So this whole idea that is a</p> <p>7 federally recognized, governed by the STB, and</p> <p>8 subject to ICCTA, the federal law is -- is</p> <p>9 unsupported and in my view, completely bogus.</p> <p>10 And all of the language or all of the --</p> <p>11 the case law that's referenced in that first</p> <p>12 document submitted by ETON, is all based on the idea</p> <p>13 that Tonopah and Tidewater is a federally recognized</p> <p>14 railroad. They are not. And so this idea that the</p> <p>15 SIP is important is not important in this case,</p> <p>16 because there is no case law that has been provided</p> <p>17 to indicate that even if they are somehow a state</p> <p>18 recognized railroad, that they can ignore local</p> <p>19 regulations.</p> <p>20 Setting that aside, just real briefly with</p> <p>21 the SIP. The way the SIP works in Nevada, is there</p> <p>22 are three entities. There's -- there's the NDEP,</p> <p>23 the state, there's Washoe and there's Clark County.</p> <p>24 And when Washoe and Clark County put together the</p> <p>25 requirements that are necessary for their areas of</p> <p>Page 203</p>	<p>1 The exhibits -- there's an agreement to</p> <p>2 convey an easement. Can you pull up -- actually if</p> <p>3 you can go to the open web and pull up APN</p> <p>4 123-31-402-006. It can pull -- make it a little bit</p> <p>5 bigger. Okay. And you might recognize that loop at</p> <p>6 the top as one of the exhibits, I think it's Exhibit</p> <p>7 23.</p> <p>8 That property right there is owned by Las</p> <p>9 Vegas Paving. And the agreement from -- that's</p> <p>10 referenced in Exhibit 20 was at the time -- well,</p> <p>11 actually not at the time. And this was subject to a</p> <p>12 -- a case back in 2015 when Las Vegas sued the</p> <p>13 subsequent owners of the properties underneath.</p> <p>14 So if you click on one of them underneath</p> <p>15 that loop, I believe those properties used to be --</p> <p>16 belonged to Pan Western and the ETON family limited</p> <p>17 partnership. And then I believe in 2012 they were</p> <p>18 taken over by a completely separate entity, Rail</p> <p>19 Acres.</p> <p>20 And the -- the agreement that they entered</p> <p>21 into in 1997, that's the subject of Exhibit 20, was</p> <p>22 entered into by Pan Western. And Pan Western was</p> <p>23 not an owner of either of those properties at the</p> <p>24 time. So there was a 2015 lawsuit where that all</p> <p>25 came out, that made it clear that that -- those</p> <p>Page 205</p>
<p>1 responsibility, is submitted to the state, and then</p> <p>2 the state submits that to EPA for submission into</p> <p>3 the SIP.</p> <p>4 So this idea that somehow Clark County's</p> <p>5 just working directly with EPA is completely</p> <p>6 incorrect. And also, I think what they mean by</p> <p>7 statewide is, what they mean is that the same rules</p> <p>8 have to apply everywhere for it to be a valid sip.</p> <p>9 And if that's what they mean, that's completely</p> <p>10 incorrect.</p> <p>11 Because when a standard is established</p> <p>12 related to the five criteria pollutants, one of</p> <p>13 which is PM10, one of the things the state does is</p> <p>14 they make a determinations, where is the -- where is</p> <p>15 that standard being exceeded? And what we try to do</p> <p>16 collectively is just try to narrow it down to those</p> <p>17 areas where it's been exceeded. So that's where the</p> <p>18 additional requirements need to be put in place.</p> <p>19 And unfortunately for Clark County, we had</p> <p>20 a really bad PM10 problem for a while. We've been</p> <p>21 able to tamp it down, but that's based on these</p> <p>22 rules that we have, and that have been put in place</p> <p>23 to comply with the -- the Clean Air Act. I know --</p> <p>24 and then if I -- I could real briefly, this whole</p> <p>25 idea that these -- right here.</p> <p>Page 204</p>	<p>1 easement had no -- it was -- it was -- it was</p> <p>2 invalid.</p> <p>3 Regardless, the easement was for Las Vegas</p> <p>4 Paving to go onto Pan Western's property, which at</p> <p>5 the time wasn't Pan Western's property. It had</p> <p>6 nothing to do with Tonopah and Tidewater having</p> <p>7 access to Las Vegas Paving.</p> <p>8 So all of this -- this -- this -- these</p> <p>9 documentation, it's just smoke and mirrors. It --</p> <p>10 it doesn't get back to the -- to the issue that at</p> <p>11 the site where Eton had taken out a dust control</p> <p>12 operating permit, they failed to comply with best</p> <p>13 available control measures and keep the site in a</p> <p>14 stable condition. And that's the first -- the --</p> <p>15 the first NOV.</p> <p>16 Can you pull up Section 94? Go to Section</p> <p>17 94.5. I'm sorry, 94.12. The 94.12 does not require</p> <p>18 that a dust -- that a drop ball test be done. What</p> <p>19 it says, if you read through it says, the</p> <p>20 responsible official, meaning the permittee, shall</p> <p>21 ensure that all contractors, operators, and other</p> <p>22 persons involved in construction employ effective</p> <p>23 control measures.</p> <p>24 B, one of the more -- "One or more of the</p> <p>25 following methods shall be implemented to maintain</p> <p>Page 206</p>





<p>1 dust control." This is on the responsible official 2 and -- and then all the control -- all their 3 operators and contractors. And here's how they can 4 determine themselves whether or not the dust -- 5 whether not the soil is sufficiently crusted. 6 That's the way 94.12 is written. Now, the 7 inspectors do perform drop ball tests, but they 8 don't have to, and that does not require them to. 9 Could you go to 94.5? Similar with 94.5 10 Subsection f, which ETON has relied on quite a bit, 11 says, "No person shall refuse access if the control 12 officer request entry for inspection and presents 13 appropriate credentials." And the first notice of 14 violation, there was no need to request access. 15 They could get on. And that's how normally dust 16 control -- dust sites work, which this ostensibly 17 was. 18 Then in July -- on July 17th, which is the 19 beginning of the second notice of violation, Mr. 20 Truman allowed them on, even though he's been -- 21 he's been claiming that he had no idea who they 22 were. And he -- and they didn't show credentials. 23 He allowed them -- he allowed two, I believe it was 24 Mr. Kirk and Mr. -- and Ms. Rowsell on. They did an 25 inspection, and then after that it was shut down. Page 207</p>	<p>1 any sense. And it certainly doesn't make any sense 2 for the -- the dust control permit that was agreed 3 to. 4 And then with regard to Exhibit 17 and 18, 5 which are referenced that deal with trespass, when 6 you read through them, it's all to do with sites 7 that have tracks -- railroad tracks. And we all -- 8 we all can agree that that Stratford site does not 9 have any railroad tracks laid down that people 10 potentially would be trespassing on. 11 And again, Air Quality, they weren't 12 trespassing. They were there to perform a function 13 based on the dust control permit that was pulled. 14 Thank you. 15 HEARING OFFICER: Anything further? 16 MR. GUBLER: Yeah. I -- I think this 17 comes -- this comes down to whether they follow 18 their own regulations. The answer is no. They did 19 not -- that there is an affirmative duty on the 20 county employee under that 94.5. Under -- under -- 21 there was comments that, you know, this was smoke 22 and mirrors as far as the railroad company. 23 The testimony that's in evidence that -- 24 that's been presented is that Tonopah and Tidewater 25 access to that and they're able to access the rail Page 209</p>
<p>1 He wouldn't allow people on until August 28th when 2 he allowed them on again, although with conditions. 3 Now, August 28th isn't the subject of this 4 particular notice of violation, but it just seems 5 like Eton wanted the dust permit, but then they 6 didn't want to comply with the dust permit. They 7 didn't want to follow the rules of the dust permit. 8 The other testimony has been and I believe 9 it's from the last hearing, Mr. Truman brought in a 10 look, potentially a two or three foot wide sign and 11 said, here it says that they needed to check in. 12 But we also heard testimony that that length along 13 Stratford was probably 500 or 600 feet. 14 I recall the testimony on the previous one 15 is there was one sign, we've heard today that there 16 was three signs, so I'm not sure which is accurate. 17 But you've heard plenty of testimony that -- from 18 the inspectors that if they saw a sign, they would 19 stop, check in and then move on. 20 And -- but I believe from the previous, 21 when we were here last week, that this idea of a 22 construction site being all closed off is completely 23 foreign to the way dust sites normally function. 24 And so this idea that everything's going to be 25 closed off of the dust permits doesn't really make Page 208</p>	<p>1 lines. Tonopah and Tidewater, there was testimony 2 of -- of many -- much oversight of federal agencies. 3 And that has to do with it being a railroad company 4 and also it putting product in interstate commerce. 5 As far as 94.12 goes, that is related to 6 on the drop ball test. The drop ball test is a 7 standard. It says that it -- that the property will 8 be maintained with one of these conditions so that 9 it -- to the extent necessary to pass the drop ball 10 test. That -- that does put the -- that does put a 11 requirement that that is the test to be performed. 12 I have nothing further? 13 HEARING OFFICER: Okay. Okay. With that 14 being said, I appreciate I did extensively review 15 these, I reviewed these a second time. As a matter 16 of fact, before today's continued hearing. I have 17 took extensive notes. I have -- I appreciate, I 18 have all the law that was presented. Appreciate 19 closing arguments. And based on everything I 20 reviewed and the evidence and testimony presented to 21 me as it pertains to this dust permit, I am going to 22 find that the violations did occur. 23 I understand that we can -- we can discuss 24 mitigation when we -- when we move into that phase. 25 I am, however -- so I'm going to find that the Page 210</p>



<p>1 violations did occur on NOV 9994 18, 19, 117, 2 because what was important to me was that it was 3 brought into compliance on February 1st. 4 So there -- you know, the test permit was 5 requested. It was supposed to be followed. It's -- 6 it states what needs to be there. The evidence 7 shows this -- the loose soils. It -- I don't think 8 that the drop ball is required, especially when the 9 pictures and the evidence show me. 10 I -- I do appreciate that there there was 11 -- we didn't see fugitive dust or plumes, but it was 12 definitely unstable soil. I mean, it met the 13 definition and it's -- and, you know, the -- the air 14 quality did say what, you know, that it was there 15 and there it was 18, 19 and 117. So I'm going to 16 find that it occurred as to NOV 9994, and then we 17 move into the violation. 18 As to NOV 10078, I'm going to find that 19 violation one did occur on 7/17. As to refusing 20 entry or access I'm going to find that occurred that 21 on 8/7 and 8/14, I'm going to dismiss 7/31. I do 22 realize, and I went back and looked that there was a 23 date for 7/25 that was said as a one off. I went 24 back and looked at that there was an issue about 25 certification. There was a lot of evidence</p> <p>Page 211</p>	<p>1 HEARING OFFICER: Okay. 2 MS. JORGENSEN: And because I -- I've 3 pretty much, I've got a good understanding and notes 4 of where I'm headed, so yes. 5 HEARING OFFICER: Okay. 6 MS. JORGENSEN: I'd like to call Ms. 7 Sotoska (ph). 8 HEARING OFFICER: Okay. 9 SOTOSKA 10 having been first duly sworn to testify to the 11 truth, the whole truth, and nothing but the truth, 12 was examined and testified as follows: 13 EXAMINATION 14 BY MS. JORGENSEN: 15 Q. Ms. Sotoska, are you familiar with notice 16 of violation 9994? 17 A. I am. 18 Q. And what is your responsibility with 19 regard to the penalty of this notice of violation? 20 A. I'm an Air Quality supervisor in the 21 enforcement section. I review and approve the 22 penalties that are recommended. 23 Q. Okay. And when you say recommended, does 24 Air Quality establish the penalty? 25 A. No.</p> <p>Page 213</p>
<p>1 presented. I'm going to give even the benefit of 2 the doubt on that one, even though the same people 3 had been there. 4 I mean that -- that I took into 5 consideration that these faces should have been 6 familiar by then, that the vehicle is says Air 7 Quality, they wear shirts, they were badges. That's 8 within my realm of doing this. This is the way 9 they've been doing it. 10 That's the first I've heard an argument 11 with the credentials. And the thing is, he did 12 allow them onto the property previous times, but I 13 am going to give the benefit of doubt and I'm going 14 to dismiss and or deny the 7/31. But I am going -- 15 so as the violation number two on the 10078 I'm 16 going to find that it did occur as 8/7, 8/14 by 17 those dates. And then we can move into the penalty 18 phase and discuss. And I understand you said for 19 mitigation purposes, and we can go into put the 20 testimony onto that. Thank you. 21 HEARING OFFICER: Would you prefer that we 22 go through, just deal with both of them at the same 23 time? 24 MS. JORGENSEN: Yes. For purposes of time 25 since we've been here.</p> <p>Page 212</p>	<p>1 Q. Who ultimately has responsibility to 2 determine or who -- who actually has the authority 3 to assess a penalty? 4 A. The hearing officer or the hearing board 5 upon appeal. 6 Q. Okay. And in this case what is the 7 recommended penalty? 8 A. For notice of violation 9994, it's 9 \$4,687.50. 10 Q. And can you -- there's an Exhibit A on the 11 screen. Could you describe what this depicts? 12 A. Sure. This is the penalty calculation 13 table and it shows how we arrived at -- well, it 14 shows the dates of violation as Air Quality observed 15 and the base penalty amounts and aggravating 16 factors. 17 Q. Okay. And then what is the maximum that 18 could be charged per day per violation? 19 A. The regulatory maximum that can be 20 assessed is \$10,000 per day per violation. 21 Q. And that's based on language and NRS for 22 5B? 23 A. It is as well as Air Quality Regulation 24 Section 9. 25 Q. Okay. And then if you could just go</p> <p>Page 214</p>



<p>1 through and describe just take us to that final 2 number.</p> <p>3 <b>A. Sure. So in the matter of notice of</b> 4 <b>violation 9994 issued to Eton Transportation</b> 5 <b>Corporation, we have one documented violation that</b> 6 <b>occurred on January 8th, January 9th and January</b> 7 <b>17th, 2024, for failing to fully implement best</b> 8 <b>developable control measures and comply with sole</b> 9 <b>stabilization standards as documented in the</b> 10 <b>compliance officer's testimonies. The base penalty</b> 11 <b>that the department applies for violations of</b> 12 <b>unstable site soils is based on the size of unstable</b> 13 <b>strolls observed during that day. For --</b></p> <p>14 Q. So if I could, just real quickly, so the 15 first, sorry. The first two days, it was a larger 16 amount?</p> <p>17 <b>A. That's correct.</b></p> <p>18 Q. And then the -- the last day was a smaller 19 amount, so -- so there wasn't as many -- there 20 wasn't as much that was unstable?</p> <p>21 <b>A. That's correct.</b></p> <p>22 Q. Okay.</p> <p>23 <b>A. So for January 8th and ninth it was</b> 24 <b>greater than or equal to one acre and less than, or</b> 25 <b>equal to five acres. On January 17th, it was less</b></p> <p style="text-align: right;">Page 215</p>	<p>1 <b>did occur within a thousand feet of a residential</b> 2 <b>area for a total penalty amount for violation, one</b> 3 <b>of \$1,562.50.</b></p> <p>4 <b>Violation two occurred on three separate</b> 5 <b>days since Madam Hearing Officer dismissed July</b> 6 <b>31st. I'll go on to August 7th and the 14th, August</b> 7 <b>7th and 14th were for failing to allow access to the</b> 8 <b>control officer for the purposes of inspection.</b></p> <p>9 <b>A violation of section Air Quality</b> 10 <b>Regulation 4.1 D1 as documented in the compliance</b> 11 <b>officer's testimon. The penalty that air quality</b> 12 <b>applies for failing to allow access is \$10,000 per</b> 13 <b>day per violation for August 7th and August 14th,</b> 14 <b>\$10,000 was applied for each day for a total penalty</b> 15 <b>amount for violation number two of \$20,000,</b> 16 <b>excluding July 31st for a total penalty amount for</b> 17 <b>NOV 10078 of \$21,562.50.</b></p> <p>18 Q. And this -- what you've described about 19 aggravating factors and base penalty amounts how is 20 there a policy or some sort of guidance that Air 21 Quality uses internally to come up with these 22 numbers?</p> <p>23 <b>A. Yes. We have a penalty procedure for</b> 24 <b>Section 94 violations. And it does point out base</b> 25 <b>penalty amounts for various things like unstable</b></p> <p style="text-align: right;">Page 217</p>
<p>1 <b>than or equal to one acre. So for January 17th, a</b> 2 <b>base penalty of a thousand dollars was applied for</b> 3 <b>January 8th and ninth a base penalty of \$1,250 was</b> 4 <b>applied.</b></p> <p>5 <b>There were aggravating factors added to</b> 6 <b>each of the days. For the first day -- while all</b> 7 <b>three days, the violations occurred within a</b> 8 <b>thousand feet of a residential area. So 25 percent</b> 9 <b>aggravation factor was added for each day. For</b> 10 <b>January 9th an additional 25 percent aggravation</b> 11 <b>factor was added for a second consecutive day of</b> 12 <b>violation. For a total penalty amount for January</b> 13 <b>8th of \$1562.50. For January 9th, \$1875. And for</b> 14 <b>January 17th, \$1250 for a total penalty amount for</b> 15 <b>violation 9994 of \$4,687.50.</b></p> <p>16 Q. Okay. And then if we could go to Exhibit 17 A of notice violation 10078.</p> <p>18 <b>A. So similarly in this case well, there were</b> 19 <b>two days, two violations observed for this notice of</b> 20 <b>violation. Violation number one occurred on -- on</b> 21 <b>July 17th, four unstable site soils. The observed</b> 22 <b>unstable site soils were greater than an acre, but</b> 23 <b>less than or equal to five acres. Therefore, base</b> 24 <b>penalty of \$1,250 was applied. An aggravation</b> 25 <b>factor of 25 percent was added because the violation</b></p> <p style="text-align: right;">Page 216</p>	<p>1 <b>site soils or track out or fugitive dust emissions.</b> 2 <b>And then it also goes into the aggravating factors</b> 3 <b>that can be applied.</b></p> <p>4 Q. And why does air quality use something 5 like that to come up with a recommended penalty?</p> <p>6 <b>A. Well, the maximum -- the maximum penalty</b> 7 <b>is \$10,000 per day per violation. We understand</b> 8 <b>that that's not appropriate. Therefore, the</b> 9 <b>procedure is to ensure that we are consistent with</b> 10 <b>how we apply the penalties to all construction sites</b> 11 <b>in the valley.</b></p> <p>12 Q. And when you say not appropriate, that Air 13 Quality does consider it to be appropriate for 14 refusal to allow access?</p> <p>15 <b>A. Yes, we do. We always assign \$10,000 for</b> 16 <b>that.</b></p> <p>17 Q. And is there any other situation where Air 18 Wuality would set a base penalty of 10,000 that 19 you're aware of or would -- would request?</p> <p>20 <b>A. That is the only one that we always</b> 21 <b>recommend \$10,000 because we cannot assess what kind</b> 22 <b>of violations will be found on site because we do</b> 23 <b>not have access to the site.</b></p> <p>24 Q. Okay. But ultimately, again, this isn't 25 Air Quality's decision to make?</p> <p style="text-align: right;">Page 218</p>



<p>1 <b>A. That's correct.</b></p> <p>2 Q. Okay. Nothing further?</p> <p>3 HEARING OFFICER: Okay. Counsel?</p> <p>4 MR. GUBLER: No question.</p> <p>5 HEARING OFFICER: Okay. So did we,</p> <p>6 obviously we've heard extensive, this is a second</p> <p>7 day. And at the end of closing arguments for Eton</p> <p>8 it was asked that if I would consider mitigating.</p> <p>9 Because I do appreciate the rota milling that was</p> <p>10 done as to NOV 9994 18, 91, 117 by 21, the site was</p> <p>11 in compliance.</p> <p>12 Looking at the pictures we did not see a</p> <p>13 fugitive dust. I understand it still was unstable</p> <p>14 soils, but I'm going to give the benefit of the</p> <p>15 doubt. We're just going to assign the base penalty</p> <p>16 of 1250 and thousand. So for NOV 9994, I'm going to</p> <p>17 put it out at \$2,250.</p> <p>18 MS. JORGENSEN: Madam Hearing Officer, so</p> <p>19 that \$1250 each day was assigned to that amount. I</p> <p>20 -- I didn't know whether you --</p> <p>21 HEARING OFFICER: So yes. Okay. And that</p> <p>22 way -- okay, so then it's going to be through today,</p> <p>23 so 1250, 1250 and the thousand. Okay, so it will be</p> <p>24 4,500, my math, right? I believe 3,505. My math</p> <p>25 wasn't right.</p> <p>Page 219</p>	<p>1 some mitigating factor needs to be determined as far</p> <p>2 as needing time to determine what was in my client's</p> <p>3 rights as far as search and seizures.</p> <p>4 And we -- we ask that the hearing officer</p> <p>5 do consider that as well as the -- the maximum for</p> <p>6 the two days. You know, since my -- my client did</p> <p>7 not have -- again, the maximum amount before was</p> <p>8 just 1250. So we -- we ask that at most that those</p> <p>9 penalties be 1250 a day.</p> <p>10 HEARING OFFICER: Okay. You know, and I</p> <p>11 -- I'm going to reconsider just, I remember the --</p> <p>12 the August 28th date, they came after the fact, and</p> <p>13 I just, with the road of milling after that I'm</p> <p>14 willing to give -- I mean, I just, the refusing</p> <p>15 access is a concern because this had been going on</p> <p>16 since January.</p> <p>17 There was testimony too about other sites</p> <p>18 coming out every six months. I mean, they weren't</p> <p>19 coming out every day other than to make sure in</p> <p>20 January they were in compliance. And then we come</p> <p>21 back six months later in July.</p> <p>22 So it wasn't like they were kept coming</p> <p>23 out. And the concern is, is that, I mean, that</p> <p>24 whether the credentialing or not it was done in</p> <p>25 January too, and the permit was there. I'm willing</p> <p>Page 221</p>
<p>1 MS. JORGENSEN: Yes.</p> <p>2 HEARING OFFICER: Is that right? 4,500.</p> <p>3 My calculator 2250 plus the 1250, is that what we're</p> <p>4 saying? Yeah. Okay. So yeah, the total penalty is</p> <p>5 3,500. So I'm keeping that at the base. Okay. As</p> <p>6 to NOV 178, I going keep 717 as to the 1250 as well.</p> <p>7 And then no entry for the two days, there was no</p> <p>8 entry on 7/31, but I see there was issues about</p> <p>9 certification, so I can dismiss that. So I'm going</p> <p>10 to hold the penalties for the refused access at the</p> <p>11 10,000 for the two. So it's going to be 20,000, so</p> <p>12 it'll be 21,250.</p> <p>13 MR. GUBLER: May I make a comment on that?</p> <p>14 HEARING OFFICER: Sure.</p> <p>15 MR. GUBLER: So the testimony given was</p> <p>16 that they you know -- they don't, they don't know</p> <p>17 the -- the -- what they're looking at. So they --</p> <p>18 they assessed the -- the full maximum amount. They</p> <p>19 -- there was testimony that they went before and</p> <p>20 after August 28th. And -- and nothing -- nothing</p> <p>21 had basically the -- the max amount that they had</p> <p>22 had any time before was the 1250 is what was just</p> <p>23 assessed.</p> <p>24 Also, you know, whether Madam Hearing</p> <p>25 Officer believes my client or not I believe that</p> <p>Page 220</p>	



1 to give a 20 percent discount on that 20,000. So  
2 what would that bring?

3 Because I do appreciate the fact, and this  
4 testimony was, it happened to August or September  
5 where the affidavits and we're talking to people in  
6 the road, rota milling. So it was -- there was some  
7 stuff done to -- to mitigate that. So I'm going to  
8 do that. So it'll be the 1250 plus, I'll give a 20  
9 percent discount off the 20,000. And 4,000. Am I  
10 saying that right? So it's going to be, yeah,  
11 16,000.

12 So 16,000 for violation number two and  
13 1250. And so that brings us to the grand total and  
14 17250, because I've already knocked the -- the --  
15 the 10,000 off. Actually there was a one off for  
16 the 725 and the 731, but it is serious to have  
17 refused entry in 878, 14 definitely by those times.

18 And but I do know that the role of milling  
19 was done after the fact. And -- and I see that. So  
20 that's -- that's what I'm -- that's the penalty  
21 then. The total being 17250. Okay. And we are  
22 adjourned. Thank you. And it's 2:31. Thank you  
23 everybody for your testimony and all the evidence  
24 presented.

25 (Proceedings adjourned at 2:31 p.m.)



CERTIFICATE OF TRANSCRIPTION

I, MICHAEL KALDOR, do hereby certify that the provided audio recording media was transcribed by me or reduced to typewriting under my supervision, that said transcript is a true transcription of the audio recording; that I am neither counsel for, related to, nor employed by any of the parties to the action involved in these proceedings; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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MICHAEL KALDOR





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**AIR POLLUTION CONTROL HEARING BOARD MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

DCOP #57148

NOV #9994 and #10078

**RESPONDENTS' WITNESS LIST**

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**NOW COME** Tonopah & Tidewater Railroad Co. ("Railroad Co."), ETON Transportation Corp. ("ETON"), and Mitchell "Moe" Truman (collectively, the "Respondents"), by and through their attorneys of the law firm of JOHNSON & GUBLER, P.C., and hereby submit this list of witnesses that Respondents expect to testify at the hearing before the Air Pollution Control Hearing Board:

1. Katrinka Byers
2. Noel Crandall
3. David Dean
4. Andrew Kirk
5. Frankie Nevarez
6. Canduella (Candy) Rowsell

7. Willard Strickler

8. Crystal Thorne

9. Mitchell Truman

DATED this 28<sup>th</sup> day of March, 2025.

JOHNSON & GUBLER, P.C.

*/s/ Russell G. Gubler*

---

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Attorneys for Clark County Department of  
Environment and Sustainability, Division of Air Quality

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**AIR POLLUTION CONTROL HEARING BOARD MEETING**

In the Matter of:	NOV #9994 AND #10078
ETON TRANSPORTATION CORP.	Hearing Board Meeting
Respondent.	<b>CLARK COUNTY'S OPENING BRIEF, NOTICE OF VIOLATION #9994 AND #10078</b>
	Date of Hearing: February 5, 2025
	Time of Hearing: 10:00 am

**NOW COME** Clark County Department of Environment and Sustainability, Division of Air Quality (**DAQ**) by and through their attorneys, Steven B. Wolfson, District Attorney through Timothy Allen, Deputy District Attorney and hereby submits this Opening Brief regarding Clark County's Notice of Violation #9994 and #10078.

ETON (which may be ETON Transportation Corp. and/or Environmental Transportation of Nevada, LLC d/b/a ETON) applied for and obtained a Dust Control Operating Permit (DCOP) for the project identified as STRATFORD-1 (57148) located at



2596 Stratford Avenue in Clark County, Permit No. 57148 – Version No. 0, with an effective date of August 30, 2023 and expiration date of August 29, 2024. See Exhibit A. Mr. Moe Truman<sup>1</sup> applied on behalf of ETON and designated himself as the Designated Onsite Representative and the Responsible Official. Initially, the DCOP permitted 3.19 acres for the purpose of grubbing and demolition. Mr. Truman on behalf of ETON applied for and obtained a revision to DCOP, Permit No. 57148 – Version No. 1 on February 8, 2024. See Exhibit B. The DCOP permit area increased to 4.99 acres for the purpose of, among other things, paving.

In both versions of the DCOP, Mr. Truman, as the Responsible Official, acknowledged that ETON consented “to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.” DCOP at 3. ETON clearly believed that they needed these permits at the time because DAQ laws and regulations applied to them. Only after ETON violated the law did they claim that they were a federally recognized common carrier and that the DAQ laws and regulations did not apply to them.

Based on various alleged violations of the Clark County Air Quality Regulations (AQR), the Clark County Department of Environment and Sustainability, Division of Air Quality (DAQ) issued two Notices of Violations (NOV) Nos. 9994 and 10078. ETON contests both NOVs and has appealed to the Hearing Board after a Hearing Officer upheld

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<sup>1</sup> Mr. Truman applied for the DCOP using the name Moe F. Truman. Upon information and belief, “Moe” is Mr. Mitchell Truman’s nickname.

both NOVs. Exhibits E and F. A hearing has been scheduled before the Air Pollution Control Hearing Board on February 5, 2025 at which time both DAQ and ETON may present testimony and evidence in support of their respective positions. To provide additional context and information to the Hearing Board, DAQ submits the following Opening Brief.

The overarching theme of ETON's argument is that the landowner Tonopah & Tidewater Railroad Co. (TTRR) is a Class III rail carrier subject to the jurisdiction of the Surface Transportation Board (STB). The argument goes that as a rail carrier, TTRR and ETON, as a company that supports TTRR in its capacity as a rail carrier, is not subject to the AQRs for various reasons. In support of this position, ETON has relied on Exhibits G and H, two Federal Register notices and decisions. On the contrary, these exhibits in addition to a decision by STB related to Exhibit H show that TTRR is not a rail carrier. Therefore, the arguments presented by ETON based on TTRR's alleged (and incorrect) status as a rail carrier are inapplicable.

Exhibit G is a STB notice published in the Federal Register on September 30, 2004 under STB Finance Docket No. 34547 in which STB identifies TTRR<sup>2</sup> as a "noncarrier" that "has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail owned by Pan Western . . . in Clark County, NV. Pan Western intends to lease the railroad

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<sup>2</sup> ETON has argued before the Hearing Officer, without any documentation, that TTRR is the "owner of rails." In fact, this assertion is contradicted by Exhibits G and H which state that TTRR, as a "noncarrier" was eligible to become a Class III rail carrier by leasing a private rail line from Pan Western which it never did. There is nothing in the record that supports the assertion that TTRR owns any rail line or is anything but a "noncarrier."

line to TTRR so that TTRR may initiate and provide common carrier rail operations on or over the line. TTRR will become a Class III rail Carrier.” 69 FR 58594 attached as Exhibit H. Subsequently, STB published a second notice, STB Finance Docket No. 34958, on December 14, 2006. 71 FR 75293. Footnote 2 states: “This line [owned by Pan Western] was the subject of a notice of exemption that, according to the current verified notice, was never consummated.” See also STB Decision, STB Finance Docket No. 34958, Service Date: March 15, 2007, footnote 1 and page 3 (“the Tonopah & Tidewater Railroad Co. did not move forward and the transaction between [TTRR and Pan Western<sup>3</sup>] never occurred.”), attached hereto as Exhibit C.

Based on the foregoing, ETON cannot rely on any of its arguments that it is somehow exempt from compliance with the AQRs based on the unsupported claim that TTRR is a rail carrier. Further, even if ETON is a railroad company formed under state law, under a general legal definition or if they have a contract with Las Vegas Paving which allows them to operate a railroad, they are not a federally recognized common carrier. *See* 49 CFR 1150.1-45 (ETON has no certificate to operate a railroad line or an exemption under the CFR). ETON cannot show that they are a federally recognized common carrier so the caselaw that they rely upon to say that the laws should not apply to them are clearly distinguishable.

Next, ETON implicitly argues that because its lease of the subject property from TTRR ended on December 31, 2023, it cannot be held liable for AQR violations. This

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<sup>3</sup> Pan Western’s status as a Nevada business entity has since been permanently revoked. See Screenshot from the Nevada Secretary of State’s website regarding Pan Western Corporation, attached hereto as Exhibit D.

argument is invalid. Whatever arrangements ETON had with TTRR is between those two companies. Mr. Truman, ETON's Responsible Official, certified that he, on behalf of ETON, could commit to all the terms and conditions of the DCOP, and he acknowledged that obtaining the DCOP was "not a substitute for obtaining the property owner's permission to use land associated with the project." DCOP at 3.

Mr. Truman, on behalf of ETON, revised the DCOP in February 2024, weeks after the date ETON's lease with TTRR allegedly expired. In addition, as alleged in the NOV's, Mr. Truman continued to interact with DAQ staff who inspected or attempted to inspect the project until the DCOP expired in August 2024.

This attempt to deflect responsibility appears to have been made up after the fact. Regardless, ETON as the permittee, and Mr. Truman, as the actively involved Responsible Official, accepted and should be held accountable for all the responsibilities that come with holding a DCOP.

ETON also argues that DAQ staff did not have the authority to come on site. This is patently incorrect. By the terms of the DCOP, ETON and Mr. Truman consented "to inspection of the site during normal hours of operation by [DAQ] staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs." DCOP at 3. To obtain a DCOP, the permittee has to agree to, and the Responsible Official has to acknowledge the permittee's consent to this permit condition. See NRS 445B.580. In addition to AQR Section 4, ETON violated the explicit permit condition as well as NRS 445B.580. Further, even if ETON did not apply for a permit which provides consent to DAQ to inspect the property, ETON still has no expectation of privacy in the subject

property which is in open view and where DAQ does not need a warrant under the highly regulated business and community caretaker exemptions to the warrant requirement.

Finally, ETON makes arguments related to what should be classified as best available control measures, equal protection and due process. They seem to be based on a fundamental misunderstanding of the Clean Air Act, its regulations, Nevada's State Implementation Plan, the NRS, the NAC, and the AQRs.

To the extent that the hearing will provide more context regarding ETON's reliance on the aerial photographs, DAQ will be able to respond. As for the due process claim, DAQ relies on NRS 445B.500, NRS 445B.640, AQR Section 9.1, and an internal penalty procedure to calculate a **recommended** penalty.

The Hearing Officer and Hearing Board decides what penalty, if any, to assess. ETON is welcome to make its case as to the appropriate penalty, if any, to the Hearing Board during the hearing on February 5, 2025. ETON is confusing DAQ's role as the regulator with the Hearing Officer's and Hearing Board's role as the trier of fact and decision maker.

Here, DAQ recommends that the penalty be \$31,562.50 for NOV 10078 and \$4,687.50 for NOV 9994.

**Witness List:**

- Canduella Rowsell, Air Quality Specialist
- Andrew Kirk, Senior Air Quality Specialist
- Noel Crandall, Air Quality Specialist
- Anna Sutowska, Air Quality Supervisor

- Katrinka Byers, Senior Air Quality Specialist

- David Dean, Air Quality Supervisor

DATED this 15<sup>th</sup> day of January, 2025.

STEVEN B. WOLFSON  
DISTRICT ATTORNEY

By: /s/ Timothy Allen  
TIMOTHY ALLEN  
Deputy District Attorney  
State Bar No. 014818  
500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
Las Vegas, Nevada 89155-2215  
Attorney for Clark County Department of  
Environment and Sustainability, Division of  
Air Quality



### **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 15<sup>th</sup> day of January, 2025, I served a true and correct copy of the foregoing **CLARK COUNTY’S OPENING BRIEF, NOTICE OF VIOLATION #9994 AND #10078** (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

Matthew L. Johnson, Esq.  
Russell G. Gubler  
*Attorneys for Respondent*

Pam Thompson  
agenforcement@clarkcountynv.gov

/s/ /s/ Tawana Thomas  
An Employee of the Clark County District  
Attorney’s Office – Civil Division

# **Exhibit A**

Dust Control Operating Permit New



## Dust Control Operating Permit (DCOP) For Construction Activities

This permit does not exempt the permittee from compliance with the Endangered Species Act

**Permit No: 57148**

**Version No: 0**

**Permittee: ETON**

**Project: STRATFORD-1 (57148)**

**Physical Location: 2596 STRATFORD AVE**

**Cross Streets: Stratford Ave/Glen Ave, S**

**Effective Date: Aug 30, 2023**

**Expiration Date: Aug 29, 2024**

**Revision Date: N/A**

**Revision Type: N/A**

**Project Acreage: 3.19**

**Region: SSE - South/Southeast**

### Notes/Additional Permit Conditions

Not NESHAP Demolition  
WF - 8/30/2023

#### Designated Onsite Representative

Name: Moe Truman  
Company: ETON  
Mobile Number: 702-348-6370  
Email: moe@eton.me  
Dust Card No.: SCHEDULED Expires: Oct 10, 2023

#### Responsible Official

Name: Moe Truman  
Company: ETON  
Office Number: 702-851-1746  
Mobile Number: 702-348-6370  
Email: moe@eton.me

**Dust control measures must occur 24 hours a day, 7 days a week.**

**This permit is not valid until all fees are paid in full and a complete copy of the permit with conditions and the dust mitigation plan is posted on the project site.**

*It is a condition of the issuance of any operating permit required by the commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by authorized officer of the department at any time during the holder's hours of operation without prior notice. This condition must be stated on each application form and operating permit. NRS 445B.580.*

The issuance of this PERMIT does not relieve the PERMITTEE from compliance with all other applicable federal, state, county and local ordinances and regulations. Issuance of this PERMIT shall not be a defense to violations of any applicable ordinances or regulations.

## Permittee Information

**Permittee Name:** ETON

**Mailing Address:** 3426 Losee Road

**City/State/Zip Code:** North Las Vegas, NV 89030

**Office Number:** 702-851-1746

**Fax Number:** 702-851-1583

## Additional Project Information

**Project Description:** GRUB SITE. Site needs to be cleared to let the survey crew in to start gathering data points to work on a grading plane.

**Project Attributes:** Miscellaneous, Other Demolition

**Portable Crushing and/or Powered Screening:** *Portable crushing and/or powered screening equipment supporting any onsite single construction activity and remaining onsite for less than 12 months is exempt from the stationary source permitting requirements of AQR Section 12.1 and will instead be subject to the conditions of the Dust Control Operating Permit issued pursuant to AQR Section 94. This exemption does not apply to equipment listed as emission units in a current minor source permit unless the permit states otherwise.*

- Will portable crushing or powered screening occur onsite: No
- If yes, what is the anticipated date that equipment will be brought onsite: N/A
- What is the duration equipment will remain onsite: N/A

## Dust Control Monitor Information

**Name:** N/A

**Company:** N/A

**Mobile Number:** N/A

**Email:** N/A

**Dust Monitor Card No.:** Expires:

## Blasting Supplemental Information

**Blasting Company:** N/A

**Contact Name:** N/A

**Mailing Address:** N/A

**Office Number:** N/A

**Mobile Number:** N/A

**Blasting Date:** N/A **Blasting Time:** N/A

**Blasting Frequency:** N/A

**Material to be Blasted:** N/A

**Acreage to be Blasted:** N/A

**Blasting Depth:** N/A Feet

**Distance to Nearest Residence:** N/A Feet

**Distance to Nearest Business:** N/A Feet

**Have Nearby Residents Been Informed:** N/A

**Have Nearby Businesses Been Informed:** N/A

## Responsible Official Certification/Acknowledgement Statement

By submitting this permit application electronically, the user (Responsible Official) certifies the following:

- a. As the Responsible Official (applicant), I am authorized on behalf of the Owner Builder/Company/Organization (permittee) to apply for this DCOP and to commit to all of the terms and conditions therein.
- b. If applying on behalf of the permittee listed, the permittee shall be responsible for complying with requirements of this DCOP and the Air Quality Regulations (AQRs). Otherwise, the applicant listed shall be the responsible party.
- c. I accept responsibility for assuring that all contractors, subcontractors, and other persons on the construction site defined by this permit comply with the terms and conditions of the DCOP, the associated Dust Mitigation Plan and the AQRs.

By submitting this permit application electronically, the user (Responsible Official) acknowledges the following:

- a. The permit issued in response to this application is not a substitute for obtaining the property owner's permission to use land associated with the project. Issuance of the DCOP is intended only for controlling the emission of air pollutants and assuring compliance with the AQRs. Clark County cannot be held liable for any unauthorized use of the land.
- b. In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.

## Additional Instructions/Advisories

- a. Before disturbing soils on a parcel, enacting a grade change, constructing a structure and/or appurtenances, or installing, constructing, or modifying equipment that emits an air pollutant, you must contact and obtain all required permits from Clark County's Department of Comprehensive Planning, Building Department, DAQ (Title 30 Notice) and the municipality with jurisdiction.
- b. If the project has 50 or more acres of disturbed soil at any given time, the permittee shall identify the on-site Dust Control Monitor for the project(s). In addition, this requirement applies when the permittee has common control of multiple adjacent projects that individually have less than 50 acres of disturbed soil at any given time, but the combined project has 50 or more acres of disturbed soil at any given time.  
If a Dust Control Monitor had not been identified at the time of this permit issuance, the permittee shall notify DAQ by revising the permit in the DAQ Permitting Portal, before disturbing 50 or more acres of soil at any given time. The Dust Control Monitor must be on-site at all times when construction activities occur and shall manage dust prevention and control on-site.
- c. DCOP acreage fee is based on total project acreage of disturbed surface area, which is rounded up to the next whole acre. If the project is less than 1 acre, a minimum of 1 acre shall apply to the project for fee purposes.
- d. Stormwater Advisory: Be advised that all land disturbances that exceed 1 acre or are adjacent to a waterway must submit a "Notice of Intent" to the Nevada Division of Environmental Protection that certifies a Storm Water Pollution Prevention Plan has been developed and is maintained for the site. Contact NDEP at (775) 687-9429 for an application, information, and instructions.

## Dust Mitigation Plan

**Parcel Number:** 161-07-103-015

**Soil PEP:** High

**Water Source:** Hydrant with Jones Valve

If other, describe:

**Water Application Method:** Water Trucks/Pulls

If other, describe:

### Best Management Practices (BMPs) – Control Measures

The permittee shall comply with all requirements of Section 94 of the AQRs and all provisions of the DCOP issued from this application.

For each project activity listed in this Dust Mitigation Plan, the permittee shall comply with the requirements for the associated Best Management Practices (BMPs). Where options are listed for a BMP requirement, the permittee shall apply one or more of the Control Measures to comply with the requirement. The permittee will apply corresponding Control Measures for the PEP for the project soil type(s).

Table 1 provides the required Control Measures to be implemented for each soil type based on PEP. Some Control Measures apply to Construction Activities regardless of soil type. The Control Measures implemented must address the PEP for the area in which the Construction project is permitted.

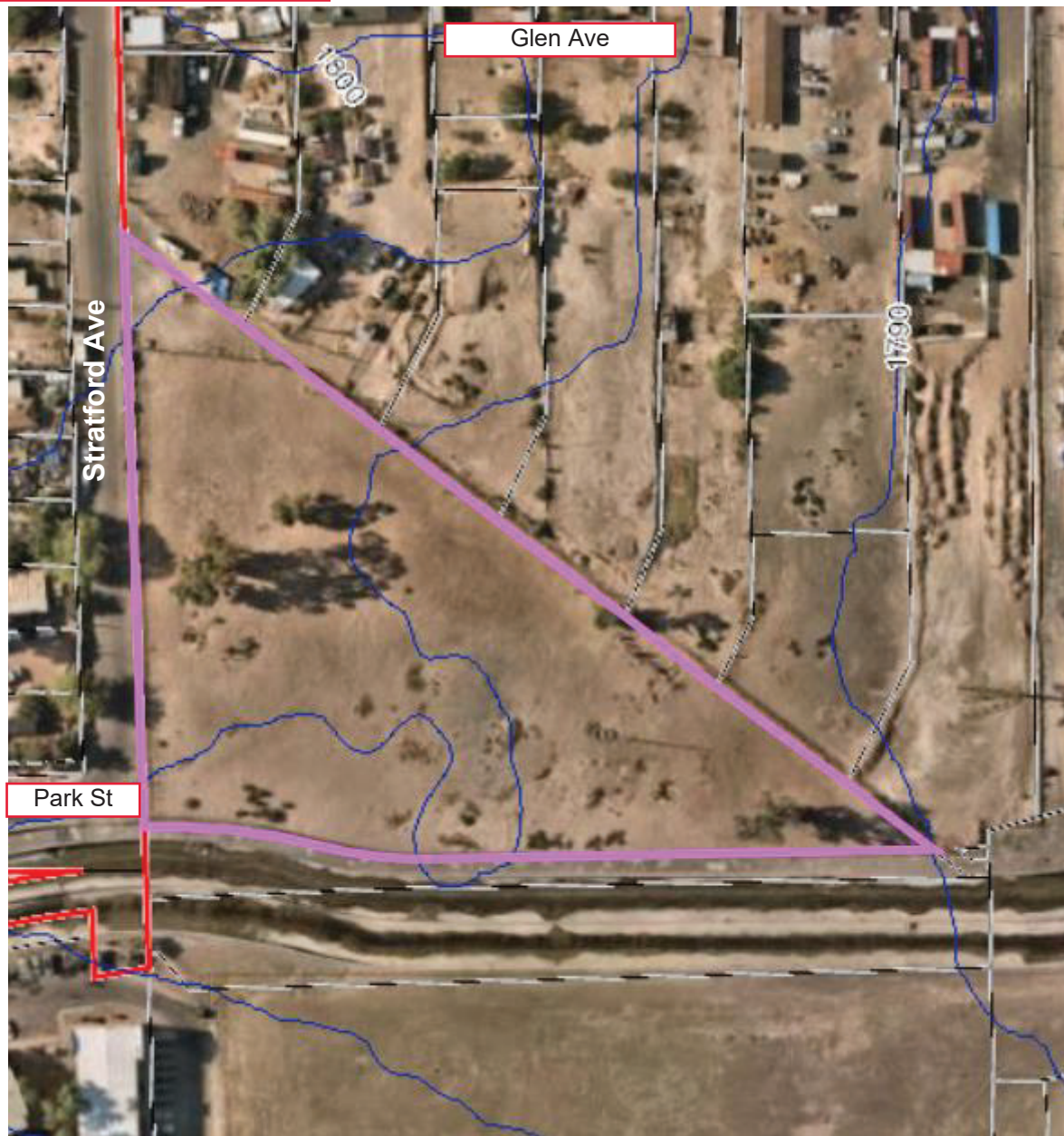
**Table 1: Soil Types**

Particulate Emission Potential (PEP)	Control Measure
Low	Apply water and mix moist soil with dry soil until optimum moisture content is reached.
Moderate Low	Apply and mix water into soil and/or material until optimum moisture content is reached.
Moderate High	Apply and mix water and tackifier solution into soil and/or material until optimum moisture content is reached.
High	Apply and mix water and surfactant solution into soil and/or material until optimum moisture content is reached.

The permittee shall comply with all applicable requirements for activities performed pursuant to this DCOP. If a requirement has Control Measures listed, permittee shall comply with one or more of the Control Measures. If Control Measures for the requirement are contingent on the project PEP/Soil Type, permittee shall comply with one or more of the Control Measure for the designated PEP/Soil Type.



SL- 08/30/2023



## **BMP 01 BACKFILLING (Filling area previously excavated or Trenched)**

### **01 Requirements**

- (a) Maintain optimum moisture content in backfill material and operate equipment in a manner that limits Fugitive Dust to comply with the AQRs before, during, and after handling of material and during storage until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Dedicate an adequate water source to backfilling equipment and apply water as needed to minimize Dust.
  - (3) Empty loader bucket slowly and minimize drop height from loader bucket.
  - (4) Ensure backfill material is moist or crusted at all times.
  - (5) Apply water, surfactant, or tackifier to maintain disturbed soils in a stable condition to limit Fugitive Dust.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 02 BLASTING – Abrasive (Sandblasting, abrasive blasting, and/or hydro-blasting)**

### **02 Requirements**

- (a) Ensure soil moisture is maintained to limit Fugitive Dust where support equipment and vehicles will operate until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Limit visible Emissions to no more than an average of 40% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
- (c) Hydro-blasting (using water as the propellant) must be conducted in a manner that maintains visible Emissions within Opacity standards.
- (d) Stabilize Particulate Matter in the surrounding area following blasting.
  - (1) Clean Particulate Matter from the surrounding area and water disturbed soils after blasting.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on the surrounding area following blasting.

**Note:** Whenever possible, abrasive blasting should be conducted within an enclosed structure to limit the release of visible Emissions to the atmosphere.

## **BMP 03      BLASTING – Soil and Rock (Explosive blasting of soil and rock)**

### **03      Requirements**

- (a) Maintain optimum moisture content in soil where drills, support equipment, and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where drills, support equipment, and vehicles will operate, and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) A Blasting Supplemental form must be filled out, submitted, and approved by DAQ prior to any blasting.
- (c) No blasting may be conducted within 1,500 feet of a residential area, occupied building, or major roadway when the wind direction is toward these structures.
- (d) Blasting shall take place between the hours of 8:00 a.m. and 4:30 p.m., excluding Saturdays, Sundays, and holidays, unless prior permission is obtained from the Control Officer.
- (e) No blasting is allowed when the National Weather Service forecasts wind gusts above 25 miles per hour (mph).
- (f) Before setting explosive charges in holes, document current and predicted weather conditions according to the National Weather Service. If the forecast is for wind gusts of 25 mph or more, do not load explosives or blast holes. If wind conditions are forecasted to be 25 mph or more during a future scheduled blast, do not load explosives or blast holes.
- (g) If DAQ issues a Construction Notice or Dust Advisory when a blast has been scheduled, do not load explosives or blast holes during the time period listed on the notice/advisory. If holes were loaded before the notices were issued, call a DAQ Compliance Supervisor or Manager for permission to blast.
- (h) Maintain the optimum moisture content in soil before, during, and after blasting activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit the blast area to what can be stabilized immediately following the blast.
  - (2) Limit disturbed areas by maintaining natural rock and vegetation.
  - (3) Presoak surface soils to the depth of caliche or bedrock with water, surfactant, or tackifier to limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following blasting activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 04      CLEARING AND GRUBBING (Definition: Clearing and grubbing for site preparation and vacant land cleanup)**

**04      Requirements**

- (a) Maintain optimum moisture content in soil before, during, and after clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Apply water, surfactant, or tackifier during clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (3) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following clearing and grubbing activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 05      CLEARING FORMS, FOUNDATIONS AND SLABS (Clearing and cleaning of forms, foundations and slabs)**

**05      Requirements**

- (a) Limit visible Emissions before, during, and after the clearing of forms, foundations, and slabs to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
  - (1) Avoid the use of high pressure air to blow soil and/or debris from forms, foundations, and slabs.
- (b) At least one of the following must be used to clear forms, foundations, and slabs:
  - (1) Water spray.
  - (2) Sweeping and water spray.
  - (3) Industrial vacuum.

**BMP 06      CRUSHING (Crushing of Construction and demolition debris, rock, and soil)**

**06      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after crushing activities to limit Emissions.
  - (1) Pre-water material before loading it into the crusher.
  - (2) Apply water to material during crushing to ensure compliance with Opacity standards and Permit conditions.

- (3) Monitor Emissions Opacity. Make adjustments to ensure compliance with Opacity standards and Permit conditions.
- (4) Apply water to crushed material immediately following crushing.

**Note:** If required, obtain the appropriate Operating Permit for powered crushers prior to engaging in crushing activity and comply with Permit conditions.

## **BMP 07 CUT AND FILL (Cut and/or fill soils for site grade preparation)**

### **07 Requirement**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils.
- (b) Maintain optimum moisture content in soils before, during, and after cut and fill activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water to cut depth and maintain surface soils in a stabilized condition.
  - (2) Rip soil and add water and/or surfactant as needed to reach moisture throughout the cut depth.
  - (3) During cut and fill activities, apply water, surfactant, or tackifier to ensure moisture content is maintained to cut depth.
  - (4) Immediately following cut and fill activities, apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 08 DEMOLITION – Implosion (Implosive blasting demolition of structure)**

### **08 Requirements**

- (a) A Demolition Supplemental Form and a Supplement to the Dust Mitigation Plan must be filled out, submitted to, and approved by the Control Officer prior to implosion.
- (b) An asbestos survey must be conducted on any facility before demolition can commence.
- (c) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (d) All friable and non-friable asbestos-containing material must be removed from the facility prior to implosion.
- (e) Blasting must be confined to times when the wind direction is away from the closest residential areas, occupied buildings, and major roadways.
- (f) Implosion time must be preapproved by the Control Officer.
- (g) Current weather conditions and weather predictions from the National Weather Service must be monitored and documented.
  - (1) Prior to setting explosive charges, obtain and document current and predicted weather conditions from the National Weather Service.



- (2) If a wind advisory (over 20 mph gusts or average wind speed of 10 mph) is current or forecasted for the blast period, do not set charges and do not blast.
  - (3) Maintain a calibrated anemometer and log ambient air velocity and direction within 1,000 feet of the implosion site, beginning at least 1 (one) hour prior to and 15 minutes after the implosion.
- (h) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Restrict support equipment and vehicles to existing Paved and/or stable areas.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (i) Maintain optimum moisture content in demolition debris before, during, and after implosion activities to limit Emissions.
  - (1) Apply water to debris immediately following blast and safety clearance, and maintain optimum moisture content in debris throughout cleanup and exporting activities.
  - (2) If water is not effective, apply and maintain a surfactant to debris immediately following blast and safety clearance.
  - (3) Clean and stabilize surrounding areas immediately following blast and safety clearance by applying water to all disturbed soil surfaces to establish a crust.
  - (4) Thoroughly clean blast debris from Paved and other surfaces following blast and safety clearance.

**BMP 09      DEMOLITION - Mechanical/Manual (Mechanical and manual demolition of walls, stucco, concrete, free-standing structures, buildings, and load-bearing walls)**

**09      Requirements**

- (a) An asbestos survey must be conducted on any facility or structure subject to NESHAP requirements before demolition can Commence.
- (b) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (c) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (d) Maintain optimum moisture content in demolition debris before, during, and after demolition activities to limit Emissions.
  - (1) Apply water to demolition debris during handling.
  - (2) Apply water to stabilize demolition debris immediately following demolition.



- (3) If water is not effective, apply and maintain a Dust Palliative to demolition debris immediately following demolition.
- (e) Stabilize surrounding area immediately following demolition by applying water and/or Dust Palliative to all disturbed soil surfaces.

**BMP 10 DISTURBED SOIL (Disturbed soil throughout project, including between structures)**

**10 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all Construction Activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit vehicle traffic and disturbance of soils to areas not being immediately developed using fencing, barriers, and/or barricades.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) Apply water, surfactant, or tackifier during Construction Activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust immediately following Construction Activities until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) If interior block walls are planned, install walls as early as possible in the Construction project.

**BMP 11 LONG-TERM STABILIZATION (Applies to disturbed land that is not built out, landscaped, or Paved at Permit closure)**

**11 Requirements**

- (a) Stabilize all disturbed land within 10 days of the completion of a project, or when active operations on all or part of the Construction site will cease for 30 days or more. Restrict access to these areas to prevent soil disturbance and maintain long-term stabilization. The Control Officer must approve the control method selected by the Permittee before its implementation. The Permittee shall select one or more of the following control methods:
  - (1) Pave.
  - (2) Apply Clean Gravel.
  - (3) Install permanent metal or wood fencing and/or a post and cable at least 3 feet high, or other similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
  - (4) Install a dirt berm at least 4 feet high, or a similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
- (b) Installation of signs, as described below, is required if a dirt berm or similar barrier is used or if Clean Gravel is applied.

- (1) Install orange "No Parking/Trespassing" signs with black lettering, at least 24 inches wide by 18 inches high, every 50 feet or as approved by the Control Officer (Table 2).
  - (2) Construct the sign(s) from materials capable of withstanding Clark County's harsh environment (e.g., wood, metal, plastic).
  - (3) Attach the sign(s) to a sturdy post, such as metal or wood, placed securely in the ground, or attach the sign(s) to a fence, barricade, or other stable object that is clearly visible.
  - (4) Post on or near the property boundary, the property corners, and at all access points; post no further than 50 feet apart.
- (c) New Construction or modification of Paved roads must be stabilized consistent with Section 93 before the Dust Control Operating Permit (DCOP) is closed.
- (1) Roads with vehicular traffic equal to 3,000 vehicles or fewer per day shall have a 4 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (2) Roads with vehicular traffic greater than 3,000 vehicles per day shall have an 8 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (3) All disturbed areas outside the road shoulder boundaries must be treated for long-term stabilization.

## **BMP 12      DUST PALLIATIVE – Selection and Use (Selection and use of chemical and organic dust suppressing agents and other Dust Palliatives)**

### **12      Requirement**

The selection and use of chemical and organic Dust Suppressing agents and other Dust Palliatives shall adhere to all local, State, and federal regulations as well as all manufacturer specifications.

## **BMP 13      IMPORTING/EXPORTING OF BULK MATERIAL (Importing or exporting of soil, aggregate, decorative rock, debris, Type II, and other bulk material)**

### **13      Requirement**

- (a) Maintain optimum moisture content in surface soils and bulk material before, during, and after all importing/exporting activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where importing/exporting activities occur, including haul routes, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative, or Clean Gravel, on surface soils where importing/exporting activities occur, including haul routes.
  - (3) Limit vehicle speeds to 15 mph on the work site.
  - (4) Maintain 3–6 inches of freeboard to prevent spillage.
  - (5) Apply tarps or other suitable enclosures that completely cover the load on haul trucks before they exit the project onto Public Roads, and maintain throughout transport. Tarps must be well-maintained and serviceable at all times.
- (b) Clean the wheels and undercarriage of haul trucks before they leave the Construction site.
- (c) Check belly/end dump truck seals regularly, and remove trapped rocks to prevent spillage.

**BMP 14 LANDSCAPING (Installation of sod, decorative rock, desert or other landscape material)**

**14 Requirements**

- (a) Maintain optimum moisture content in soils and landscaping material before, during, and after landscaping activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) Apply water, surfactant, or tackifier to maintain disturbed soils and landscaping material in a stable condition until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 15 SUBGRADE PREPARATION FOR PAVING (Subgrade preparation for paving streets, parking lots, etc.)**

**15 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all paving/subgrade preparation activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water subgrade surfaces until optimum moisture content is reached.
  - (2) Maintain optimum moisture content in material while aggregate is being applied.
  - (3) Place tack coat on aggregate base.

**BMP 16 SAWING/CUTTING MATERIALS (Sawing or cutting materials such as concrete, asphalt, block or pipe)**

**16 Requirements**

- (a) Limit visible Emissions to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs. One of the following two control methods must be used when sawing/cutting materials:
  - (1) Use water to control Dust.
  - (2) Use a vacuum to collect Dust.

**BMP 17 SCREENING (Screening of rock, soil, or Construction debris)**

**17 Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after screening activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Apply sufficient water or a Dust Suppressant prior to screening.
  - (2) Drop material through the screen slowly; minimize drop height.

- (3) Dedicate an adequate water source to the screening operation, and apply water as needed to minimize Dust.
- (4) Monitor visible Emissions; make adjustments to Control Measures to ensure compliance with Opacity standards and Permit conditions.
- (5) Apply water, surfactant, or Dust Palliative to screened material and surrounding areas following screening activities until long-term stabilization is achieved.

**Note:** If required, obtain the appropriate Operating Permit for powered screens before engaging in screening activity and comply with Permit conditions.

## **BMP 18 STAGING AREAS (Staging areas and equipment/material storage areas)**

### **18 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all staging area activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
  - (3) Limit vehicle speed to 15 mph in staging area(s) and on all unpaved access routes.
  - (4) Apply water, Clean Gravel, recycled asphalt, or Dust Palliative to staging area soils for the duration of the project.

## **BMP 19 STOCKPILING (Stockpiling of materials, such as Type II, rock or debris, for future use or export)**

### **19 Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after stockpiling activities to limit Fugitive Dust until long-term stabilization is achieved.
  - (1) Stockpiles located within 100 yards of occupied buildings shall not be constructed over 8 feet in height unless otherwise approved by the Control Officer.
  - (2) Stockpiles located farther than 100 yards from any occupied building and constructed over 8 feet in height must have a road bladed to the top to allow water truck access, or shall demonstrate another means to provide effective Dust control.
  - (3) Apply water, surfactant, or tackifier during stockpiling activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to material and surface soils to form a crust immediately following stockpiling activities until the long-term stabilization requirements listed in BMP 11 are achieved.

- (c) All stockpiles must be removed or leveled prior to project completion unless otherwise approved by the Control Officer. Stockpiles approved to be left in place must be in compliance with the long-term stabilization requirements listed in BMP 11.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 20 TRACKOUT PREVENTION AND CLEANUP (Prevention and cleanup of mud, silt, and soil tracked out onto Paved surfaces)**

### **20 Requirements**

- (a) Install and maintain a Trackout control device in an effective condition at all access points where Paved and unpaved access or travel routes intersect.
  - (1) Install gravel pad(s) consisting of a minimum of 2 inches in rough diameter of Clean Gravel or crushed rock on a well-graded surface (Type II material is not acceptable). Minimum dimensions must be 30 feet wide by 6 inches deep by 50 feet in length or the length of the longest haul truck, whichever is greater. Re-screen, wash, or apply additional rock to gravel pads to maintain effectiveness.
    - (A) Install wheel shakers if gravel pads are not effective in preventing Trackout. Clean wheel shakers regularly to maintain their effectiveness.
    - (B) Install wheel washers if wheel shakers are not effective in preventing Trackout. Maintain wheel washers regularly to maintain effectiveness.
    - (C) Alternative Trackout control devices may be used if approved by the Control Officer.
  - (2) All exiting traffic must be routed over selected Trackout control device(s) by clearly establishing and enforcing traffic patterns on-site.
- (b) Maintain Dust control and clean all Trackout from Paved surfaces.
  - (1) Maintain Dust control during working hours and clean all Trackout from Paved surfaces, including sidewalks and gutters, at the end of each work shift.
  - (2) Immediately clean up Trackout that extends 50 feet or more, or more than ¼ inch in depth, from Paved surfaces, including sidewalks and gutters, or any amount of Trackout that causes one or more of the following:
    - (A) A Dust plume that extends more than 100 feet horizontally or vertically.
    - (B) An average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, pursuant to the AQRs.
    - (C) 50% instantaneous Opacity, pursuant to the AQRs.
  - (3) Use street sweeper(s) in addition to Trackout control devices to ensure the cleanup of Trackout is maintained. If one street sweeper is not effective in controlling Trackout to Air Quality Standards, bring in additional street sweepers.
  - (4) The use of blower devices to remove deposited mud/dirt Trackout from a Paved road is prohibited.
  - (5) The use of rotary brushes without water is prohibited.
  - (6) The use of soil to create a ramp for vehicle access over a curb is prohibited.

## **BMP 21      TRAFFIC—Unpaved Routes and Parking Areas (Construction-related traffic on unpaved roads and parking areas)**

### **21      Requirements**

- (a) Limit visible Dust Emissions from vehicle operations and stabilize all unpaved routes, including unpaved parking areas.
  - (1) Limit vehicle speeds to 15 mph on all unpaved routes and parking areas.
  - (2) Apply water to unpaved haul routes and off-road traffic areas, including parking areas, and maintain in a stabilized condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on unpaved routes, off-road traffic areas, and parking areas.
  - (4) If water, surfactant, and/or Dust Palliative is not effective, apply and maintain Clean Gravel (or other suitable material approved by the Control Officer) on unpaved routes, off-road traffic areas, and parking areas.
  - (5) If a preexisting unpaved road or haul route is being used but is not permitted, it must be maintained in a stabilized condition. These unpaved roads or haul routes must not be changed in any way unless permitted or as approved by the Control Officer.

## **BMP 22      TRENCHING (Trenching with track- or wheel-mounted excavator, shovel, backhoe, or trencher)**

### **22      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in soils before, during, and after Trenching activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils before Trenching.
  - (2) Apply water, surfactant, or tackifier during Trenching activities to prevent unstable soil conditions, and limit Fugitive Dust by dedicating a water truck or large hose.
  - (3) Apply water, surfactant, and/or Dust Palliative to excavated soils to form a crust immediately following Trenching activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.



## **BMP 23      TRUCK LOADING (Loading trucks with materials including Construction and demolition debris, rock, and soil)**

### **23      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after truck loading activities to limit Fugitive Dust.
  - (1) Mix material with water, surfactant, or tackifier prior to truck loading activities to limit Fugitive Dust.
  - (2) Empty loader bucket slowly and minimize the drop height while dumping.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## Sheenaleigh Lucas

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**From:** Moe Truman <moe@eton.me>  
**Sent:** Wednesday, August 30, 2023 2:43 PM  
**To:** Sheenaleigh Lucas  
**Subject:** RE: DCOP App No. 20032- ETON- STRATFORD

YES

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**From:** Sheenaleigh Lucas <Sheenaleigh.Lucas@ClarkCountyNV.gov>  
**Sent:** Wednesday, August 30, 2023 2:39 PM  
**To:** Moe Truman <moe@eton.me>  
**Subject:** RE: DCOP App No. 20032- ETON- STRATFORD

Is this parcel going to be developed in the future?

Regards,

Sheenaleigh Lucas  
Air Quality Specialist II  
Clark County Department of Environment and Sustainability  
Division of Air Quality  
4701 W. Russell Rd., Suite 200  
Las Vegas, NV 89118  
Phone: (702) 455-1684 Fax: (702) 383-9994

*My work hours are Tuesday- Friday, 7:00 am- 5:30pm*

**For any dust permit information or forms, please click on the link below.**

**[Dust Control Permitting Portal, Forms & Requirements](#)**

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**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Sent:** Tuesday, August 29, 2023 2:47 PM  
**To:** Sheenaleigh Lucas <[Sheenaleigh.Lucas@ClarkCountyNV.gov](mailto:Sheenaleigh.Lucas@ClarkCountyNV.gov)>  
**Subject:** RE: DCOP App No. 20032- ETON- STRATFORD

There are some trees to be taken down, and some old foundation from a water tank trash from the homeless in the area.

Site needs to be cleared to let the survey crew in to start gathering data points to work on a grading plane.

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**From:** Sheenaleigh Lucas <[Sheenaleigh.Lucas@ClarkCountyNV.gov](mailto:Sheenaleigh.Lucas@ClarkCountyNV.gov)>  
**Sent:** Tuesday, August 29, 2023 2:37 PM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Subject:** DCOP App No. 20032- ETON- STRATFORD

Greetings,

Please **reply to this email only** as soon as possible so not to delay the approval process. I have reviewed your Dust Control Operating Permit application and have questions and/or need additional information. Applications cannot be

updated with verbal authorization so **please reply to this email.** *You cannot correct the application on the portal, only the reviewer can.* If you have questions, feel free to email me those inquiries. If you wish to come in to discuss the application with me, please make an appointment.

The mailing address listed in the application, 4680 N Cimmaron Las Vegas, NV 89129, belongs to a residential home. Please provide the business mailing address of ETON.

The project description is listed as "Grub Site." What is this site being grubbed for?

Other Demolition was selected as a Project Attribute. What is being demolished on the site?

Regards,

Sheenaleigh Lucas  
Air Quality Specialist II  
Clark County Department of Environment and Sustainability  
Division of Air Quality  
4701 W. Russell Rd., Suite 200  
Las Vegas, NV 89118  
Phone: (702) 455-1684 Fax: (702) 383-9994

*My work hours are Tuesday- Friday, 7:00 am- 5:30pm*

**For any dust permit information or forms, please click on the link below.**

**[Dust Control Permitting Portal, Forms & Requirements](#)**

# **Exhibit B**

Dust Control Operating Permit Revised



## Dust Control Operating Permit (DCOP) For Construction Activities

This permit does not exempt the permittee from compliance with the Endangered Species Act

**Permit No: 57148**

**Version No: 1**

**Permittee: ETON**

**Project: STRATFORD-1 (57148)**

**Physical Location: 2596 STRATFORD AVE**

**Cross Streets: Stratford Ave/Glen Ave, S**

**Effective Date: Aug 30, 2023**

**Expiration Date: Aug 29, 2024**

**Revision Date: Feb 8, 2024**

**Revision Type: Add Acreage**

**Project Acreage: 4.99**

**Region: SSE - South/Southeast**

### Notes/Additional Permit Conditions

M1 = +1.8 acres  
Conditional renewal as per Section 92 regulations.

Not NESHAP Demolition  
WF - 8/30/2023

#### Designated Onsite Representative

Name: Moe Truman  
Company: ETON  
Mobile Number: 702-348-6370  
Email: moe@eton.me  
Dust Card No.: SCHEDULED Expires: Feb 27, 2024

#### Responsible Official

Name: Moe Truman  
Company: ETON  
Office Number: 702-851-1746  
Mobile Number: 702-348-6370  
Email: moe@eton.me

**Dust control measures must occur 24 hours a day, 7 days a week.**

**This permit is not valid until all fees are paid in full and a complete copy of the permit with conditions and the dust mitigation plan is posted on the project site.**

*It is a condition of the issuance of any operating permit required by the commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by authorized officer of the department at any time during the holder's hours of operation without prior notice. This condition must be stated on each application form and operating permit. NRS 445B.580.*

The issuance of this PERMIT does not relieve the PERMITTEE from compliance with all other applicable federal, state, county and local ordinances and regulations. Issuance of this PERMIT shall not be a defense to violations of any applicable ordinances or regulations.

## Permittee Information

**Permittee Name:** ETON

**Mailing Address:** 2596 Stratford Ave

**City/State/Zip Code:** Las Vegas, NV 89121

**Office Number:** 702-851-1746

**Fax Number:** 702-851-1583

## Additional Project Information

**Project Description:** M1 = +1.8--GRUB SITE. Bring in fill, survey, get drainage study, get zoning approved bring in chat on top of base roll and compact and shoot with AC 30 then pave with parking lot mix

**Project Attributes:** Commercial Construction, Miscellaneous, Other Demolition, Staging/Stockpiling

**Portable Crushing and/or Powered Screening:** *Portable crushing and/or powered screening equipment supporting any onsite single construction activity and remaining onsite for less than 12 months is exempt from the stationary source permitting requirements of AQR Section 12.1 and will instead be subject to the conditions of the Dust Control Operating Permit issued pursuant to AQR Section 94. This exemption does not apply to equipment listed as emission units in a current minor source permit unless the permit states otherwise.*

- Will portable crushing or powered screening occur onsite: No
- If yes, what is the anticipated date that equipment will be brought onsite: N/A
- What is the duration equipment will remain onsite: N/A

## Dust Control Monitor Information

**Name:** N/A

**Company:** N/A

**Mobile Number:** N/A

**Email:** N/A

**Dust Monitor Card No.:** Expires:

## Blasting Supplemental Information

**Blasting Company:** N/A

**Contact Name:** N/A

**Mailing Address:** N/A

**Office Number:** N/A

**Mobile Number:** N/A

**Blasting Date:** N/A **Blasting Time:** N/A

**Blasting Frequency:** N/A

**Material to be Blasted:** N/A

**Acreage to be Blasted:** N/A

**Blasting Depth:** N/A Feet

**Distance to Nearest Residence:** N/A Feet

**Distance to Nearest Business:** N/A Feet

**Have Nearby Residents Been Informed:** N/A

**Have Nearby Businesses Been Informed:** N/A



## Responsible Official Certification/Acknowledgement Statement

By submitting this permit application electronically, the user (Responsible Official) certifies the following:

- a. As the Responsible Official (applicant), I am authorized on behalf of the Owner Builder/Company/Organization (permittee) to apply for this DCOP and to commit to all of the terms and conditions therein.
- b. If applying on behalf of the permittee listed, the permittee shall be responsible for complying with requirements of this DCOP and the Air Quality Regulations (AQRs). Otherwise, the applicant listed shall be the responsible party.
- c. I accept responsibility for assuring that all contractors, subcontractors, and other persons on the construction site defined by this permit comply with the terms and conditions of the DCOP, the associated Dust Mitigation Plan and the AQRs.

By submitting this permit application electronically, the user (Responsible Official) acknowledges the following:

- a. The permit issued in response to this application is not a substitute for obtaining the property owner's permission to use land associated with the project. Issuance of the DCOP is intended only for controlling the emission of air pollutants and assuring compliance with the AQRs. Clark County cannot be held liable for any unauthorized use of the land.
- b. In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.

## Additional Instructions/Advisories

- a. Before disturbing soils on a parcel, enacting a grade change, constructing a structure and/or appurtenances, or installing, constructing, or modifying equipment that emits an air pollutant, you must contact and obtain all required permits from Clark County's Department of Comprehensive Planning, Building Department, DAQ (Title 30 Notice) and the municipality with jurisdiction.
- b. If the project has 50 or more acres of disturbed soil at any given time, the permittee shall identify the on-site Dust Control Monitor for the project(s). In addition, this requirement applies when the permittee has common control of multiple adjacent projects that individually have less than 50 acres of disturbed soil at any given time, but the combined project has 50 or more acres of disturbed soil at any given time.  
If a Dust Control Monitor had not been identified at the time of this permit issuance, the permittee shall notify DAQ by revising the permit in the DAQ Permitting Portal, before disturbing 50 or more acres of soil at any given time. The Dust Control Monitor must be on-site at all times when construction activities occur and shall manage dust prevention and control on-site.
- c. DCOP acreage fee is based on total project acreage of disturbed surface area, which is rounded up to the next whole acre. If the project is less than 1 acre, a minimum of 1 acre shall apply to the project for fee purposes.
- d. Stormwater Advisory: Be advised that all land disturbances that exceed 1 acre or are adjacent to a waterway must submit a "Notice of Intent" to the Nevada Division of Environmental Protection that certifies a Storm Water Pollution Prevention Plan has been developed and is maintained for the site. Contact NDEP at (775) 687-9429 for an application, information, and instructions.

## Dust Mitigation Plan

**Parcel Number:** 161-07-103-015

**Soil PEP:** High

**Water Source:** Hydrant with Jones Valve

If other, describe:

**Water Application Method:** Water Trucks/Pulls

If other, describe:

### Best Management Practices (BMPs) – Control Measures

The permittee shall comply with all requirements of Section 94 of the AQRs and all provisions of the DCOP issued from this application.

For each project activity listed in this Dust Mitigation Plan, the permittee shall comply with the requirements for the associated Best Management Practices (BMPs). Where options are listed for a BMP requirement, the permittee shall apply one or more of the Control Measures to comply with the requirement. The permittee will apply corresponding Control Measures for the PEP for the project soil type(s).

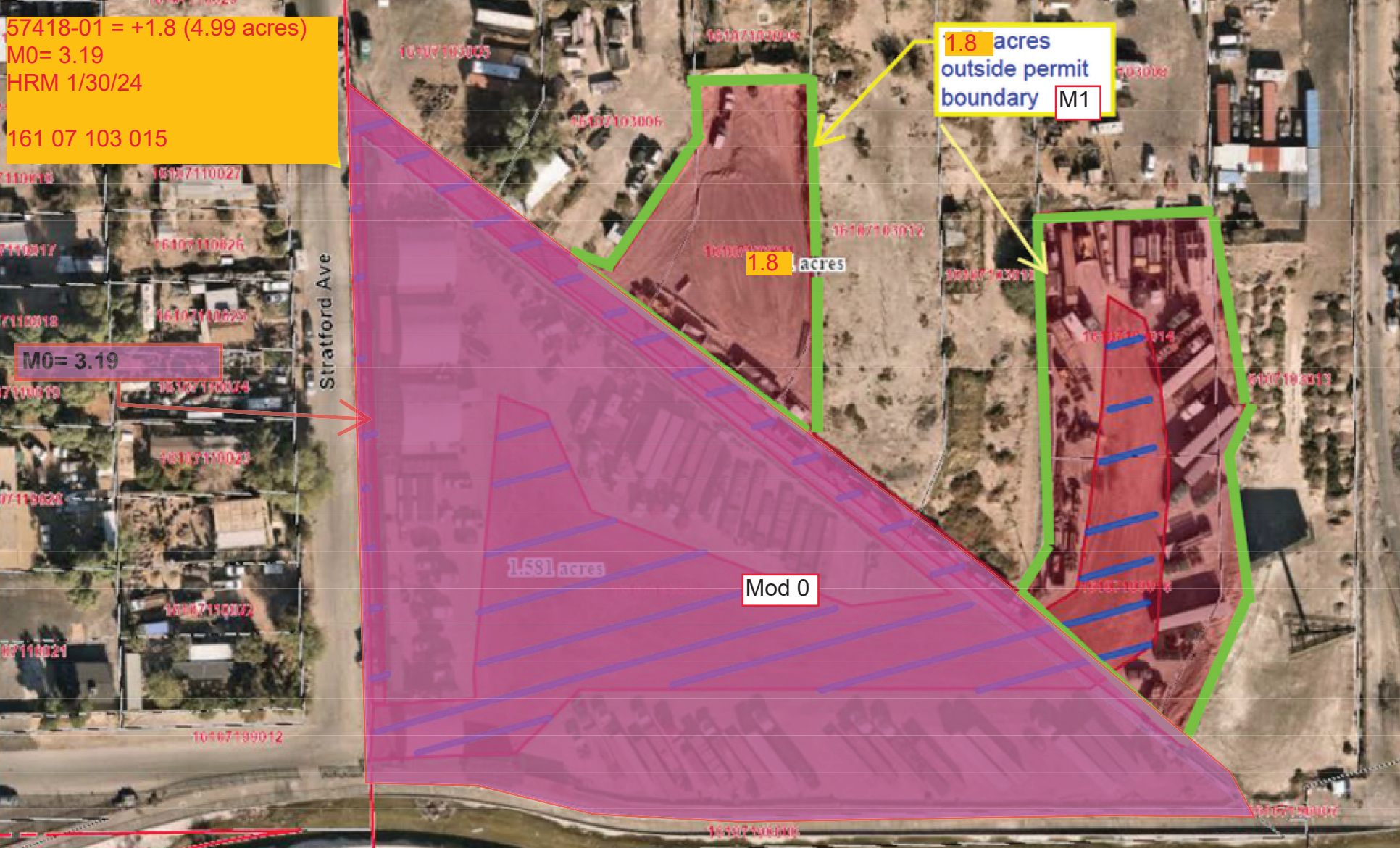
Table 1 provides the required Control Measures to be implemented for each soil type based on PEP. Some Control Measures apply to Construction Activities regardless of soil type. The Control Measures implemented must address the PEP for the area in which the Construction project is permitted.

**Table 1: Soil Types**

Particulate Emission Potential (PEP)	Control Measure
Low	Apply water and mix moist soil with dry soil until optimum moisture content is reached.
Moderate Low	Apply and mix water into soil and/or material until optimum moisture content is reached.
Moderate High	Apply and mix water and tackifier solution into soil and/or material until optimum moisture content is reached.
High	Apply and mix water and surfactant solution into soil and/or material until optimum moisture content is reached.

The permittee shall comply with all applicable requirements for activities performed pursuant to this DCOP. If a requirement has Control Measures listed, permittee shall comply with one or more of the Control Measures. If Control Measures for the requirement are contingent on the project PEP/Soil Type, permittee shall comply with one or more of the Control Measure for the designated PEP/Soil Type.

57418-01 = +1.8 (4.99 acres)  
M0= 3.19  
HRM 1/30/24  
161 07 103 015





## **BMP 01 BACKFILLING (Filling area previously excavated or Trenched)**

### **01 Requirements**

- (a) Maintain optimum moisture content in backfill material and operate equipment in a manner that limits Fugitive Dust to comply with the AQRs before, during, and after handling of material and during storage until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Dedicate an adequate water source to backfilling equipment and apply water as needed to minimize Dust.
  - (3) Empty loader bucket slowly and minimize drop height from loader bucket.
  - (4) Ensure backfill material is moist or crusted at all times.
  - (5) Apply water, surfactant, or tackifier to maintain disturbed soils in a stable condition to limit Fugitive Dust.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 02 BLASTING – Abrasive (Sandblasting, abrasive blasting, and/or hydro-blasting)**

### **02 Requirements**

- (a) Ensure soil moisture is maintained to limit Fugitive Dust where support equipment and vehicles will operate until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Limit visible Emissions to no more than an average of 40% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
- (c) Hydro-blasting (using water as the propellant) must be conducted in a manner that maintains visible Emissions within Opacity standards.
- (d) Stabilize Particulate Matter in the surrounding area following blasting.
  - (1) Clean Particulate Matter from the surrounding area and water disturbed soils after blasting.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on the surrounding area following blasting.

**Note:** Whenever possible, abrasive blasting should be conducted within an enclosed structure to limit the release of visible Emissions to the atmosphere.

## **BMP 03      BLASTING – Soil and Rock (Explosive blasting of soil and rock)**

### **03      Requirements**

- (a) Maintain optimum moisture content in soil where drills, support equipment, and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where drills, support equipment, and vehicles will operate, and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) A Blasting Supplemental form must be filled out, submitted, and approved by DAQ prior to any blasting.
- (c) No blasting may be conducted within 1,500 feet of a residential area, occupied building, or major roadway when the wind direction is toward these structures.
- (d) Blasting shall take place between the hours of 8:00 a.m. and 4:30 p.m., excluding Saturdays, Sundays, and holidays, unless prior permission is obtained from the Control Officer.
- (e) No blasting is allowed when the National Weather Service forecasts wind gusts above 25 miles per hour (mph).
- (f) Before setting explosive charges in holes, document current and predicted weather conditions according to the National Weather Service. If the forecast is for wind gusts of 25 mph or more, do not load explosives or blast holes. If wind conditions are forecasted to be 25 mph or more during a future scheduled blast, do not load explosives or blast holes.
- (g) If DAQ issues a Construction Notice or Dust Advisory when a blast has been scheduled, do not load explosives or blast holes during the time period listed on the notice/advisory. If holes were loaded before the notices were issued, call a DAQ Compliance Supervisor or Manager for permission to blast.
- (h) Maintain the optimum moisture content in soil before, during, and after blasting activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit the blast area to what can be stabilized immediately following the blast.
  - (2) Limit disturbed areas by maintaining natural rock and vegetation.
  - (3) Presoak surface soils to the depth of caliche or bedrock with water, surfactant, or tackifier to limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following blasting activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 04      CLEARING AND GRUBBING (Definition: Clearing and grubbing for site preparation and vacant land cleanup)**

**04      Requirements**

- (a) Maintain optimum moisture content in soil before, during, and after clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Apply water, surfactant, or tackifier during clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (3) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following clearing and grubbing activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 05      CLEARING FORMS, FOUNDATIONS AND SLABS (Clearing and cleaning of forms, foundations and slabs)**

**05      Requirements**

- (a) Limit visible Emissions before, during, and after the clearing of forms, foundations, and slabs to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
  - (1) Avoid the use of high pressure air to blow soil and/or debris from forms, foundations, and slabs.
- (b) At least one of the following must be used to clear forms, foundations, and slabs:
  - (1) Water spray.
  - (2) Sweeping and water spray.
  - (3) Industrial vacuum.

**BMP 06      CRUSHING (Crushing of Construction and demolition debris, rock, and soil)**

**06      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after crushing activities to limit Emissions.
  - (1) Pre-water material before loading it into the crusher.
  - (2) Apply water to material during crushing to ensure compliance with Opacity standards and Permit conditions.



- (3) Monitor Emissions Opacity. Make adjustments to ensure compliance with Opacity standards and Permit conditions.
- (4) Apply water to crushed material immediately following crushing.

**Note:** If required, obtain the appropriate Operating Permit for powered crushers prior to engaging in crushing activity and comply with Permit conditions.

## **BMP 07 CUT AND FILL (Cut and/or fill soils for site grade preparation)**

### **07 Requirement**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils.
- (b) Maintain optimum moisture content in soils before, during, and after cut and fill activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water to cut depth and maintain surface soils in a stabilized condition.
  - (2) Rip soil and add water and/or surfactant as needed to reach moisture throughout the cut depth.
  - (3) During cut and fill activities, apply water, surfactant, or tackifier to ensure moisture content is maintained to cut depth.
  - (4) Immediately following cut and fill activities, apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 08 DEMOLITION – Implosion (Implosive blasting demolition of structure)**

### **08 Requirements**

- (a) A Demolition Supplemental Form and a Supplement to the Dust Mitigation Plan must be filled out, submitted to, and approved by the Control Officer prior to implosion.
- (b) An asbestos survey must be conducted on any facility before demolition can commence.
- (c) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (d) All friable and non-friable asbestos-containing material must be removed from the facility prior to implosion.
- (e) Blasting must be confined to times when the wind direction is away from the closest residential areas, occupied buildings, and major roadways.
- (f) Implosion time must be preapproved by the Control Officer.
- (g) Current weather conditions and weather predictions from the National Weather Service must be monitored and documented.
  - (1) Prior to setting explosive charges, obtain and document current and predicted weather conditions from the National Weather Service.

- (2) If a wind advisory (over 20 mph gusts or average wind speed of 10 mph) is current or forecasted for the blast period, do not set charges and do not blast.
  - (3) Maintain a calibrated anemometer and log ambient air velocity and direction within 1,000 feet of the implosion site, beginning at least 1 (one) hour prior to and 15 minutes after the implosion.
- (h) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Restrict support equipment and vehicles to existing Paved and/or stable areas.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (i) Maintain optimum moisture content in demolition debris before, during, and after implosion activities to limit Emissions.
  - (1) Apply water to debris immediately following blast and safety clearance, and maintain optimum moisture content in debris throughout cleanup and exporting activities.
  - (2) If water is not effective, apply and maintain a surfactant to debris immediately following blast and safety clearance.
  - (3) Clean and stabilize surrounding areas immediately following blast and safety clearance by applying water to all disturbed soil surfaces to establish a crust.
  - (4) Thoroughly clean blast debris from Paved and other surfaces following blast and safety clearance.

**BMP 09      DEMOLITION - Mechanical/Manual (Mechanical and manual demolition of walls, stucco, concrete, free-standing structures, buildings, and load-bearing walls)**

**09      Requirements**

- (a) An asbestos survey must be conducted on any facility or structure subject to NESHAP requirements before demolition can Commence.
- (b) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (c) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (d) Maintain optimum moisture content in demolition debris before, during, and after demolition activities to limit Emissions.
  - (1) Apply water to demolition debris during handling.
  - (2) Apply water to stabilize demolition debris immediately following demolition.

- (3) If water is not effective, apply and maintain a Dust Palliative to demolition debris immediately following demolition.
- (e) Stabilize surrounding area immediately following demolition by applying water and/or Dust Palliative to all disturbed soil surfaces.

**BMP 10 DISTURBED SOIL (Disturbed soil throughout project, including between structures)**

**10 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all Construction Activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit vehicle traffic and disturbance of soils to areas not being immediately developed using fencing, barriers, and/or barricades.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) Apply water, surfactant, or tackifier during Construction Activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust immediately following Construction Activities until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) If interior block walls are planned, install walls as early as possible in the Construction project.

**BMP 11 LONG-TERM STABILIZATION (Applies to disturbed land that is not built out, landscaped, or Paved at Permit closure)**

**11 Requirements**

- (a) Stabilize all disturbed land within 10 days of the completion of a project, or when active operations on all or part of the Construction site will cease for 30 days or more. Restrict access to these areas to prevent soil disturbance and maintain long-term stabilization. The Control Officer must approve the control method selected by the Permittee before its implementation. The Permittee shall select one or more of the following control methods:
  - (1) Pave.
  - (2) Apply Clean Gravel.
  - (3) Install permanent metal or wood fencing and/or a post and cable at least 3 feet high, or other similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
  - (4) Install a dirt berm at least 4 feet high, or a similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
- (b) Installation of signs, as described below, is required if a dirt berm or similar barrier is used or if Clean Gravel is applied.

- (1) Install orange “No Parking/Trespassing” signs with black lettering, at least 24 inches wide by 18 inches high, every 50 feet or as approved by the Control Officer (Table 2).
  - (2) Construct the sign(s) from materials capable of withstanding Clark County’s harsh environment (e.g., wood, metal, plastic).
  - (3) Attach the sign(s) to a sturdy post, such as metal or wood, placed securely in the ground, or attach the sign(s) to a fence, barricade, or other stable object that is clearly visible.
  - (4) Post on or near the property boundary, the property corners, and at all access points; post no further than 50 feet apart.
- (c) New Construction or modification of Paved roads must be stabilized consistent with Section 93 before the Dust Control Operating Permit (DCOP) is closed.
- (1) Roads with vehicular traffic equal to 3,000 vehicles or fewer per day shall have a 4 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (2) Roads with vehicular traffic greater than 3,000 vehicles per day shall have an 8 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (3) All disturbed areas outside the road shoulder boundaries must be treated for long-term stabilization.

## **BMP 12      DUST PALLIATIVE – Selection and Use (Selection and use of chemical and organic dust suppressing agents and other Dust Palliatives)**

### **12      Requirement**

The selection and use of chemical and organic Dust Suppressing agents and other Dust Palliatives shall adhere to all local, State, and federal regulations as well as all manufacturer specifications.

## **BMP 13      IMPORTING/EXPORTING OF BULK MATERIAL (Importing or exporting of soil, aggregate, decorative rock, debris, Type II, and other bulk material)**

### **13      Requirement**

- (a) Maintain optimum moisture content in surface soils and bulk material before, during, and after all importing/exporting activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where importing/exporting activities occur, including haul routes, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative, or Clean Gravel, on surface soils where importing/exporting activities occur, including haul routes.
  - (3) Limit vehicle speeds to 15 mph on the work site.
  - (4) Maintain 3–6 inches of freeboard to prevent spillage.
  - (5) Apply tarps or other suitable enclosures that completely cover the load on haul trucks before they exit the project onto Public Roads, and maintain throughout transport. Tarps must be well-maintained and serviceable at all times.
- (b) Clean the wheels and undercarriage of haul trucks before they leave the Construction site.
- (c) Check belly/end dump truck seals regularly, and remove trapped rocks to prevent spillage.

**BMP 14 LANDSCAPING (Installation of sod, decorative rock, desert or other landscape material)**

**14 Requirements**

- (a) Maintain optimum moisture content in soils and landscaping material before, during, and after landscaping activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) Apply water, surfactant, or tackifier to maintain disturbed soils and landscaping material in a stable condition until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 15 SUBGRADE PREPARATION FOR PAVING (Subgrade preparation for paving streets, parking lots, etc.)**

**15 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all paving/subgrade preparation activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water subgrade surfaces until optimum moisture content is reached.
  - (2) Maintain optimum moisture content in material while aggregate is being applied.
  - (3) Place tack coat on aggregate base.

**BMP 16 SAWING/CUTTING MATERIALS (Sawing or cutting materials such as concrete, asphalt, block or pipe)**

**16 Requirements**

- (a) Limit visible Emissions to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs. One of the following two control methods must be used when sawing/cutting materials:
  - (1) Use water to control Dust.
  - (2) Use a vacuum to collect Dust.

**BMP 17 SCREENING (Screening of rock, soil, or Construction debris)**

**17 Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after screening activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Apply sufficient water or a Dust Suppressant prior to screening.
  - (2) Drop material through the screen slowly; minimize drop height.

- (3) Dedicate an adequate water source to the screening operation, and apply water as needed to minimize Dust.
- (4) Monitor visible Emissions; make adjustments to Control Measures to ensure compliance with Opacity standards and Permit conditions.
- (5) Apply water, surfactant, or Dust Palliative to screened material and surrounding areas following screening activities until long-term stabilization is achieved.

**Note:** If required, obtain the appropriate Operating Permit for powered screens before engaging in screening activity and comply with Permit conditions.

## **BMP 18 STAGING AREAS (Staging areas and equipment/material storage areas)**

### **18 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all staging area activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
  - (3) Limit vehicle speed to 15 mph in staging area(s) and on all unpaved access routes.
  - (4) Apply water, Clean Gravel, recycled asphalt, or Dust Palliative to staging area soils for the duration of the project.

## **BMP 19 STOCKPILING (Stockpiling of materials, such as Type II, rock or debris, for future use or export)**

### **19 Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after stockpiling activities to limit Fugitive Dust until long-term stabilization is achieved.
  - (1) Stockpiles located within 100 yards of occupied buildings shall not be constructed over 8 feet in height unless otherwise approved by the Control Officer.
  - (2) Stockpiles located farther than 100 yards from any occupied building and constructed over 8 feet in height must have a road bladed to the top to allow water truck access, or shall demonstrate another means to provide effective Dust control.
  - (3) Apply water, surfactant, or tackifier during stockpiling activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to material and surface soils to form a crust immediately following stockpiling activities until the long-term stabilization requirements listed in BMP 11 are achieved.



- (c) All stockpiles must be removed or leveled prior to project completion unless otherwise approved by the Control Officer. Stockpiles approved to be left in place must be in compliance with the long-term stabilization requirements listed in BMP 11.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 20 TRACKOUT PREVENTION AND CLEANUP (Prevention and cleanup of mud, silt, and soil tracked out onto Paved surfaces)**

### **20 Requirements**

- (a) Install and maintain a Trackout control device in an effective condition at all access points where Paved and unpaved access or travel routes intersect.
  - (1) Install gravel pad(s) consisting of a minimum of 2 inches in rough diameter of Clean Gravel or crushed rock on a well-graded surface (Type II material is not acceptable). Minimum dimensions must be 30 feet wide by 6 inches deep by 50 feet in length or the length of the longest haul truck, whichever is greater. Re-screen, wash, or apply additional rock to gravel pads to maintain effectiveness.
    - (A) Install wheel shakers if gravel pads are not effective in preventing Trackout. Clean wheel shakers regularly to maintain their effectiveness.
    - (B) Install wheel washers if wheel shakers are not effective in preventing Trackout. Maintain wheel washers regularly to maintain effectiveness.
    - (C) Alternative Trackout control devices may be used if approved by the Control Officer.
  - (2) All exiting traffic must be routed over selected Trackout control device(s) by clearly establishing and enforcing traffic patterns on-site.
- (b) Maintain Dust control and clean all Trackout from Paved surfaces.
  - (1) Maintain Dust control during working hours and clean all Trackout from Paved surfaces, including sidewalks and gutters, at the end of each work shift.
  - (2) Immediately clean up Trackout that extends 50 feet or more, or more than ¼ inch in depth, from Paved surfaces, including sidewalks and gutters, or any amount of Trackout that causes one or more of the following:
    - (A) A Dust plume that extends more than 100 feet horizontally or vertically.
    - (B) An average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, pursuant to the AQRs.
    - (C) 50% instantaneous Opacity, pursuant to the AQRs.
  - (3) Use street sweeper(s) in addition to Trackout control devices to ensure the cleanup of Trackout is maintained. If one street sweeper is not effective in controlling Trackout to Air Quality Standards, bring in additional street sweepers.
  - (4) The use of blower devices to remove deposited mud/dirt Trackout from a Paved road is prohibited.
  - (5) The use of rotary brushes without water is prohibited.
  - (6) The use of soil to create a ramp for vehicle access over a curb is prohibited.

## **BMP 21      TRAFFIC—Unpaved Routes and Parking Areas (Construction-related traffic on unpaved roads and parking areas)**

### **21      Requirements**

- (a) Limit visible Dust Emissions from vehicle operations and stabilize all unpaved routes, including unpaved parking areas.
  - (1) Limit vehicle speeds to 15 mph on all unpaved routes and parking areas.
  - (2) Apply water to unpaved haul routes and off-road traffic areas, including parking areas, and maintain in a stabilized condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on unpaved routes, off-road traffic areas, and parking areas.
  - (4) If water, surfactant, and/or Dust Palliative is not effective, apply and maintain Clean Gravel (or other suitable material approved by the Control Officer) on unpaved routes, off-road traffic areas, and parking areas.
  - (5) If a preexisting unpaved road or haul route is being used but is not permitted, it must be maintained in a stabilized condition. These unpaved roads or haul routes must not be changed in any way unless permitted or as approved by the Control Officer.

## **BMP 22      TRENCHING (Trenching with track- or wheel-mounted excavator, shovel, backhoe, or trencher)**

### **22      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in soils before, during, and after Trenching activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils before Trenching.
  - (2) Apply water, surfactant, or tackifier during Trenching activities to prevent unstable soil conditions, and limit Fugitive Dust by dedicating a water truck or large hose.
  - (3) Apply water, surfactant, and/or Dust Palliative to excavated soils to form a crust immediately following Trenching activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 23      TRUCK LOADING (Loading trucks with materials including Construction and demolition debris, rock, and soil)**

### **23      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after truck loading activities to limit Fugitive Dust.
  - (1) Mix material with water, surfactant, or tackifier prior to truck loading activities to limit Fugitive Dust.
  - (2) Empty loader bucket slowly and minimize the drop height while dumping.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**From:** [Anna Sutowska](#)  
**To:** [Anna Sutowska](#)  
**Subject:** FW: 57148-ETON-STRATFORD 1  
**Date:** Thursday, February 8, 2024 1:13:22 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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**From:** Moe Truman <moe@eton.me>  
**Sent:** Thursday, February 8, 2024 12:52 PM  
**To:** Anna Sutowska <Anna.Sutowska@ClarkCountyNV.gov>  
**Subject:** RE: 57148-ETON-STRATFORD 1

Correct 3 inches of hot mix

---

**From:** Anna Sutowska <[Anna.Sutowska@ClarkCountyNV.gov](mailto:Anna.Sutowska@ClarkCountyNV.gov)>  
**Sent:** Thursday, February 8, 2024 12:51 PM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Cc:** Anna Sutowska <[Anna.Sutowska@ClarkCountyNV.gov](mailto:Anna.Sutowska@ClarkCountyNV.gov)>  
**Subject:** FW: 57148-ETON-STRATFORD 1

Good afternoon Mr. Truman,

Can you please confirm that you will be paving this site with permanent asphalt pavement and not an alternative such as recycled asphalt?

Regards,

**Anna Sutowska**  
**Air Quality Supervisor**  
**Clark County Department of Environment and Sustainability,**  
**Division of Air Quality**  
**4701 W. Russell Rd., Suite 200**  
**Las Vegas, NV 89118**  
**Office: 702-455-0666/Cell: 702-378-9780/Fax: 702-383-9994**

**For any dust permit information or forms, please go to the link posted below.**  
[Dust Control Permitting Portal, Forms & Requirements](#)

---

**From:** Heather Mackinnon  
**Sent:** Tuesday, January 30, 2024 11:14 AM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Subject:** RE: 57148-ETON-STRATFORD 1

Thank you Mr. Truman.

Regards,

***Heather Mackinnon***

Air Quality Specialist II  
Department of Environment and Sustainability  
Air Quality Division – Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118

Phone: (702) 455-1524 Fax: (702) 383-9994



**For Dust Control Applications, Forms, classes and mapping guidance, click on this link:**

[Dust Control Permitting Portal, Forms & Requirements.](#)

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**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Sent:** Tuesday, January 30, 2024 11:12 AM  
**To:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>  
**Subject:** RE: 57148-ETON-STRATFORD 1

noted

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**From:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>  
**Sent:** Tuesday, January 30, 2024 10:54 AM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Cc:** Katrinka Byers <[Katrinka.Byers@ClarkCountyNV.gov](mailto:Katrinka.Byers@ClarkCountyNV.gov)>; Canduella Rowsell <[Canduella.Rowsell@ClarkCountyNV.gov](mailto:Canduella.Rowsell@ClarkCountyNV.gov)>  
**Subject:** RE: 57148-ETON-STRATFORD 1  
**Importance:** High

Mr. Truman,  
Just to verify, you were scheduled on 10/2023 and 1/23/24 both no shows. You also have two other employees that were scheduled for the 1/23/24 class that were also no shows.

You are now registered for the class on 2/27/24. **Please make sure you attend this class so you will not continue to be out of compliance.**

Regards,

***Heather Mackinnon***

Air Quality Specialist II  
Department of Environment and Sustainability  
Air Quality Division – Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118  
Phone: (702) 455-1524 Fax: (702) 383-9994



**For Dust Control Applications, Forms, classes and mapping guidance, click on this link:**

[Dust Control Permitting Portal, Forms & Requirements.](#)

**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>

**Sent:** Tuesday, January 30, 2024 10:38 AM

**To:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>

**Cc:** Katrinka Byers <[Katrinka.Byers@ClarkCountyNV.gov](mailto:Katrinka.Byers@ClarkCountyNV.gov)>; Canduella Rowsell <[Canduella.Rowsell@ClarkCountyNV.gov](mailto:Canduella.Rowsell@ClarkCountyNV.gov)>

**Subject:** RE: 57148-ETON-STRATFORD 1

As requested

The screenshot displays the 'Dust Classes' section of a web portal. At the top, there are navigation tabs: 'Permits', 'Your Applications', 'Apply for a New Permit', and 'Dust Classes'. Below the tabs, a light blue box titled 'Who is required to complete a Dust Control Class?' lists requirements: 'The construction site superintendent or other designated on-site representative of the project developer and all construction site supervisors and foremen.' and 'Water truck and water pull drivers for each construction project.' It also provides instructions on enrolling, receiving an invoice, and the consequences of non-payment. Below this, a section titled 'Dust Class Registration' features a button 'REGISTER OTHERS' and a fee of '\$54.00 per attendee'. The 'Your Dust Classes' section includes a note about rescheduling and a table with one entry: 'Feb 27, 2024 2:30 PM' with a 'PAID' status and buttons for 'RESCHEDULE' and 'VIEW'. The 'Others' Classes' section provides information on single and multiple person registration, credits for no-shows, and a table with one entry: 'Jan 23, 2024 2:30 PM' with a 'PAID' status and a 'VIEW' button.

**Who is required to complete a Dust Control Class?**

- The construction site superintendent or other designated on-site representative of the project developer and all construction site supervisors and foremen.
- Water truck and water pull drivers for each construction project.

To enroll in a dust class, select one of the options below for registering yourself or others. Then, complete the required information, and submit. Air Quality will then issue an invoice, and you will receive an email that the registration is pending payment. The payment voucher with invoice details will be available for downloading in the top right hand corner of your portal account. Once payment is received, the registration will be complete. If payment is not received within 7 calendar days, the registration will be canceled.

**Dust Class Registration**

**Register Others for a Dust Class**  
Registration fee \$54.00 per attendee

**REGISTER OTHERS**

**Your Dust Classes**

You can reschedule up to 7 days before the class date. If you do not attend the scheduled dust class, the credit will be available to use the following Monday. Credits will be available for 6 months after the fee payment date. Once you have attended class, select the View button to download a copy of your dust class card.

**Feb 27, 2024 2:30 PM** **PAID**

Scheduled

**RESCHEDULE** **VIEW**

**Others' Classes**

**Single Person Registration:** You can reschedule or replace an individual up to 7 days before the class date.  
**Multiple Person Registration:** You can replace an individual up to 7 days before the class date.  
The credits for a registered attendee that did not show up will be available to use the following Monday after a dust class. Credits will be available for 6 months after the fee payment date. Once attendance for a dust class has been posted, select the View button to see the card numbers, expiration dates, and to download copies of the cards.

**Jan 23, 2024 2:30 PM** **PAID**

Eton  
2 people - 2 No Shows

**VIEW**

**From:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>

**Sent:** Tuesday, January 30, 2024 10:29 AM

**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>

**Cc:** Katrinka Byers <[Katrinka.Byers@ClarkCountyNV.gov](mailto:Katrinka.Byers@ClarkCountyNV.gov)>; Canduella Rowsell <[Canduella.Rowsell@ClarkCountyNV.gov](mailto:Canduella.Rowsell@ClarkCountyNV.gov)>

**Subject:** RE: 57148-ETON-STRATFORD 1

**Importance:** High

Mr. Truman,

DAQ shows that you were scheduled to attend the dust class on 10/10/23 and you were a no show. You are allowed one more opportunity for free to attend the next available dust class. Please schedule ASAP via the front desk (702-455-5942) and email me back letting me know which class you have been registered for.

OR supply me with a valid card holder.

Regards,



## Heather Mackinnon

Air Quality Specialist II  
Department of Environment and Sustainability  
Air Quality Division – Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118  
Phone: (702) 455-1524 Fax: (702) 383-9994



**For Dust Control Applications, Forms, classes and mapping guidance, click on this link:** [Dust Control Permitting Portal, Forms & Requirements.](#)

---

**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Sent:** Tuesday, January 30, 2024 10:23 AM  
**To:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>  
**Subject:** RE: 57148-ETON-STRATFORD 1

Error on my part on the removal

---

**From:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>  
**Sent:** Tuesday, January 30, 2024 10:21 AM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Subject:** 57148-ETON-STRATFORD 1  
**Importance:** High

Greetings,

Please **reply to this email only** as soon as possible. ***You cannot edit the application after submittal in the portal, only the reviewer can.*** I have reviewed your Dust Control Operating Permit (DCOP) application and have questions and/or need additional information. Applications cannot be updated with verbal authorization so please reply to this email.

The Notice of Noncompliance was to add additional areas that were not previously permitted. On the application you have stated that you are removing .5 acres, yet on the map there is no reference to a removal. Please clarify.

<b>Nonlinear Area Disturbed</b>	
3.34	
<b>Linear Area Disturbed</b>	
Linear Length (Feet)	Linear Width (Feet)
<b>Acreage Added</b>	
1.76	
<b>Acreage Removed</b>	
5	
<b>Nonlinear Area Acreage Subtotal</b>	<b>Existing Nonlinear Area Acreage Subtotal</b>
3.34 Acres	3.19 Acres
<b>Linear Area Acreage Subtotal</b>	<b>Existing Linear Area Acreage Subtotal</b>
0 Acres	0 Acres
<b>Total Project Area Disturbed</b>	<b>Existing Total Project Area Disturbed</b>
3.34 Acres	3.19 Acres

Your new acreage should read as +1.8 (rounding up) to 3.19 = 4.99. Do you agree with this?

**Project Disturbed Surface Area**

**Nonlinear Area Disturbed**

4.99

**Linear Area Disturbed**

Linear Length (Feet)

Lin

Add Segment

**Acreage Added**

1.8

**Acreage Removed**

0.0

**Nonlinear Area Acreage Subtotal**

4.99 Acres

**Linear Area Acreage Subtotal**

0 Acres

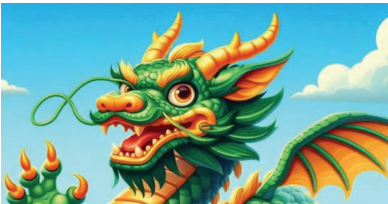
**Total Project Area Disturbed**

4.99 Acres

Regards,

***Heather Mackinnon***

Air Quality Specialist II  
 Department of Environment and Sustainability  
 Air Quality Division – Enforcement Section  
 4701 W. Russell Road #200  
 Las Vegas NV 89118  
 Phone: (702) 455-1524 Fax: (702) 383-9994



**For Dust Control Applications, Forms, classes and mapping guidance, click on this link:** [Dust Control Permitting Portal, Forms & Requirements.](#)

# Exhibit C

ESOS Screenshot

## Entity Information

**Entity Name:** PAN WESTERN CORPORATION

**Entity Number:** C3114-1970

**Entity Type:** Domestic Corporation (78)

**Entity Status:** Permanently Revoked

**Formation Date:** 12/21/1970

**NV Business ID:** NV19701003623

**Termination Date:**

**Annual Report Due Date:** 12/31/2013

**Compliance Hold:**

## Registered AGENT INFORMATION

**Name of Individual or Legal Entity:** Resigned

**Status:** Active

**CRA Agent Entity Type:**

**Registered Agent Type:** Non-Commercial Registered Agent

**NV Business ID:** NV20091402243

**Office or Position:**

**Jurisdiction:**

**Street Address:**

**Mailing Address:**

## OFFICER INFORMATION

[View Historical Data](#)

Title	Name	Address	Last Updated	Status
President	MITCHELL W TRUMAN	4682 NORTH CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active
Secretary	MITCHELL W TRUMAN	4680 N CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active
Treasurer	MITCHELL W TRUMAN	4680 N CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active
Director	MITCHELL W TRUMAN	4680 N CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active

Page 1 of 1, records 1 to 4 of 4

## CURRENT SHARES

Class/Series	Type	Share Number	Value
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No records to view.

Number of No Par Value Shares: 2500

Total Authorized Capital 2,500

[Filing History](#)

[Name History](#)

[Mergers/Conversions](#)

[Return to Search](#)

[Return to Results](#)

# **Exhibit D**

Surface Transportation Board Decision  
37751



SERVICE DATE – MARCH 15, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34958

NEVADA PACIFIC RAILROAD CORPORATION–LEASE AND OPERATION  
EXEMPTION–RAIL LINES OF PAN WESTERN CORPORATION

Decided: March 13, 2007

On November 14, 2006, Nevada Pacific Railroad Corporation (NPRC), a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail track owned by Pan Western, extending between milepost 0.0 and milepost 2.66, in Clark County, NV.<sup>1</sup> Notice of NPRC's exemption authority was served and published in the Federal Register (71 FR 75293) on December 14, 2006.<sup>2</sup>

The verified notice of exemption was originally filed under the name UP Nevada Railroad LLC (UPNR). However, the Union Pacific Railroad Company (UP) objected to this name as a violation of its trademarks. Accordingly, by letters filed November 20, 2006, and November 22, 2006, counsel addressed issues relating to the identity and name of the entity seeking authority (the Applicant) in this proceeding and, in the latter letter, requested that Nevada Pacific Railroad Corporation be substituted as the Applicant.

On December 15, 2006, Nevada Central Railroad (NCR) filed a petition to dismiss the notice or revoke the exemption.<sup>3</sup> NPRC filed a reply to NCR's petition.

For the reasons discussed below, we find that there is no basis to reject or revoke NPRC's notice of exemption.

---

<sup>1</sup> This track was the subject of a previous notice of exemption that, according to the current verified notice, was never consummated. See Tonopah & Tidewater Railroad Co.–Lease and Operation Exemption–Pan Western Corporation, STB Finance Docket No. 34547 (STB served Sept. 30, 2004) (Tonopah & Tidewater).

<sup>2</sup> Under the Board's rules that were in place at the time, the exemption automatically became effective on November 21, 2006, 7 days after the notice was filed.

<sup>3</sup> We will treat the petition to dismiss as a petition to revoke the exemption.

## DISCUSSION AND CONCLUSIONS

Notices of exemption that contain false and/or misleading information are void ab initio under 49 CFR 1150.32(c) and are subject to being rejected. NCR asserts that NPRC submitted materially false, misleading, and therefore fraudulent information in its notice. Specifically, NCR asserts that the notice was defective because at the time it was filed, the original applicant, UPNR, did not exist. NCR argues that NPRC, a separate entity, could not therefore replace UPNR.

Applicant acknowledged that, due to a miscommunication with its counsel, its actual name, UP Nevada Corporation, was incorrectly stated as UPNR in the Notice. As stated above, in the November 20th letter, UP Nevada Corporation, based on objections to its name, disclosed the mistake in the original notice. In a letter dated November 22, 2006, in response to UP's objections, UP Nevada Corporation asked the Board to substitute NPRC as the Applicant.

The Applicant amended the Notice of Exemption prior to its Federal Register publication and the exemption was published under NPRC's name and correct address. Accordingly, the exemption was not granted under false or misleading circumstances. Furthermore, no party was prejudiced because the information contained in the Federal Register Notice was correct.

NCR also claims that it has provided new evidence showing that UP Nevada Corporation and NPRC are two distinct entities and that UP Nevada Corporation and its counsel cannot apply for operating authority on behalf of a third party.<sup>4</sup> According to NCR, this information and the information discussed above requires reopening this proceeding and revoking the exemption.

Under 49 U.S.C. 10502(d), we may revoke an exemption if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP). To obtain a revocation, the petitioner must demonstrate that greater regulatory scrutiny is necessary to carry out the RTP. When taken together, the information provided by NCR to reject the Notice does not show that the transaction is contrary to the RTP. NCR has not demonstrated that greater regulatory scrutiny is necessary and that revocation is warranted because NPC's presentation does not provide a basis for finding that NPRC should not have authority to lease and operate the Pan Western trackage or that NPRC has abused the Board's processes in pursuing that authority.

Finally, NCR requests that the Board publicly confirm that the lease and operation exemption in Tonopah & Tidewater is null and void. A Board grant of authority is merely permissive. Once a Board exemption has become effective, it is up to the parties to determine whether to move forward with the underlying transaction. According to the

---

<sup>4</sup> NCR itself, however, states that both companies have the same President and that individuals from NCR have spoken to the President of UP Nevada Corporation and NPRC regarding this proceeding.

notice filed by the Applicant, the Tonopah & Tidewater Railroad Co. did not move forward and the transaction never occurred.<sup>5</sup> There is no need, however, to formally withdraw the authority that was never used.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NCR's petition to dismiss or revoke is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary

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<sup>5</sup> NCR asserts that Mr. Mitchell Truman, who signed the verified statement, was the President of both the Applicant and the Tonopah & Tidewater Railroad Corporation at the time the notice was filed with the Board.

# **Exhibit E**

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4. **IT IS HEREBY ORDERED** that ETON pay a penalty of Three Thousand Five Hundred and no/100 Dollars (\$3,500.00) within 30 days of the date of this ORDER.

5. ETON has the right to appeal this ORDER to the Clark County Air Pollution Control Hearing Board. Any appeal of this ORDER shall be: (1) on a form provided by Air Quality specifying the reason(s) for the appeal, (2) accompanied by a filing fee of One Hundred Forty and no/100 Dollars (\$140.00), and (3) received by Air Quality within ten (10) days of ETON's receipt of this ORDER.

DATED this 7th day of November, 2024.

Holly Fic  
Holly Fic (Nov 7, 2024 08:51 PST)

Holly Fic  
Hearing Officer



# Exhibit F

1                               BEFORE THE AIR POLLUTION CONTROL HEARING OFFICER  
2   CLARK COUNTY, NEVADA

3  
4 In the Matter of the Notice of Violation #10078 )                               ORDER  
5 Issued to )  
6 ETON TRANSPORTATION CORP., )  
7 ENVIRONMENTAL TRANSPORTATION )  
8 OF NEVADA, LLC D/B/A ETON, and )  
9 MOE TRUMAN, Respondents. )  
10 \_\_\_\_\_ )

11               The above-entitled matter was heard on November 5, 2024, before Hearing Officer  
12 Holly Fic on the Contested Docket. Representatives of both the Clark County Department of  
13 Environment and Sustainability, Division of Air Quality (**Air Quality**) and ETON  
14 TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA,  
15 LLC D/B/A ETON, and MOE TRUMAN (**TRUMAN**) appeared, testified and submitted  
16 evidence for consideration by the Hearing Officer. Having considered the evidence presented  
17 at the hearing, the Hearing Officer hereby finds and orders as follows:

18               1.     Notice of Violation (**NOV**) #10078 was issued by Air Quality to Respondents  
19 ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF  
20 NEVADA, LLC D/B/A ETON, and TRUMAN on August 29, 2024, for alleged violation(s)  
21 of Dust Control Operating Permit #57148 (**Permit**) and the Clark County Air Quality  
22 Regulations (**AQRs**) at the STRATFORD-1 construction site located at 2596 Stratford  
23 Avenue, in Clark County, Nevada. The violation(s) alleged in the NOV include:

24                       (a)     Violation of AQR Sections 94.13(a) and (b) for failing to employ Best  
25 Available Control Measures and comply with soil stabilization standards 24 hours a  
26 day, seven days a week; and

27                       (b)     Violation of AQR Section 4.1(d)(1) for refusing entry or access to the  
28 Control Officer who requests entry for purposes of inspection.

2.     The penalty recommended by Air Quality in NOV #10078 was \$31,562.50.

3. The Hearing Officer finds that the violation(s) alleged in NOV #10078 occurred in that ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN violated AQR Sections 94.13(a) and (b) on July 17, 2024, and AQR Section 4.1(d)(1) on August 7 and 14, 2024.

4. **IT IS HEREBY ORDERED** that ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN pay a penalty of Seventeen Thousand Two Hundred Fifty and no/100 Dollars (\$17,250.00) within 30 days of the date of this ORDER.

5. ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN have the right to appeal this ORDER to the Clark County Air Pollution Control Hearing Board. Any appeal of this ORDER shall be: (1) on a form provided by Air Quality specifying the reason(s) for the appeal, (2) accompanied by a filing fee of One Hundred Forty and no/100 Dollars (\$140.00), and (3) received by Air Quality within ten (10) days of ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN's receipt of this ORDER.

DATED this 7th day of November, 2024.

Holly Fic

Holly Fic  
Hearing Officer

# **Exhibit G**

formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 24, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-21977 Filed 9-29-04; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34547]

#### **Tonopah & Tidewater Railroad Co.— Lease and Operation Exemption—Pan Western Corporation**

Tonopah & Tidewater Railroad Co. (TTRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail line owned by Pan Western, extending from milepost 0.0 to milepost 2.66 in Clark County, NV. Pan Western intends to lease the railroad line to TTRR so that TTRR may initiate and provide common carrier rail operations on and over the

line. TTRR will become a Class III rail carrier. TTRR certifies that its projected revenues are not expected to exceed those of a Class III rail carrier or \$5 million annually.

The transaction was due to be consummated on or after September 9, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34547, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Jeffrey O. Moreno, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036-1601.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 22, 2004.

By the Board, David M. Konschnick,  
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04-21981 Filed 9-29-04; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### **Office of Research and Development; Government Owned Invention Available for Licensing**

**AGENCY:** Office of Research and Development, VA.

**ACTION:** Notice of Government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Mindy L. Aisen, Department of Veterans Affairs, Acting Director,

Technology Transfer Program, Office of Research and Development (12TT), 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202-254-0473; e-mail at [mindy.aisen@mail.va.gov](mailto:mindy.aisen@mail.va.gov). Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is: PCT Patent Application No. PCT/US03/25189 "Touch Screen Applications for Outpatient Process Automation"

Dated: September 22, 2004.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 04-21919 Filed 9-29-04; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### **Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Leavenworth, KS**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of intent to enter into an enhanced-use lease.

**SUMMARY:** The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 50 acres at the Dwight D. Eisenhower VA Medical Center in Leavenworth, Kansas. The selected lessee will finance, redevelop, manage, maintain and operate a mixed-use development that would provide services and accommodations relating to affordable senior housing, long-term care, long-term housing for veterans, transitional housing with supportive services for veterans, and educational and community support facilities on the site, at no cost to VA.

#### **FOR FURTHER INFORMATION CONTACT:**

Malinda D. Pugh, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8192.

**SUPPLEMENTARY INFORMATION:** 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely

# Exhibit H



a. The Task Force Chairman may establish working groups to perform specific assignments with the approval of the Designated Federal Official. The Chairman may designate members from either the Task Force or the public to serve on working groups. The Working Group Chair will be a Task Force member. Recording or videotaping of working group meetings may only be performed by the sponsor, Designated Federal Official, or their designee.

b. Any recommendations to the Department by working groups must be approved by the Task Force as a whole.

15. *Filing Date:* October 27, 2006, is the filing date and the effective date of this Charter which will expire in 2 years from this filing date, unless sooner terminated or extended.

*Conclusion:* The first meeting of the National Safe Routes to School Task Force to the Secretary of Transportation will be held on January 11, 2007, from 8:30 a.m. to 5 p.m., e.t. at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

(Authority: Section 1404(h) of Pub. L. 109–59; Pub. L. 92–463, 5 U.S.C., App. II § 1.)

Issued on: December 7, 2006.

**J. Richard Capka,**

*Federal Highway Administrator.*

[FR Doc. E6–21226 Filed 12–13–06; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34958]

#### Nevada Pacific Railroad Corporation—Lease and Operation Exemption—Rail Lines of Pan Western Corporation

Nevada Pacific Railroad Corporation (NPRC),<sup>1</sup> a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail line owned by Pan Western, extending between milepost 0.0, and milepost 2.66, in Clark County, NV.<sup>2</sup> Pan Western

intends to lease the railroad line to NPRC so that NPRC may initiate and provide common carrier rail operations on and over the line.

NPRC certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier or \$5 million annually. The transaction was scheduled to be consummated on or about November 21, 2006, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34958, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Dated: December 7, 2006.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6–21174 Filed 12–13–06; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, January 9, 2007, at 9:30 a.m. Central Time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, January 9, 2007, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, PO Box 3205, Milwaukee, WI 53201, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various IRS issues

Dated: December 7, 2006.

**John Fay,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6–21227 Filed 12–13–06; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday January 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, January 17, 2007, from 2 p.m. Pacific Time to 3:30 p.m. Pacific Time via a telephone conference call.

<sup>1</sup> The verified notice of exemption was originally filed under the name UP Nevada Railroad LLC. However, the Union Pacific Railroad Company objected to this name as a violation of its trademarks. Accordingly, by letters filed November 20, and November 22, 2006, counsel addressed issues relating to the identity and name of the Applicant in this proceeding and in the latter letter, requested that Nevada Pacific Railroad Corporation be substituted as the Applicant.

<sup>2</sup> This line was the subject of a notice of exemption that, according to the current verified notice, was never consummated. See *Tonopah & Tidewater Railroad Co.—Lease and Operation Exemption—Pan Western Corporation*, STB Finance Docket No. 34547 (STB served Sept. 30, 2004).



**REQUEST FOR HEARING BEFORE THE  
CLARK COUNTY AIR POLLUTION CONTROL  
HEARING BOARD**

**Appeal of Hearing Officer's Order**

Inv# 071221  
RECEIVED CC DAO  
2024 NOV 18 AM 10:27

1. **Date of Appeal:** 11/14/2024  
(Must be within 10 days of receipt of Hearing Officer Order)  
Notice of Violation # 9994 Hearing Date: 10/29/24 & 11/5/24  
Hearing Officer: Holly Fic
2. **Name, address, telephone number of Appellant:**  
Name: ETON Transportation Corp.; Tonopah & Tidewater Railroad Co.  
(Please print)  
Address: P.O. Box 753850, Las Vegas, NV 89136  
Telephone: 702-632-2931 Fax: \_\_\_\_\_  
Email: moe@eton.me; kathy@eton.me
3. **Other person or persons authorized to receive service of notice:**  
Name: Johnson & Gubler, P.C.  
(Please print)  
Address: 8831 W. Sahara Ave., Las Vegas, NV 89117  
Telephone: 702-471-0065 Fax: 702-471-0075  
Email: rgubler@mjohnsonlaw.com; annabelle@mjohnsonlaw.com; Jennifer@mjohnsonlaw.com
4. **Type of business or activity and location of activity involved in the request:**  
Railroad and Interstate Commerce  
\_\_\_\_\_  
\_\_\_\_\_
5. **Reason for appeal:** ☐ Facts alleged ☐ Penalty assessed ☒ Both  
Provide a detailed explanation of the reason for your appeal:  
Please see attached.  
\_\_\_\_\_

RECEIVED CC DAQ  
2024 NOV 18 AM 10:27

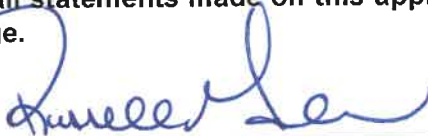
128

6. An application filing fee of \$140.00 must accompany this application. This fee is non-refundable. Please make check payable to Division of Air Quality or DAQ and mail to 4701 W. Russell Road, Suite 200, Las Vegas, NV 89118.

The appellant or a representative of the appellant must be present at the hearing board meeting to answer any questions by the Air Pollution Control Hearing Board Members. **Please include any supporting documentation with this form for distribution to the respective board members.**

I affirm that all statements made on this application are true and complete to the best of my knowledge.

Signature: \_\_\_\_\_



Date: 11/14/2024

Printed Name: Russell G. Gubler

Title: Attorney (10889)

**FOR OFFICE USE ONLY**

Application Received on \_\_\_\_\_

November 18, 2024

Application Fee \$140.00 - Check \_\_\_\_\_

# 12766

Received Date: \_\_\_\_\_

11/18/2024

RS

**Reasons for the appeal:**

1. DES has failed to meet the conditions precedent under AQR 4.1 and NRS 445B.580;
2. Failure of county to follow property owner request to check in;
3. Trespass;
4. Fruit of the poisonous tree;
5. The AQR is preempted by Federal Law;
6. HM-232;
7. HBSD-12 is a template for credentials for federally regulated facility;
8. AQR is not a statewide implemented program under the Clean Air Act;
9. Courts have authority to interpret statutes;
10. The EPA was not authorized to bypass the State of Nevada when it approved the AQR;
11. The AQR unreasonably burdens railroad activity and/or interferes with other interstate commerce;
12. DES is unable to interpret statutory ambiguities;
13. This is not the proper jurisdiction to hear Appellant(s)' arguments;
14. Water and pavement are not the best available control measures;
15. Best practical methods vs. best available control methods;
16. Roto milling is within the AQR guidelines;
17. Appellant is entitled to an exception/exemption from asphalt;
18. Discrimination;
19. Illegal search and seizures;
20. Violation of Due Process
21. Appellants should not be fined, as it needed time to investigate best practical methods with track equipment.
22. Presentment



**Clark County Nevada Department of Environment and Sustainability**  
4701 W Russell Road, Suite 200, Las Vegas, NV 89118  
Phone (702) 455-5942 Fax (702) 383-9994  
AirQuality@clarkcountynv.gov

## RECEIPT

ETON TRANSPORTATION CORP.  
2596 STRATFORD AVE.  
LAS VEGAS, NV 89121

Invoice #	Invoice Date	Invoice By	Invoice Type	Due Date
071221	11/15/2024	SHERRIER	DUST CONTROL ENFORCEMENT	11/15/2024

Quantity	Description	Fee Code	Fee	Total
1.00	HEARING BOARD REQUEST	AGHB01	\$140.00	\$140.00
	11/18/2024 CHECK (012766)	PAYMENT		(\$140.00)

Notes: NOV #9994, Hearing Officer Appeal, Submitted 11/18/2024

Subtotal:	\$140.00
Paid:	(\$140.00)
Adjustments:	\$0.00
Balance Due:	\$0.00



REQUEST FOR HEARING BEFORE THE  
CLARK COUNTY AIR POLLUTION CONTROL  
HEARING BOARD

Inv #071222  
RECEIVED CC DAO  
2024 NOV 18 AM 10:28

Appeal of Hearing Officer's Order

ps

1. **Date of Appeal:** 11/14/2024  
(Must be within 10 days of receipt of Hearing Officer Order)  
Notice of Violation # 10078 Hearing Date: 10/29/24 & 11/5/24  
Hearing Officer: Holly Fic
2. **Name, address, telephone number of Appellant:**  
Name: ETON Transportation Corp.; Environmental Transportation of Nevada, LLC d/b/a ETON; Moe Truman; Tonopah & Tidewater Railroad Co.  
(Please print)  
Address: P.O. Box 753850, Las Vegas, NV 89136  
Telephone: 702-632-2931 Fax: \_\_\_\_\_  
Email: moe@eton.me; kathy@eton.me
3. **Other person or persons authorized to receive service of notice:**  
Name: Johnson & Gubler, P.C.  
(Please print)  
Address: 8831 W. Sahara Ave., Las Vegas, NV 89117  
Telephone: 702-471-0065 Fax: 702-471-0075  
Email: rgubler@mjohnsonlaw.com; annabelle@mjohnsonlaw.com; Jennifer@mjohnsonlaw.com
4. **Type of business or activity and location of activity involved in the request:**  
Railroad and Interstate Commerce  
\_\_\_\_\_  
\_\_\_\_\_
5. **Reason for appeal:** ☐ Facts alleged ☐ Penalty assessed ☒ Both  
Provide a detailed explanation of the reason for your appeal:  
Please see the attached.  
\_\_\_\_\_



RECEIVED CC DAQ  
2024 NOV 18 AM 10:28

PS

6. An application filing fee of \$140.00 must accompany this application. This fee is non-refundable. Please make check payable to Division of Air Quality or DAQ and mail to 4701 W. Russell Road, Suite 200, Las Vegas, NV 89118.

The appellant or a representative of the appellant must be present at the hearing board meeting to answer any questions by the Air Pollution Control Hearing Board Members. **Please include any supporting documentation with this form for distribution to the respective board members.**

I affirm that all statements made on this application are true and complete to the best of my knowledge.

Signature: \_\_\_\_\_

*Russell G. Gubler*

Date: 11/14/2024

Printed Name: Russell G. Gubler

Title: Attorney (10889)

**FOR OFFICE USE ONLY**

Application Received on Nov. 18, 2024

Application Fee \$140.00 - Check

#12767

Received Date: 11/18/2024

**Reasons for the appeal:**

1. DES has failed to meet the conditions precedent under AQR 4.1 and NRS 445B.580;
2. Failure of county to follow property owner request to check in;
3. Trespass;
4. Fruit of the poisonous tree;
5. The AQR is preempted by Federal Law;
6. HM-232;
7. HBSD-12 is a template for credentials for federally regulated facility;
8. AQR is not a statewide implemented program under the Clean Air Act;
9. Courts have authority to interpret statutes;
10. The EPA was not authorized to bypass the State of Nevada when it approved the AQR;
11. The AQR unreasonably burdens railroad activity and/or interferes with other interstate commerce;
12. DES is unable to interpret statutory ambiguities;
13. This is not the proper jurisdiction to hear Appellant(s)' arguments;
14. Water and pavement are not the best available control measures;
15. Best practical methods vs. best available control methods;
16. Roto milling is within the AQR guidelines;
17. Appellant is entitled to an exception/exemption from asphalt;
18. Discrimination;
19. Illegal search and seizures;
20. Violation of Due Process
21. Appellants should not be fined, as it needed time to investigate best practical methods with track equipment.
22. Presentment



**Clark County Nevada Department of Environment and Sustainability**  
4701 W Russell Road, Suite 200, Las Vegas, NV 89118  
Phone (702) 455-5942 Fax (702) 383-9994  
AirQuality@clarkcountynv.gov

## RECEIPT

ETON TRANSPORTATION CORP, ENVIRON.  
TRANSPORTATION NV LLC DBA ETON, AND MOE  
TRUMAN, INDIVIDUALLY  
4680 CIMARRON ROAD  
LAS VEGAS, NV 89129

Invoice #	Invoice Date	Invoice By	Invoice Type	Due Date
071222	11/15/2024	SHERRIER	DUST CONTROL ENFORCEMENT	11/15/2024

Quantity	Description	Fee Code	Fee	Total
1.00	HEARING BOARD REQUEST	AGHB01	\$140.00	\$140.00
	11/18/2024 CHECK (012767)	PAYMENT		(\$140.00)

Notes: NOV #10078, Hearing Officer Appeal, Submitted 11/18/2024

Subtotal:	\$140.00
Paid:	(\$140.00)
Adjustments:	\$0.00
Balance Due:	\$0.00

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #9994 and #10078

Hearing Officer: Holly Fic

**RESPONSE TO NOTICE OF  
VIOLATION #9994 AND #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

**NOW COME** Tonopah & Tidewater Railroad Co. ("Railroad Co."), ETON Transportation Corp. ("ETON"), and Moe Truman (collectively, the "Respondents"), by and through their attorneys of the law firm of JOHNSON & GUBLER, P.C., and hereby respond to Clark County's Notice of Violation #9994 and 10078.

For the reasons stated herein, Respondents request that the hearing officer reject the violations and the fines.

**Violations Alleged:**

**NOV#9994**

By failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, ETON violated AQR Sections 94.13(a) and (b).

AQR Sections 94.13(a) and (b) state:

(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).

(b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with Section 94.5(n)(2).

**NOV#10078**

**Violation 1:**

By failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON, and Truman violated AQR Sections 94.13(a) and (b).

AQR Sections 94.13(a) and (b) state:

(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).

(b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with 94.5(n)(2).

**Violation 2:**

By refusing entry or access to the Control Officer who requests entry for purposes of inspection, ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON, and Truman violated AQR Section 4.1(d)(1).

AQR Section 4.1(d)(1) states:

#### 4.1 Authority and Responsibilities

(d) The Control Officer may enter and inspect any property, premise, or place where an air contaminant source is located or is being constructed, installed, or established at any reasonable time to ascertain compliance with the AQRs.

(1) No person shall:

- (i) Refuse access if the Control Officer requests entry for inspection and presents appropriate credentials.
- (ii) Obstruct, hamper, or interfere with an inspection.

#### **Facts:**

1. Tonopah & Tidewater Railroad Co. is a railroad company owning property located at located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property"). Exhibit 1, Deed.
2. The Railroad Co. was organized in the State of Nevada on July 9, 2004. Exhibit 2, Entity information.
3. On September 30, 2004, the Railroad Co. filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate a private rail line owned in Clark County, NV. The Railroad company may initiate and provide common carrier rail operations on and over the line. Accordingly, the Railroad Co. became a Class III rail carrier. Exhibit 3, Federal Register Docket No. 34547.
4. On December 14, 2006, the Railroad Co. repeated a similar publication in the Federal Register. Exhibit 4, Register Docket No. 34958.
5. The Railroad Co. entered into a lease with ETON. Exhibit 5, Lease.
6. ETON obtained a dust control permit for grubbing, effective August 30, 2023.



7. During its occupancy, ETON performed services for the Railroad Co. at the Property in the assistance of its business of moving goods across state lines, in interstate commerce.

8. The Lease concluded on December 31, 2023. Exhibit 5, Lease.

9. Since January 1, 2024, the Railroad Co. has occupied the Property. The Railroad Co. never applied for or executed a dust control permit.

10. In addition to the Property, the Railroad Co. is the owner of rails, but uses the Property as one of its facilities and yards, as a parking lot, in the assistance of its business of moving goods across state lines, in interstate commerce.

11. The Railroad Co. engages in interstate commerce and works with other railroads in the shipment of items across state lines. Exhibit 6, News 8 report.

12. In the furtherance of Railroad Co.'s federally assigned duties to maintain safe railroad service, the Railroad Co. bought a Caterpillar D9L with a serial # of 7G426. Exhibit A of Exhibit 7, Declaration of Mitchell Truman.

13. This tracked bulldozer is kept in the ready mode for immediate deployment at the Property, 24 hours a day, 7 days a week, in the event of a rail derailment, to open up rail service. Exhibit B of Exhibit 7, Declaration of Mitchell Truman.

14. On January 8 and 9, 2024, Canduella Rowsell and/or Katrinka Byers appeared at the Property, wanting to perform an "inspection."

15. On or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an "inspection." Exhibit 7, Declaration of Mitchell Truman.

16. At no time on these dates (or before) did either Byers, Rowsell or Crandall present or attempt to present any credentials, showing that they were officers with Air Quality. Exhibit 7, Declaration of Mitchell Truman. Further, on information and belief, Rowsell and Crandall do not possess appropriate credentials that would verify that they are inspectors for Air Quality. *See e.g., Exhibit 8, Federal EPA Inspector Credentials.*<sup>1</sup>

17. The Property is covered with six inches of roto milling, which is at least ¼ inch in thickness. Exhibit 9, photographs of Property.

18. It is impractical to pave the Property as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property. Exhibit 7, Declaration of Mitchell Truman.

19. Six inches of roto milling is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act. Exhibit 10, Declaration of Miller.

20. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black top is not a viable palliative, and roto milling is the only viable dust palliative. Exhibit 10, Declaration of Miller; Exhibit 11, Declaration of Harber.

21. Roto milling meets the requirement as a comparable palliative for dust abatement, particularly when there is track equipment operated on the property. Exhibit 11, Declaration of Harber; *see also* Exhibit 12, Declaration of McDonough; Exhibit 13, Meldrum.

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<sup>1</sup> On or about August 28, 2024, Rowsell or Crandall were asked for their Credentials, to which they showed a card to obtain access to an office.

22. Professionally, the roto milling on the Property is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act. Exhibit 10, Declaration of Miller; Exhibit 13, Declaration of Meldrum.

23. Similarly, for a property to be used for parking trucks, there is no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling. Exhibit 12, Declaration of McDonough.

24. By requiring the Property to be paved with asphalt, as opposed to roto milling, Clark County will create more air pollution from its activities. The following required items are needed to make virgin asphalt (all of which are activities that release CO<sub>2</sub> into the atmosphere, require additional water to stop dust, and/or wash the material to have it prepared to make asphalt):

- a. Mining the rock;
- b. Fuel manufacturing to prepare fuel for the quarry equipment;
- c. Transportation of the fuel to the paving yard;
- d. Power generation to move the fuel from the refinery to the local fuel terminal;
- e. Transportation of the rock by haul trucks from the quarry site to the crusher;
- f. Generator to power the crushing equipment.
- g. Fuel usage to move the material by a loader to and around the plant;
- h. Fuel usage to transport the asphalt oil to the hot plant;
- i. Fuel usage to transfer the asphalt oil from the refiner to the local terminal;

- j. Fuel usage to heat the plant to heat the rock to allow the asphalt oil to adhere to the rock;
- k. Fuel usage for the hot asphalt to be delivered to the site.
- l. Fuel usage for the laydown machine to lay the asphalt.

Exhibit 13, Declaration of Meldrum.

25. Paving instead of roto milling is not the best practice in this application on the Property (as used by other political entities). Exhibit 13, Declaration of Meldrum; Exhibit 14, Declaration of Montandon.

26. Further, DES' actions are discriminatory in nature, as DES fails to enforce its policies against other rail roads. Exhibit 15, photographs of rails by other owners in Clark County.

27. Further, AQR is invalid, as it is not a state-wide program. Exhibit 16, photographs of rails in other Nevada counties.

**Argument:**

***A. DES has failed to meet the conditions precedent under AQR 4.1. Respondents are not in violation of AQR 4.1(d)(1) (Violation #2).***

Respondents are not in violation of AQR 4.1(d)(1), as alleged. AQR Section 4.1(d)(1) states, as follows:

**4.1 Authority and Responsibilities**

(d) The Control Officer may enter and inspect any property, premise, or place where an air contaminant source is located or is being constructed, installed, or established at any reasonable time to ascertain compliance with the AQRs.

(1) No person shall:

- (i) Refuse access ***if the Control Officer requests entry for inspection and presents appropriate credentials.***
- (ii) Obstruct, hamper, or interfere with an inspection.

AQR 4.1(d)(1) (emphasis added).

When an officer appears to inspect a property, the officer must request to enter the property and present the appropriate credentials as a condition precedent to entering the property. Further, it is a federal and state crime to trespass onto railroad properties. *See* Exhibit 17; Exhibit 18.

On January 8 and 9, 2024, Canduella Rowsell and/or Katrinka Byers appeared at the Property, wanting to perform an “inspection.” Similarly, on or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an “inspection.” On January 8/9, 2024, Rowsell and/or Byers appeared at the Property, but did not request to enter the Property. Similarly, on January 9, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, but did not request to enter the Property. They were trespassing and merely entered the Property. When ask why Rowsell and Crandall the did not stop to sign in at the guardhouse, they responded to Mr. Truman they saw no one there and drove in. The guard was in fact in the guardhouse, and followed them after entering. Clearly marked on the Property was a sign that all visitors must sign in to enter the Property. The reason for the guard house is that from time to time, the Railroad Co. has hazardous material on the Property, and the Railroad Co. offers those that sign in a respirator in the event that poison gas is released. One of the individuals stated that her husband was a hazmat specialist and that she knew everything about hazardous materials, but when pressed if she was knowable with placarding nomenclature, she agreed she was not aware of said nomenclature.

Although ETON applied for a permit that agreed to access during normal business hours, it still expected persons to check in the office at the property. This was not done on the dates in

January, 2024. Further, ETON certainly did not agree to grant access to the Property, without showing the appropriate credentials. Further, ETON had already vacated the Property. Moreover, the Railroad Co. and Truman never personally applied for the permit, are not bound by the permit, and did not authorize entry.

Regardless, at no time on these dates (or before) did any of the individuals purportedly from the County ever present or attempt to present any credentials, showing that they were officers with Air Quality. Exhibit 7, Declaration of Mitchell Truman.

On information and belief, these individuals do not possess appropriate credentials that would verify that they are inspectors for Air Quality. Appropriate credentials would be a badge, with a name, photograph, credential number, department, affiliation, chip, and an indication of the person's authority. *See e.g.*, Exhibit 8, Federal EPA Inspector Credentials. On or about August 28, 2024, Rowsell or Crandall were asked for their Credentials, to which they showed a card to obtain access to an office somewhere not on the Property. However, this is not an appropriate credential. Access to an office somewhere else is not proper authority to enter the Property. Further, even if the access to an office somewhere else was an appropriate credential, it was shown after the dates noticed for violation.

Thus, DES has failed to meet the conditions precedent, set forth in AQR 4.1(d)(1), and therefore, cannot prevail on Violation #2.

***B. Similarly, because DES failed to meet the conditions precedent, set forth in AQR 4.1(d)(1), Violation #1 of both NON's must also fail.***

Violation #1 of both NON's should also fail. Fruit of the poisonous trees is a doctrine that extends the exclusionary rule to make evidence inadmissible if it was derived from evidence



that was illegally obtained. If the evidential "tree" is tainted, so is its "fruit." *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 385 (1920).

For the reasons set forth above, DES has failed to meet the conditions precedent in AQR 4.1(d)(1). Although this is considered a civil matter, the Fruit of the Poisonous Tree doctrine should be applied here, as DES is a government entity, enforcing a regulation, and seeking to fine companies and individuals. Thus, any evidence taken for an inspection should not be considered, as it is fruit of the poisonous tree, and Violation #1 for both NON's should be rejected and dismissed.

***C. AQR is preempted by Federal law.***

AQR is preempted by Federal Law. Commerce Clause Art. I, §8, Cl. 3, states, in part, Congress shall have the power to . . . regulate commerce . . . among the several states . . .” The Supremacy Clause Art. VI, Cl. 2, also states, “This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . , shall be the supreme law of the land . . . .” The Interstate Commerce Act, established in 1887, and then the Interstate Commission Termination Act (“ICCTA”) of 1995 grants the Surface Transportation Board (“STB”) authority over rail service.<sup>2</sup> That authority includes the ability to regulate items such as rates,

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<sup>2</sup> The Act abolished the Interstate Commerce Commission (ICC) and established the STB under the U.S. Department of Transportation. It is now an independent agency. ICCTA Statutory Preemption language (49 USC §10501):

(b) The jurisdiction of the Board over-

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, ***services, and facilities of such carriers***; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and ***preempt the remedies provided under Federal or State law***. [Emphasis added.]

classifications rules, practices, routes, *services, and facilities, among others*, even if the tracks are located entirely within one state. The definition of “transportation” included within the STB’s purview is broad, including a locomotive, car, *vehicle, vessel, warehouse, yard, property, facility, instrumentality, or equipment* of any kind related to the movement of passengers and/or property by rail. This preemption applies to rail carriers, operating in interstate commerce, and those operating on their behalf, including transloaders.

In *Chicago and North Western Transportation Company v. Kalo Brick and Tile Co.*, 450 U.S. 311 (1991), the Supreme Court held, “The ICA is among the most pervasive and comprehensive of federal regulatory schemes . . . . Since the turn of the century, we have frequently invalidated attempts by the States to impose on common carriers obligations that are plainly inconsistent with the plenary authority of the ICC] . . .” The Court further said, “[There] can be no divided authority over interstate commerce, and . . . the acts of Congress on that subject are supreme and exclusive. Consequently, state efforts to regulate commerce must fall when they conflict with or interfere with federal authority over the same activity.” *Id.* at 318-9.

Attempts by states and municipalities to exert their authority over rail-related service or structures usually fail. The city of Auburn in Washington State tried to require a full environmental impact statement of a proposed rail line reopening, but was denied. *City of Auburn v. US Government*, 154 F. 3d 1025, 29 Env’tl. L. Rep. 20,096 (9th Cir. 1998). The City of Auburn argued that there was no express preemption of local regulation in ICCTA, and that Congress meant to preempt economic regulation, not “essential local police power required to protect the health or safety of citizens.” However, the court rejected the City’s position, noting the long history of judicial recognition that rail operations need to be regulated at the federal, not local level.

The STB denied the request of Winchester, Mass. to regulate use of a freight yard which residents claimed was too noisy at night. Winchester claimed that its zoning regulations prohibited the use, but the STB ruled that federal law preempted the town's regulations. *Boston & Maine Corporation & Springfield Terminal Railroad Company* – Petition for Declaratory Order, 2013 WL 5869470, October 30, 2013.

The reason federal control of rail transportation is important is clear – if every city, town, county, and state could put its own restrictions on rail service, it would cripple it and destroy any semblance of a unified national system. The smooth operation of the rail system is protected by prohibiting states and municipalities from any requirements that would inhibit that system. Although very limited local or state regulation is allowed if the regulation is directly related to public health and safety, such as compliance with building and fire codes, rail lines cannot be required to apply for environmental permits governed by local or state law. *See Green Mountain Railroad Corp. v. Vermont*, 404 F.3d 638 (2005).

Even restrictions on activities somewhat removed from actual rail service are also prohibited because they would have an effect on the provision of rail service. In *Norfolk Southern Railway Co. v. City of Alexandria*, 608 F.3d 150 (2010), the City's ordinance regulating when trucks could enter and leave the rail facility was struck down because that restriction would cause a back-up in unloading the rail cars and have a limiting effect on rail service.

Thus, when state or local laws are an obstacle to the accomplishment and execution of an interstate carrier in the furtherance of its duty to move good between states a railroad's services, the laws are preempted. *See* 49 CFR 655.6; *Pike v. Bruce Church Inc.*, 397 U.S. 137 (1970).

DES will likely argue that these rules do not apply under *Association of American Railroads v. South Coast Air Quality Manag. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010).

However, DES' reliance is misguided.

***D. AQR is not consistent with a state-wide program***

The AQR code is not consistent with a state-wide program. If an apparent conflict exists between ICCTA ***and a federal law***, then the courts must strive to harmonize the two laws, giving effect to both laws if possible. *Association of American Railroads v. South Coast Air Quality Manag. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010). If an apparent conflict exists between ICCTA and a state or local law, however, different rules apply. *Association of American Railroads*, 622 F.3d at 1097 (emphasis added).

The STB has explained that this system preserves a role for state and local agencies in the environmental regulation of railroads in at least two ways. First, to the extent that state and local agencies promulgate EPA-approved ***statewide plans*** under federal environmental laws (such as "***statewide implementation plans***" under the Clean Air Act), ICCTA generally does not preempt those regulations because it is possible to harmonize ICCTA with those federally recognized regulations. *Association of American Railroads*, 622 F.3d at 1098 (emphasis added).

The corollary to that rule is that, until approved by the EPA, ***state implementation plans*** do not have the force and effect of federal law. *Association of American Railroads*, 622 F.3d at 1098 (emphasis added).<sup>3</sup>

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<sup>3</sup> In *Association of American Railroads*, the court found that the South Coast Air Quality Management District's rules did not have the force and effect of federal law. Although the District promised to, the District had not submitted the rules to the ***state agency***, CARB, for its approval. Thus, in turn, if CARB approved, CARB would submit the rules to the federal EPA as part of California's ***state implementation plan***. Once approved by EPA, ***state implementation plans*** have "the force and effect of federal law."

Second, to the extent that state and local agencies enforce their generally applicable regulations in a way that does *not unreasonably burden railroad activity*, ICCTA does not preempt such regulation, despite the fact that the regulation does not have the force and effect of federal law. *Association of American Railroads*, 622 F.3d at 1098 (emphasis added). ICCTA preempts those rules unless they are rules of general applicability that do not unreasonably burden railroad activity. *Association of American Railroads*, 622 F.3d at 1097-98 (Noting that the STB has recognized that ICCTA likely would not preempt local laws that prohibit the dumping of *harmful substances or wastes*, because such a generally applicable regulation would not constitute an unreasonable burden on interstate commerce).

The EPA bypassed the whole requirement to implement a state-wide program when the AQR was approved. The AQR is not a *state* implemented plan; it is a *county* implemented plan as required in *Association of American Railroads*.

Section 52.1490(61) of Title 40 of the CFR shows that the plan that was approved by the EPA is not a state-wide plan.

(61) The following plan revision was submitted on March 26, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(1) Section 93, adopted on June 22, 2000 by the Clark County Board of Commissioners and amended on March 4, 2003; Section 94, *adopted on June 22, 2000 by the Clark County Board of Commissioners* and amended on March 18, 2003; and, the "Construction Activities Dust Control Handbook", adopted June 22, 2000 by the Clark County Board of Commissioners and amended on March 18, 2003.

(emphasis added). Thus, the AQR was adopted by the Clark County Board of Commissioners, not the legislature and governor of Nevada.

AQR Sections 94.13(a) and (b) are not part of a state-implemented plan:

94.13 Best Available Control Measures

(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall **employ BACM** and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).

(b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with Section 94.5(n)(2).

(emphasis added).

AQR 94.2 Defines BACM as follows:

“Best Available Control Measures” and “BACM” means those Control Measures that are the **best available** with current technology for reducing or eliminating the release of Particulate Matter into the atmosphere from Construction Activities. These include, but are not limited to, all measures listed as Best Management Practices and any other Control Measures required by the Control Officer.

(emphasis added).

In contrast, the Nevada state-implemented plan allows for officials to use common sense and to be reasonable. NRS 445B.100 states as follows:

1. It is the public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State.

2. It is the intent of NRS 445B.100 to 445B.640, inclusive, to:

(a) Require the use of **reasonably available methods** to prevent, reduce or control air pollution throughout the State of Nevada;

(emphasis added). Similarly, NAC 445B.22037, states,

1. No person may cause or permit the handling, transporting or storing of any material in a manner which allows or may allow controllable particulate matter to become airborne.

2. Except as otherwise provided in subsection 4, no person may cause or permit the construction, repair, demolition, or use of unpaved or untreated areas without first putting into effect an ongoing program using the best practical methods to prevent particulate



matter from becoming airborne. As used in this subsection, “*best practical methods*” includes, but is not limited to, paving, *chemical stabilization*, watering, phased construction and revegetation.

(emphasis added). Thus, best available (County) compared to best practical or reasonably available methods (State) are not the same. They are quite different, and the AQR is not part of a state-wide implemented plan.

Similarly, the method in which the State of Nevada implements a program is quite different from the way that DES is attempting to enforce its program against Respondents. See Exhibit 16, railroad yards in other counties in the State of Nevada.

***E. The end of the Chevron doctrine and Chevron preference.***

The EPA was not authorized to bypass the State of Nevada when it approved the AQR, as it was required to approve a state-wide implemented plan. The United States Supreme Court’s recent rulings in *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_\_\_ (2024) and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. \_\_\_\_ (2024), both ended the *Chevron* doctrine that gave preferences to agencies in interpreting statutes. Accordingly, this forum further does have jurisdiction to determine whether the AQR has the force and effect of federal law.

In *Loper* and *Corner Post*, the Supreme Court has created a new framework for challenges to existing and developing regulatory landscape. First, in the 6-3 *Loper* decision, the Court overruled its decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.* Previously, under the *Chevron* doctrine, when a reviewing court determined that a statute was ambiguous or that Congress had not directly addressed the precise question at issue, the Court, rather than imposing its own interpretation of the statute, would defer to the agency’s interpretation as long as the agency’s interpretation was based on a permissible construction of the statute. In *Loper*, the Court concluded that *Chevron* deference conflicts with separation of

powers principles and the command of the APA that courts, not agencies, are to "decide all relevant questions of law" and "interpret statutory provisions." Stated another way, the Court made clear that it "remains the responsibility of the court to decide whether the law means what the agency says." The Court reinforced that "courts, not agencies, will decide 'all relevant questions of law' arising on review of agency action" and prescribed "no deferential standard for courts to employ in answering those legal questions." Therefore, the Court concluded, the APA "makes clear that agency interpretations of statutes – like agency interpretations of the Constitution – are not entitled to deference." In so holding, the Court specifically rejected arguments that federal agencies, rather than courts, are better suited to determine what ambiguities in a federal law might mean, including when those ambiguities involve technical or scientific questions that fall within an agency's area of expertise. Finally, the Court noted that "to the extent that Congress and the Executive Branch may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute."

Going forward, *Loper* means that: (1) "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and "may not defer to an agency interpretation of the law simply because a statute is ambiguous." (2) Courts still can consider the "interpretations and opinions" of the relevant agency and should accord "due respect" for the specialized expertise and informed judgement of the agency. However, the weight of those interpretations and opinions will "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."

Following *Loper Bright*, courts must now exercise their independent judgment in deciding whether an agency acted within its statutory authority, even when a statute is ambiguous. To accomplish that, federal courts will use their traditional statutory interpretation tools to resolve statutory ambiguities.

Thus, here, the EPA overstepped its authority by approving a non-state-wide implemented program, known as the AQR. As a result, the AQR does not have the force and effect of federal law. Moreover, Respondents object to the jurisdiction of this forum, as a court must interpret whether the EPA has overstepped its authority by approving the AQR, and whether the AQR has the force and effect of federal law, as well as any of the other constitutional issues raised in this response.

**F. The AQR unreasonably burdens railroad activity by interfering with Interstate Commerce.**

Again, ICCTA preempts those rules that unreasonably burden railroad activity. *Association of American Railroads*, 622 F.3d at 1097-98.

Here, Respondents, the Railroad Co. and ETON, are both a railroad and an interstate trucking company. The Railroad Co has a federal docket number and is a public utility. ETON has a DOT number. Respondents move goods from one state to another. Respondents are required to adhere to Federal laws and regulations as it is engaging in fulfilling its federal obligations to move goods across state lines.

Currently, the Property has six inches of roto milling, which is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act.

Further, the Railroad Co., does work for other railroads. In addition, the Railroad Co. has track equipment, which is necessary to conduct business. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black

top is not a viable palliative, and roto milling is the only viable dust palliative. It is impractical to pave the Property as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property. The AQR is a direct obstacle to the Railroad Co.'s services and to interstate commerce.

Further, the Railroad Co. has occupied the Property. The Railroad Co. never applied for or executed a dust control permit.

Further, for a property to be used for parking trucks, there is no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling. On August 28, 2024, Rowsell and Crandall confirmed that there were no dust emissions. On the other hand, asphalt is much more expensive, causing a burden to businesses, including Respondents. This restricts trade, and is an unreasonably burden on railroad activity and interstate commerce.

Therefore, Respondents have not committed any of the violations and request that the hearing officer reject the violations and fines.

**G. Water and Pavement are not the best available control measures.**

DES insists that the Railroad Co. continues to water the Property and to place asphalt on the Property. However, water is not the "Best Available Control Measure" for this application. Water is a precious resource in Southern Nevada, and watering the 1.17 acres 24 hours a day, 7 days a week, as required by the control officer, is not the best available control measures. Further, water is expensive.

Similarly, because the Railroad Co. owns and/or utilizes track equipment, pavement is not the best available control source either. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black top is not a viable palliative, and roto milling is the only viable dust palliative. It is impractical to pave the Property

as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property. For a property to be used for parking trucks, there is no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling. On August 28, 2024, Rowsell and Crandall confirmed that there were no dust emissions. On the other hand, asphalt is much more expensive, causing a burden to businesses, including Respondents.

Further, AQR violates an executive order to reduce greenhouse gas emissions, as well as the Paris Agreement. *See* Exhibit 19, executive order. By requiring the Property to be paved with asphalt, as opposed to roto milling, DES will create more air pollution from its activities. The following items are needed to make virgin asphalt (all of which are activities that release CO<sub>2</sub> into the atmosphere, require additional water to stop dust, and/or wash the material to have it prepared to make asphalt):

- a. Mining the rock;
- b. Fuel manufacturing to prepare fuel for the quarry equipment;
- c. Transportation of the fuel to the paving yard;
- d. Power generation to move the fuel from the refinery to the local fuel terminal;
- e. Transportation of the rock by haul trucks from the quarry site to the crusher;
- f. Generator to power the crushing equipment.
- g. Fuel usage to move the material by a loader to and around the plant;
- h. Fuel usage to transport the asphalt oil to the hot plant;
- i. Fuel usage to transfer the asphalt oil from the refiner to the local terminal;
- j. Fuel usage to heat the plant to heat the rock to allow the asphalt oil to adhere to the rock;

k. Fuel usage for the hot asphalt to be delivered to the site.

l. Fuel usage for the laydown machine to lay the asphalt.

Exhibit 13, Declaration of Meldrum. In addition, asphalt contributes to global warming. *See* <https://www.smithsonianmag.com/smart-news/hot-days-asphalt-may-release-much-air-pollution-cars-180975756/>. This is contrary to a Nevada executive order. Exhibit 19, EO.

Therefore, again, water and asphalt in this application are not the best available control measures.

**H. The Roto Milling is within the AQR guidelines, and Respondents are not violating the AQR.**

AQR Sections 94.13(a) and (b) state:

(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14)<sup>4</sup>.

(b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with 94.5(n)(2).<sup>5</sup>

**AQR 94.12 Soil Stabilization Standards**

(a) The Responsible Official shall ensure that all contractors, operators, and other Persons involved in Construction Activities employ effective Control Measures.

(b) One or more of the following methods shall be implemented to maintain Dust control on all disturbed soils on Construction sites and staging areas to the extent necessary to pass the Drop Ball Test described in Section 94.15.5:

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<sup>4</sup> As applicable here, AQR 94.14 (Emission Standards), does not allow a dust plume.

<sup>5</sup> Under AQR 94.5(n)(2), a final stabilization must be in accordance with BMP 11. BMP 11(3) allows the following for long-term stabilization:

[P]ermanent metal or wood fencing and/or a post and cable at least 3 feet high, or other similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:

(A) Water, or

(B) Dust Palliative.



...

(3) Completely covered with Clean Gravel.<sup>6</sup>

(4) Treated with a Dust Suppressant.

In its NON's, DES never states that a drop ball test was used. Therefore, no violation or fine should be assessed against Respondents.

Further, the Property is covered with Roto Milling, which is in the size of at least .25 inches, processed, and less than 6% silt. Exhibit 9, photo. It is an effective dust suppressant and does not allow for a dust plume. On August 28, 2024, Rowsell and Crandall visited the Property and stated that there were no dust emissions from the Property. Therefore, no fine should be assessed against Respondents.

Similarly, the roto milling is sufficient for long-term stabilization, under BMP 11. Roto milling is a dust palliative that works just as effectively as asphalt, and works better, considering the track equipment on the Property. It qualifies as a clean gravel and a dust suppressant, as confirmed by Rowsell and Crandall on August 28, 2024. Further, the Property is surrounded by fencing. Therefore, no violations or fine should be assessed against Respondents.

**I. DES has discriminated against Respondents by not enforcing the AOR unevenly.**

Under Equal Protection, a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances.

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<sup>6</sup> AQR 94.2: "Clean Gravel" means a mineral or rock aggregate ranging in size from 0.25 to 3 inches on its longest dimension that is either natural or the product of a mineral processing operation and contains no more than 6% silt by weight.

The Fifth Amendment's Due Process Clause of the United States Constitution requires the United States government to practice equal protection. The Fourteenth Amendment's Equal Protection Clause requires states (and local governments) to practice equal protection.

Equal protection forces a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Thus, the equal protection clause is crucial to the protection of civil rights.

Based on the type of discrimination alleged, the individual will first need to prove that the governing body actually discriminated against the individual. The individual will need to prove that the governing body's action resulted in actual harm to them. After proving this, the court will typically scrutinize the governmental action in one of several three ways to determine whether the governmental body's action is permissible: these three methods are referred to as strict scrutiny, intermediate scrutiny, and rational basis scrutiny. The court will determine which scrutiny the individual will be subject to, relying on legal precedent to determine which level of scrutiny to use.

Here, DES is discriminating against the Railroad Co. In comparison, DES does not regulate other railroad companies, and require them to pave around their rails, as it does with the Railroad Co. *See* Exhibit 15, photographs of rails by other owners in Clark County. None of the roads adjacent to or in the rail track or yards are paved, nor does DES mandate their coal cars have no tarping over them, and fugitive coal dust protrudes from their cars as they travel through the Las Vegas Valley and the length of Clark County. There can be no rational basis for this conduct.

Therefore, the hearing officer should reject the violations and the fine.

**J. DES also violates Due Process.**

Further, due process requires that one receives adequate notice of any charges or legal proceedings brought against them. This includes being informed of the nature and cause of the accusation. Due process is a constitutional requirement that protects from the government denying life, liberty, or property interests. It requires that individuals are given notice, the opportunity to be heard, and a decision by a neutral decision-maker.

Here, DES requests thousands of dollars in fines. However, the fines are not adequately calculated or set forth, to allow Respondents to appropriately respond. Therefore, notice is not proper, and the fines should not be assessed against Respondents.

DATED this 5<sup>th</sup> day of September, 2024.

JOHNSON & GUBLER, P.C.

*/s/ Russell G. Gubler*

---

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2024, I caused to be sent a true and correct copy of the foregoing RESPONSE TO NOTICE OF VIOLATION #9994 AND #10078 via electronic mail, as indicated, to the following parties:

Pam Thompson  
aqenforcement@clarkcountynv.gov

Catherine Jorgenson  
Catherine.Jorgenson@clarkcountyda.com

*/s/ Russell G. Gubler*

---

An Employee of Johnson & Gubler, P.C.

### EXHIBITS

	<b><u>DESCRIPTION</u></b>
1.	Grant, Bargain, Sale Deed
2.	NV Secretary of State Entity Information
3.	Federal Register, 58594
4.	Federal Register, 75293
5.	Commercial Lease Agreement
6.	Local News 8 Report
7.	Declaration of Mitchell Truman
7A.	Invoice
7B.	Photograph of Dozer at Property
8.	Information on EPA Inspector Credentials
9.	Photographs of Property
10.	Declaration of Joe Miller
11.	Declaration of Paul Harber
12.	Declaration of David M McDonough
13.	Declaration of Floyd Meldrum
14.	Declaration of Michael Montandon
15.	Rails/rail yards in Clark County, Nevada
16.	Rails/rail yards outside of Clark County, Nevada
17.	US Trespass Information
18.	NV Trespass Information
19.	Executive Order

## EXHIBITS

	<u>DESCRIPTION</u>
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14.	Declaration of Michael Montandon
15.	Rails/rail yards in Clark County, Nevada
16.	Rails/rail yards outside of Clark County, Nevada
17.	US Trespass Information
18.	NV Trespass Information
19.	Executive Order
20.	Agreement to Convey Easement
21.	Licensing Agreement
22.	Purchase Agreement.
23.	Photo of rails
24.	Hazardous Materials Transportation Security Requirements
25.	Railroad Co. Security Plan

# Exhibit 1



APN: 161-07-103-014, 015 & 016  
Affix R.P.T.T.: \$5,100.00

RECORDING REQUESTED BY:  
FIDELITY NATIONAL TITLE  
WHEN RECORDED MAIL TO AND  
MAIL TAX STATEMENT TO:  
TONOPAH & TIDEWATER RAILROAD CO., A  
NEVADA CORPORATION  
ATTN: KATHERINE TRUMAN  
4680 N. CIMARRON ROAD  
LAS VEGAS, NV 89129

ESCROW NO: 42054616-420-KS1

Inst #: 20230907-0000999  
Fees: \$42.00  
RPTT: \$5100.00 Ex #:  
09/07/2023 11:52:49 AM  
Receipt #: 5383566  
Requestor:  
FNTG NCS Las Vegas  
Recorded By: OSA Pgs: 6  
Debbie Conway  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

Colvin Industrial Property Group, LLC Series E, a series of Colvin Industrial Property Group, LLC, a Nevada series limited liability company, as to Parcel 1 who acquired title as Colvin Industrial Property Group, LLC - Series E, a Nevada limited liability company and Colvin Industrial Property Group, LLC - Series A, a series of Colvin Industrial Property Group, LLC, a Nevada series limited liability company, as to Parcel 2 who acquired title as Colvin Industrial Property Group, LLC - Series A, a Nevada series limited liability company and Middlefork Holdings, LLC, a Nevada limited liability company, as to Parcel 3 who erroneously acquired title as Middlefolk Holdings LLC

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

**Tonopah & Tidewater Railroad Co., a Nevada corporation**

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

Subject to:

1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 6<sup>th</sup> day of September, 2023.

**SELLERS:**

**Colvin Industrial Property Group, LLC  
Series E, a series of Colvin Industrial  
Property Group, LLC, a Nevada series  
limited liability company**



**By: Michael F. Colvin, Manager**

Michael F. Colvin, Manager

**Colvin Industrial Property Group, LLC - Series  
A, a series of Colvin Industrial Property Group,  
a Nevada series limited liability company**



**By: Michael F. Colvin, Manager**

Michael F. Colvin, Manager

**Middlefork Holdings, LLC, a Nevada limited  
liability company**



**By: Michael Colvin, Manager**

Michael F. Colvin, Manager

STATE OF NEVADA

} ss:

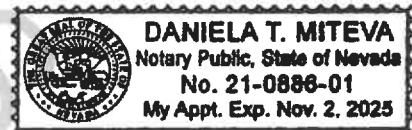
COUNTY OF CLARK

On SEPTEMBER 6, 2023  
appeared before me, a Notary Public, Michael F. Colvin,  
as **Manager of Colvin Industrial Property Group,  
LLC Series E and A**, personally known or proven to  
me to be the person(s) whose name(s) is/are  
subscribed to the above instrument, who  
acknowledged that he/she/they executed the  
instrument for the purposes therein contained.



Notary Public

My commission expires: 11-2-25

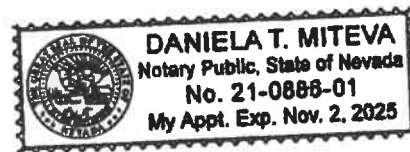


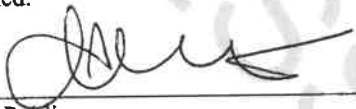
STATE OF NEVADA

}ss:

COUNTY OF CLARK

On SEPTEMBER 6, 2023  
appeared before me, a Notary Public, Michael F. Colvin,  
as **Manager of Middlefork Holdings, LLC**,  
personally known or proven to me to be the person(s)  
whose name(s) is/are subscribed to the above  
instrument, who acknowledged that he/she/they  
executed the instrument for the purposes therein  
contained.



  
\_\_\_\_\_  
Notary Public

My commission expires: NOV 2, 2025

Escrow No. 42054616 - 420 - KS1  
Grant, Bargain, Sale Deed....Continued

**EXHIBIT "A"**

PARCEL 1: APN 161-07-103-014

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M. D. B. AND M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, AS DESIGNATED BY SURVEY MAP THEREOF ON FILE IN FILE 4, PAGE 97 OF REGISTERED PROFESSIONAL ENGINEERS FILE IN THE OFFICE OF THE COUNTY RECORDS OF CLARK COUNTY, NEVADA; THENCE NORTH 89° 43' WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, A DISTANCE OF 63.45 FEET TO A POINT; THENCE SOUTH 01° 10'50" EAST A DISTANCE OF 361.25 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 43' WEST A DISTANCE OF 120.58 FEET TO A POINT; THENCE SOUTH 01° 10'50" EAST A DISTANCE OF 167.45 FEET TO A POINT; THENCE SOUTH 89° 43' EAST A DISTANCE OF 120.58 FEET TO A POINT; THENCE NORTH 01° 10'50" WEST A DISTANCE OF 167.45 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE ABOVE LEGAL PREVIOUSLY APPEARED IN DOCUMENT RECORDED AUGUST 21, 2018 IN BOOK 20180821 AS INSTRUMENT NO. 000756, OFFICIAL RECORDS.

PARCEL 2: APN 161-07-103-015

THAT PORTION OF NORTHEAST QUARTER (NE ¼) OF THE NORTHWEST QUARTER (NW ¼) SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST M.D.B.&M., CLARK COUNTY, NEVADA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF FOUR MILE PARK AS THE SAME IS DESIGNATED BY SURVEY ON FILE IN FILE 1, PAGE 13, OF REGISTERED PROFESSIONAL ENGINEER'S FILE, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, THENCE SOUTH 1°10'50" EAST ALONG THE EAST LINE OF SAID FOUR MILE PARK A DISTANCE OF 284.2 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 1°10'50" EAST A DISTANCE OF 507.8 FEET TO A POINT; THENCE NORTH 88°49'10" EAST A DISTANCE OF 634.8 FEET TO A POINT; THENCE NORTH 52°31'30" WEST A DISTANCE OF 812.89 FEET TO TA TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND AS CONVEYED TO THE COUNTY OF CLARK BY DEED RECORDED AUGUST 05, 2002 IN BOOK 20020805 AS DOCUMENT NO. 001482, OFFICIAL RECORDS.

NOTE: THE ABOVE LEGAL PREVIOUSLY APPEARED IN DOCUMENT RECORDED AUGUST 16, 2018 IN BOOK 20180816 AS INSTRUMENT NO. 001376, OFFICIAL RECORDS.

PARCEL 3: APN 161-07-103-016

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, AS DESIGNATED BY SURVEY MAP THEREOF ON FILE IN FILE 4, PAGE 97 OF REGISTERED PROFESSIONAL ENGINEERS FILE IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA; THENCE NORTH 89°43' WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7 A DISTANCE OF 63.45 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 525.22 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°43' WEST A DISTANCE OF 120.58 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 69.70 FEET TO A POINT; THENCE SOUTH 26°43' WEST A DISTANCE OF 56.35 FEET TO A POINT; THENCE SOUTH 52°31'30" EAST A DISTANCE OF 124.45 FEET TO A POINT; THENCE NORTH 26°43' EAST A DISTANCE OF 106.33 FEET TO A POINT; THENCE NORTH 01° 10'50" WEST A DISTANCE OF 100.19 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE ABOVE LEGAL PREVIOUSLY APPEARED IN DOCUMENT RECORDED AUGUST 15, 2017 IN BOOK 20170815 AS INSTRUMENT NO. 002262, OFFICIAL RECORDS.

PARCEL 3A:

AN EASEMENT ACROSS THE EASTERLY FIFTEEN (15) FEET OF:

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 7, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7, AS DESIGNATED BY SURVEY MAP THEREOF ON FILE IN FILE 4, PAGE 97 OF REGISTERED PROFESSIONAL ENGINEERS FILE IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA; THENCE NORTH 89°43' WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 7 A DISTANCE OF 63.45 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 361.25 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°43' WEST A DISTANCE OF 120.58 FEET TO A POINT; THENCE SOUTH 01°10'50" EAST A DISTANCE OF 167.45 FEET TO A POINT; THENCE SOUTH 89°43' EAST A DISTANCE OF 120.58 FEET TO A POINT; THENCE NORTH 01°10'50" WEST A DISTANCE OF 167.45 FEET TO THE TRUE POINT OF BEGINNING.

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a. 161-07-103-014  
b. 161-07-103-015  
c. 161-07-103-016

2. Type of Property:

- a. ☒ Vacant Land                      b. ☐ Single Fam. Res.  
c. ☐ Condo/Twnhse                      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg                              f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural                          h. ☐ Mobile Home  
i. Other \_\_\_\_\_

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property: \$ 1,000,000.00  
b. Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_  
c. Transfer Tax Value \$ 1,000,000.00  
d. Real Property Transfer Tax Due: \$ 5,100.00

4. **If Exemption Claimed**

- a. Transfer Tax Exemption, per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity Grantor  
Signature \_\_\_\_\_ Capacity Grantee

**SELLER (GRANTOR) INFORMATION  
(REQUIRED)**

Print Name: Colvin Industrial Property Group, LLC  
Series E, a series of Colvin Industrial Property Group,  
LLC, a Nevada series limited liability company and  
Colvin Industrial Property Group, LLC - Series A, a  
Nevada series limited liability company and Middlefork  
Holdings, LLC, a Nevada limited liability company  
Address: 7674 W. Lake Mead Blvd., Ste. 150  
City: Las Vegas  
State: NV Zip: 89128

**BUYER (GRANTEE) INFORMATION  
(REQUIRED)**

Print Name: Tonopah & Tidewater Railroad Co., a  
Nevada corporation  
Address: 4680 N. Cimarron Rd.  
City: Las Vegas  
State: NV Zip: 89129

**COMPANY/PERSON REQUESTING RECORDING (Required if not Seller or Buyer)**

Print Name: Fidelity National Title Group Escrow No.: 42054616-420-KS1  
Address: 6385 S Rainbow Blvd, Suite 130  
City, State, Zip: Las Vegas, NV 89118

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# Exhibit 2



## ENTITY INFORMATION

### ENTITY INFORMATION

**Entity Name:**

TONOPAH & TIDEWATER RAILROAD CO.

**Entity Number:**

C18165-2004

**Entity Type:**

Domestic Corporation (78)

**Entity Status:**

Active

**Formation Date:**

07/09/2004

**NV Business ID:**

NV20041526496

**Termination Date:****Annual Report Due Date:**

7/31/2024

**Compliance Hold:**

### REGISTERED AGENT INFORMATION

**Name of Individual or Legal Entity:**

KATHERINE TRUMAN

**Status:**

Active

**CRA Agent Entity Type:**

**Registered Agent Type:**

Non-Commercial Registered Agent

**NV Business ID:**

**Office or Position:**

**Jurisdiction:**

**Street Address:**

4680 N. CIMARRON RD, LAS VEGAS, NV, 89129, USA

**Mailing Address:**

#### OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
Secretary	KATHERINE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	03/01/2021	Active
Treasurer	KATHERINE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	03/01/2021	Active
President	JAKE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	06/17/2020	Active
Director	JAKE TRUMAN	4680 N. CIMARRON ROAD, Las Vegas, NV, 89129, USA	06/17/2020	Active

Page 1 of 1, records 1 to 4 of 4

#### CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	75,000	1.000000000000

Page 1 of 1, records 1 to 1 of 1

Number of No Par Value Shares:

**0**

Total Authorized Capital:

**75,000**

[Filing History](#)

[Name History](#)

[Mergers/Conversions](#)

[Return to Search](#)

[Return to Results](#)

# Exhibit 3

formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an anti-theft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an anti-theft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 24, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-21977 Filed 9-29-04; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34547]

#### Tonopah & Tidewater Railroad Co.— Lease and Operation Exemption—Pan Western Corporation

Tonopah & Tidewater Railroad Co. (TTRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail line owned by Pan Western, extending from milepost 0.0 to milepost 2.66 in Clark County, NV. Pan Western intends to lease the railroad line to TTRR so that TTRR may initiate and provide common carrier rail operations on and over the

line. TTRR will become a Class III rail carrier. TTRR certifies that its projected revenues are not expected to exceed those of a Class III rail carrier or \$5 million annually.

The transaction was due to be consummated on or after September 9, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34547, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Jeffrey O. Moreno, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036-1601.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 22, 2004.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04-21981 Filed 9-29-04; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Office of Research and Development; Government Owned Invention Available for Licensing

**AGENCY:** Office of Research and Development, VA.

**ACTION:** Notice of Government owned invention available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Mindy L. Aisen, Department of Veterans Affairs, Acting Director,

Technology Transfer Program, Office of Research and Development (12TT), 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202-254-0473; e-mail at [mindy.aisen@mail.va.gov](mailto:mindy.aisen@mail.va.gov). Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is: PCT Patent Application No. PCT/US03/25189 "Touch Screen Applications for Outpatient Process Automation"

Dated: September 22, 2004.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 04-21919 Filed 9-29-04; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Leavenworth, KS

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of intent to enter into an enhanced-use lease.

**SUMMARY:** The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 50 acres at the Dwight D. Eisenhower VA Medical Center in Leavenworth, Kansas. The selected lessee will finance, redevelop, manage, maintain and operate a mixed-use development that would provide services and accommodations relating to affordable senior housing, long-term care, long-term housing for veterans, transitional housing with supportive services for veterans, and educational and community support facilities on the site, at no cost to VA.

#### FOR FURTHER INFORMATION CONTACT:

Malinda D. Pugh, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8192.

**SUPPLEMENTARY INFORMATION:** 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely

# Exhibit 4

a. The Task Force Chairman may establish working groups to perform specific assignments with the approval of the Designated Federal Official. The Chairman may designate members from either the Task Force or the public to serve on working groups. The Working Group Chair will be a Task Force member. Recording or videotaping of working group meetings may only be performed by the sponsor, Designated Federal Official, or their designee.

b. Any recommendations to the Department by working groups must be approved by the Task Force as a whole.

15. **Filing Date:** October 27, 2006, is the filing date and the effective date of this Charter which will expire in 2 years from this filing date, unless sooner terminated or extended.

**Conclusion:** The first meeting of the National Safe Routes to School Task Force to the Secretary of Transportation will be held on January 11, 2007, from 8:30 a.m. to 5 p.m., e.t. at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

(Authority: Section 1404(h) of Pub. L. 109-59; Pub. L. 92-463, 5 U.S.C., App. II § 1.)

Issued on: December 7, 2006.

**J. Richard Capka,**  
*Federal Highway Administrator.*

[FR Doc. E6-21226 Filed 12-13-06; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34958]

#### Nevada Pacific Railroad Corporation—Lease and Operation Exemption—Rail Lines of Pan Western Corporation

Nevada Pacific Railroad Corporation (NPRC),<sup>1</sup> a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail line owned by Pan Western, extending between milepost 0.0, and milepost 2.66, in Clark County, NV.<sup>2</sup> Pan Western

intends to lease the railroad line to NPRC so that NPRC may initiate and provide common carrier rail operations on and over the line.

NPRC certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier or \$5 million annually. The transaction was scheduled to be consummated on or about November 21, 2006, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34958, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Dated: December 7, 2006.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-21174 Filed 12-13-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, January 9, 2007, at 9:30 a.m. Central Time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1-888-912-1227, or (414) 231-2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, January 9, 2007, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231-2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, PO Box 3205, Milwaukee, WI 53201, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 231-2360 for additional information.

The agenda will include the following: Various IRS issues

Dated: December 7, 2006.

**John Fay,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E6-21227 Filed 12-13-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday January 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1-888-912-1227, or 206-220-6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, January 17, 2007, from 2 p.m. Pacific Time to 3:30 p.m. Pacific Time via a telephone conference call.

<sup>1</sup> The verified notice of exemption was originally filed under the name UP Nevada Railroad LLC. However, the Union Pacific Railroad Company objected to this name as a violation of its trademarks. Accordingly, by letters filed November 20, and November 22, 2006, counsel addressed issues relating to the identity and name of the Applicant in this proceeding and in the latter letter, requested that Nevada Pacific Railroad Corporation be substituted as the Applicant.

<sup>2</sup> This line was the subject of a notice of exemption that, according to the current verified notice, was never consummated. See *Tonopah & Tidewater Railroad Co.—Lease and Operation Exemption—Pan Western Corporation*, STB Finance Docket No. 34547 (STB served Sept. 30, 2004).



# Exhibit 5

## **COMMERCIAL LEASE AGREEMENT**

**THIS LEASE (this "Lease") dated this 1st day of September, 2023**

**BETWEEN:**

**Tonopah & Tidewater Railroad of 2596 Stratford Ave  
Telephone: (702) 348-6370  
(the "Landlord")**

**OF THE FIRST PART**

**- AND -**

**ETON of 3426 Losee Rd, North Las Vegas, NV 89030, USA  
Telephone: (702) 851-1743  
(the "Tenant")**

**OF THE SECOND PART**

**IN CONSIDERATION OF** the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

### **Definitions**

1. When used in this Lease, the following expressions will have the meanings indicated:
  - a. "Additional Rent" means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;
  - b. "Building" means the Lands together with all buildings, improvements, equipment, fixtures, property and facilities from time to time thereon, as from time to time altered, expanded or reduced by the Landlord in its sole discretion;
  - c. "Common Areas and Facilities" mean:
    - i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are

not designated or intended by the Landlord to be leased to tenants of the Building including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Building; and

- ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;

d. "Lands" means the land legally described as:

- i. 16107103015, 16107103016, 16107103014;

e. "Leasable Area" means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined, calculated and certified by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements;

f. "Premises" means the commercial premises at 2956 Stratford Ave, Las Vegas, NV 89121, USA;

g. "Rent" means the total of Base Rent and Additional Rent.

### **Intent of Lease**

- 2. It is the intent of this Lease and agreed to by the Parties to this Lease that rent for this Lease will be on a gross rent basis meaning the Tenant will pay the Base Rent and any Additional Rent and the Landlord will be responsible for all other service charges related to the Premises and the operation of the Building save as specifically provided in this Lease to the contrary.

### **Leased Premises**

- 3. The Landlord agrees to rent to the Tenant the commercial premises municipally described as 2956 Stratford Ave, Las Vegas, NV 89121, USA (the "Premises").

The Premises will be used for only the following permitted use (the "Permitted Use"):  
Truck parking.

4. While the Tenant, or an assignee or subtenant approved by the Landlord, is using and occupying the Premises for the Permitted Use and is not in default under the Lease, the Landlord agrees not to Lease space in the Building to any tenant who will be conducting in such premises as its principal business, the services of: Truck parking.

## **Term**

5. The term of the Lease commences at 12:00 noon on September 1, 2023 and ends at 12:00 noon on December 31, 2023(the "Term").
6. Should the Tenant remain in possession of the Premises with the consent of the Landlord after the natural expiration of this Lease, a new tenancy from month to month will be created between the Landlord and the Tenant which will be subject to all the terms and conditions of this Lease but will be terminable upon either party giving one month's notice to the other party.
7. Upon 30 days' notice, the Landlord may terminate the tenancy under this Lease if the Tenant has defaulted in the payment of any portion of the Rent when due.
8. Upon 60 days' notice, the Landlord may terminate the tenancy under this Lease if the Tenant fails to observe, perform and keep each and every of the covenants, agreements, stipulations, obligations, conditions and other provisions of this Lease to be observed, performed and kept by the Tenant and the Tenant persists in such default beyond the said 60 days' notice.

## **Rent**

9. Subject to the provisions of this Lease, the Tenant will pay a base rent of \$10,000.00, payable per month, for the Premises (the "Base Rent"), without setoff, abatement or deduction. In addition to the Base Rent, the Tenant will pay for any fees or taxes arising from the Tenant's business.
10. The Tenant will pay the Base Rent on or before the first of each and every month of the Term to the Landlord.
11. No acceptance by the Landlord of any amount less than the full amount owed will be taken to operate as a waiver by the Landlord for the full amount or in any way to defeat or affect the rights and remedies of the Landlord to pursue the full amount.

## **Use and Occupation**

12. The Tenant will open the whole of the Premises for business to the public fully fixtured, stocked and staffed on the date of commencement of the Term and throughout the Term, and will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined from time to time by the Landlord.
13. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.
14. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with any statute, including any subordinate legislation, which is in force now or in the future and taking into account any amendment or re-enactment, or any government department, local authority, other public or competent authority or court of competent jurisdiction and of the insurers in relation to the use, occupation and enjoyment of the Building (including in relation to health and safety compliance with the proper practice recommended by all appropriate authorities).

## **Quiet Enjoyment**

15. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

## **Distress**

16. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as Rent, or any part of the Rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.

## **Overholding**

17. If the Tenant continues to occupy the Premises without the written consent of the Landlord after the

expiration or other termination of the Term, then, without any further written agreement, the Tenant will be a month-to-month tenant at a minimum monthly rental equal to twice the Base Rent and subject always to all of the other provisions of this Lease insofar as the same are applicable to a month-to-month tenancy and a tenancy from year to year will not be created by implication of law.

### **Additional Rights on Reentry**

**18. If the Landlord reenters the Premises or terminates this Lease, then:**

- a. notwithstanding any such termination or the Term thereby becoming forfeited and void, the provisions of this Lease relating to the consequences of termination will survive;**
- b. the Landlord may use such reasonable force as it may deem necessary for the purpose of gaining admittance to and retaking possession of the Premises and the Tenant hereby releases the Landlord from all actions, proceedings, claims and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith or consequential thereupon;**
- c. the Landlord may expel and remove, forcibly, if necessary, the Tenant, those claiming under the Tenant, and their effects, as allowed by law, without being taken or deemed to be guilty of any manner of trespass;**
- d. in the event that the Landlord has removed the property of the Tenant, the Landlord may store such property in a public warehouse or at a place selected by the Landlord, at the expense of the Tenant. If the Landlord feels that it is not worth storing such property given its value and the cost to store it, then the Landlord may dispose of such property in its sole discretion and use such funds, if any, towards any indebtedness of the Tenant to the Landlord. The Landlord will not be responsible to the Tenant for the disposal of such property other than to provide any balance of the proceeds to the Tenant after paying any storage costs and any amounts owed by the Tenant to the Landlord;**
- e. the Landlord may relet the Premises or any part of the Premises for a term or terms which may be less or greater than the balance of the Term remaining and may grant reasonable concessions in connection with such reletting including any alterations and improvements to the Premises;**
- f. after reentry, the Landlord may procure the appointment of a receiver to take possession and collect rents and profits of the business of the Tenant, and, if necessary to collect the rents and profits the receiver may carry on the business of the Tenant and take possession of the personal property used in the business of the Tenant, including inventory, trade fixtures, and furnishings, and use them in the business without compensating the Tenant;**





21. Both the Landlord and the Tenant is responsible for insuring the Landlord's contents and furnishings in or about the Premises for either damage or loss for the benefit of the Landlord.
22. Both the Landlord and the Tenant is responsible for insuring their respective interests and property in the Premises for damage or loss for the benefit of the Tenant and the Landlord. Such insurance should include such risks as fire, theft, vandalism, flood and disaster.
23. Both the Landlord and the Tenant is responsible for insuring the Premises for liability insurance for the benefit of the Tenant and the Landlord.

### **Abandonment**

24. If at any time during the Term, the Tenant abandons the Premises or any part of the Premises, the Landlord may, at its option, enter the Premises by any means without being liable for any prosecution for such entering, and without becoming liable to the Tenant for damages or for any payment of any kind whatever, and may, at the Landlord's discretion, as agent for the Tenant, relet the Premises, or any part of the Premises, for the whole or any part of the then unexpired Term, and may receive and collect all rent payable by virtue of such reletting, and, at the Landlord's option, hold the Tenant liable for any difference between the Rent that would have been payable under this Lease during the balance of the unexpired Term, if this Lease had continued in force, and the net rent for such period realized by the Landlord by means of the reletting. If the Landlord's right of reentry is exercised following abandonment of the premises by the Tenant, then the Landlord may consider any personal property belonging to the Tenant and left on the Premises to also have been abandoned, in which case the Landlord may dispose of all such personal property in any manner the Landlord will deem proper and is relieved of all liability for doing so.

### **Governing Law**

25. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Nevada, without regard to the jurisdiction in which any action or special proceeding may be instituted.

### **Severability**

26. If there is a conflict between any provision of this Lease and the applicable legislation of the State of Nevada (the 'Act'), the Act will prevail and such provisions of the Lease will be amended or deleted as

necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

### **Assignment and Subletting**

27. The Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises, nor grant any license or part with possession of the Premises or transfer to any other person in whole or in part or any other right or interest under this Lease (except to a parent, subsidiary or affiliate of the Tenant), without the prior written consent of the Landlord in each instance, which consent will not be unreasonably withheld so long as the proposed assignment or sublease complies with the provisions of this Lease.
28. Notwithstanding any assignment or sublease, the Tenant will remain fully liable on this Lease and will not be released from performing any of the terms, covenants and conditions of this Lease.
29. If the Lease is assigned or if the Premises or any part of the Premises are sublet or occupied by anyone other than the Tenant, the Landlord may collect rent directly from the assignee, subtenant or occupant, and apply the net amount collected, or the necessary portion of that amount, to the rent owing under this Lease.
30. The prohibition against assigning or subletting without the consent required by this Lease will be constructed to include a prohibition against any assignment or sublease by operation of law.
31. The consent by the Landlord to any assignment or sublease will not constitute a waiver of the necessity of such consent to any subsequent assignment or sublease.

### **Bulk Sale**

32. No bulk sale of goods and assets of the Tenant may take place without first obtaining the written consent of the Landlord, which consent will not be unreasonably withheld so long as the Tenant and the Purchaser are able to provide the Landlord with assurances, in a form satisfactory to the Landlord, that the Tenant's obligations in this Lease will continue to be performed and respected, in the manner satisfactory to the Landlord, after completion of the said bulk sale.

### **Care and Use of Premises**

33. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.
34. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable

opinion of the Landlord, disturbs the comfort or convenience of other tenants.

35. The Tenant will not engage in any illegal trade or activity on or about the Premises.
36. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

### **Surrender of Premises**

37. At the expiration of the lease term, the Tenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

### **Hazardous Materials**

38. The Tenant will not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on the Premises or that might be considered hazardous by any responsible insurance company.

### **Rules and Regulations**

39. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

### **General Provisions**

40. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease will not operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Landlord's rights in respect of any subsequent default or breach.
41. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.
42. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recoverable by the Landlord as rental arrears.
43. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.

44. Time is of the essence in this Lease.

45. This Lease will constitute the entire agreement between the Landlord and the Tenant. Any prior understanding or representation of any kind preceding the date of this Lease will not be binding on either party to this Lease except to the extent incorporated in this Lease. In particular, no warranties of the Landlord not expressed in this Lease are to be implied.

**IN WITNESS WHEREOF** the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this 28st day of August, 2023.

Heusa M Wier

(Witness)

Tonopah & Tidewater Railroad (Landlord)

Per: [Signature] (SEAL)

Heusa M Wier

(Witness)

ETON (Tenant)

Per: [Signature] (SEAL)

# Exhibit 6

## LOCAL NEWS

## Tanks on Trains: Why so many were in Las Vegas

*Military equipment from Fort Hood in Texas moves through Las Vegas for troops training at Fort Irwin in California. (Photos: Instagram @LeroyNotCenkins)*

by: [Duncan Phenix](#)

Posted: Mar 14, 2022 / 05:51 PM PDT

Updated: Mar 15, 2022 / 12:41 PM PDT

SHARE



**LAS VEGAS (KLAS)** — Dozens of tanks, armored personnel carriers, troop transport vehicles, Bradley fighting vehicles, and much more were recently seen in downtown Las Vegas and around the valley. All of them loaded onto rail cars being hauled to somewhere from somewhere.

Many people posted videos on social media, wondering what was happening. Given the similar scenes coming out of western Russia, some found it troubling as it prepared to invade Ukraine. 8 News Now found an answer.

For anyone who has been around the valley and Southern California for a while knows, there is a strong military presence. In Las Vegas, there is Nellis Air Force Base and the National Guard with equipment. Across the state line in Southern California, there is the Marine Corps Logistics Base Barstow, Fort Irwin, and Edwards Air Force Base, to name a few.

ADVERTISING



These installations often move equipment, including tanks, by rail through Las Vegas; this was exactly what happened last week.

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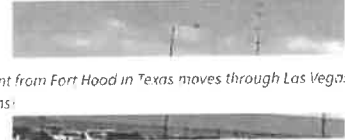




Military equipment from Fort Hood in Texas moves through Las Vegas for troops training at Fort Irwin in California. Photos: Instagram @LeroyNotCenkins



Military equipment from Fort Hood in Texas moves through Las Vegas. @LeroyNotCenkins



According to a spokesperson with Fort Irwin, the Army was doing a routine movement of equipment from Fort Irwin to Fort Hood in Texas. Currently, soldiers from Fort Hood are at Fort Irwin for training. The spokesperson said these troop training and equipment rotations happen during at least 10 out of the 12 months a year.

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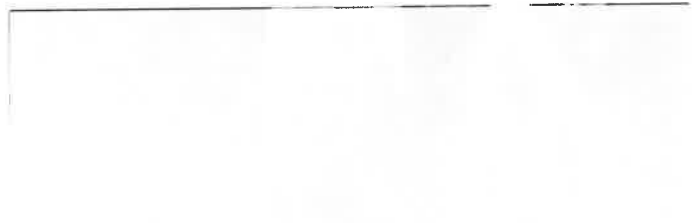


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## WHAT DO YOU THINK?



Which party will control the House of Representatives after the 2024 general election?

- ☐ Republicans
- ☐ Democrats
- ☐ It's a toss-up
- ☐ Other / No opinion

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# Exhibit 7



Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF MITCHELL  
TRUMAN IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Mitchell Truman, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.
2. I am a manager of the rail operation for the Tonopah & Tidewater Railroad Co. (the "Railroad Co."), owner of the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property")

3. The Railroad Co. is the owner of rails, but uses the Property as one of its facilities and yards, in the assistance of its business of moving goods across state lines, in interstate commerce.

4. In the furtherance of Railroad Co.'s federally assigned duties to maintain safe railroad service, the Railroad co. bought a Caterpillar D9L with a serial # of 7G426. A true and correct cop of the invoice for the purchase of the D9N, is attached hereto as Exhibit A.

5. This tracked bulldozer is kept in the ready mode for immediate deployment at the Property, 24 hours a day, 7 days a week, in the event of a rail derailment, to open up rail service. A true and correct photograph, showing that the D9L is kept at the Property, is attached hereto as Exhibit B.

6. It is impractical to pave the Property as the bulldozer would destroy the paving, turning it to an equivalent roto-milling state, now on the Property.

7. On or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an "inspection." However, at no time on these dates (or before) did either Rowsell or Crandall present or attempt to present any credentials, showing that they were officers with Air Quality.

Further, Declarant saith naught.

DATED: September 4, 2024

 9-4-24  
\_\_\_\_\_  
Mitchell Truman

# Exhibit 7A

**PAID IN FULL**

Invoice #:	19617
Date:	4/28/2023
Page:	1

**SOLD TO:**

# 144521

Moe Truman  
3426 Losee Rd North  
Las Vegas, NV 89030  
Phone: 702-632-2931

moe@eton.me; crs@eton.me; kathy@eton.me

5/9 Made a WT today for 100,000 will make another tomorrow for 11,000.

5/8 Had problem rec'vg email. Will send wire in next day or two. kre

5/5 EM Payment Reminder CM

E-Mailed on 4/28/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/5/2023 to moe@eton.me

E-Mailed on 5/7/2023 to moe@eton.me, crs@eton.me, kathy@eton.me

E-Mailed on 5/8/2023 to moe@eton.me, crs@eton.me, kathy@eton.me

Lot#	INVENTORY# - DESCRIPTION	QUANTITY UNIT PRICE	EXTENDED PRICE
20	51657 - 2022 Agrotk 680 Hydraulic Hammer  Location: Washougal Washington ***Unused Manufacturer Consignment*** S/N: SSHH68022110202 2 Bits, 2.7" Bit Diameter, 585 Joule Impact Energy, 400 - 700 BPM, 9.5 - 16 gpm Working Flow, 1/2" Hydraulic Hose, Tool Kit, Nitrogen Charge Kit, To Fit 40-80hp Skidsteer Loader	1 x 1,600.00	1,600.00 T
		Buyer's Premium -	160.00 T
		Internet Service Fee -	40.00 T
23	52642 - 2023 Agrotk PD680-PZ Hydraulic Post Driver  Location: Washougal Washington ***Unused Manufacturer Consignment*** To Fit Skidsteer Loader	1 x 1,500.00	1,500.00 T
		Buyer's Premium -	150.00 T
		Internet Service Fee -	37.50 T
99	53192 - 1974 Caterpillar 613 Elevating Motor Scraper  Location: Boring Oregon ***End-User Consignment*** S/N: 71M2852 Engine: Caterpillar 1160 Diesel OROPS, Paddle Wheel, 23.5-25 Tires, *This item is located in Boring, Oregon and can be viewed by appointment only. To schedule	1 x 12,000.00	12,000.00

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224

**PAID IN FULL**

Invoice #:	19617
Date:	4/28/2023
Page:	2

#144521 Moe Truman

Lot#	INVENTORY# - DESCRIPTION	UNIT PRICE	EXTENDED PRICE
	a preview or to ask questions about this item call 888-230-8840 *		
		Buyer's Premium -	1,200.00 . .
		Internet Service Fee -	300.00 . .
113	52038 - 1985 Caterpillar D9L Crawler Dozer	1 x 77,500.00	77,500.00 . T
	Location: Spokane Washington		
	***End-User Consignment***		
	S/N: 4Y031156		
	Engine: Caterpillar 3412 Diesel Transmission: 3 Speed		
	4-Way 16' U-Blade, EROPS, Cab, CB Radio, 4-Barrel Multi-Shank		
	Ripper w/2 Shanks, 24" Single Bar Tracks, *Hydraulic Leak*, *Ripper		
	Shanks & Blade Tips Were Removed For Transportation but Come		
	With the Unit*, **Per Seller work done - Ripper Control Valve & Track		
	Link Assembly @ 4993 Hours, Complete Undercarriage &		
	Reseal/Rerod Blade Lift Cylinders @2226 Hours, New Hydraulic Oil		
	Cooler @ 3477 Hours, Re-seal Blade Lift Cylinders @ 4601 Hours**		
	Hours: 6,125		
		Buyer's Premium -	7,750.00 . T
		Internet Service Fee -	750.00 . T
		Total Quantity:	4.00
		Total Extended Price:	92,600.00
		0% Buyer's Premium:	0.00
		Buyer's Premium:	9,260.00
		Internet Service Fee:	1,127.50
		Tax1 Washougal, WA (8.5%) 0606:	296.44
		Tax2 Spokane City, WA 3210 (9.0%):	7,740.00
		Invoice Total:	\$111,023.94
	wire Transfer PAR 230509024277 kre - 5/9/2023 -		100,000.00
	wire Transfer PAR 230510018702 kre - 5/10/2023 -		11,023.94
		Remaining Invoice Balance:	\$0.00

All items must be removed from the auction site by 7 days from the sale date or storage fees will be charged per the terms of the sale.

I acknowledge that all sales are "As Is, Where Is" with no warranties or guarantees and that no sale shall be invalidated; nor shall the auctioneers be liable as a result of inaccuracies of description, condition or defect of any item being sold.

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224



**PAID IN FULL**

Invoice #:	19617
Date:	4/28/2023
Page:	3

**WIRE TRANSFER INSTRUCTIONS**

Please send wires to :      C/o:  
J. Stout Auctions              US Bank  
520 S. 28th Street          16415 SE McGillivray Blvd.  
Washougal, WA 98671      Vancouver WA 98683

Routing # 125000105    Account # 153568618240

Please reference your Buyer # and Invoice #

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224  
Portland Retail Sale Center: 12841 NE Whitaker Way, Portland, OR 97230  
\* (888) 230-8840 \* [www.jstoutauction.com](http://www.jstoutauction.com)

**UNPAID**

Invoice #:	19617
Date:	4/28/2023
Page:	1

**SOLD TO:** # 144521

Moe Truman  
3426 Losee Rd North  
Las Vegas, NV 89030  
Phone: 702-632-2931

moe@eton.me, crs@eton.me, kathy@eton.me

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Lot#	INVENTORY# - DESCRIPTION	QUANTITY UNIT PRICE	EXTENDED PRICE
20	51657 - 2022 Agrotk 680 Hydraulic Hammer  Location: Washougal Washington ***Unused Manufacturer Consignment*** S/N: SSHH68022110202 2 Bits, 2.7" Bit Diameter, 585 Joule Impact Energy, 400 - 700 BPM, 9.5 - 16 gpm Working Flow, 1/2" Hydraulic Hose, Tool Kit, Nitrogen Charge Kit, To Fit 40-80hp Skidsteer Loader Receipt # 22-5103	1 x 1,600.00	1,600.00 T .
		Buyer's Premium -	160.00 T .
		Internet Service Fee -	40.00 T .
23	52642 - 2023 Agrotk PD680-PZ Hydraulic Post Driver  Location: Washougal Washington ***Unused Manufacturer Consignment*** To Fit Skidsteer Loader Receipt # 23-1033	1 x 1,500.00	1,500.00 T .
		Buyer's Premium -	150.00 T .
		Internet Service Fee -	37.50 T .
99	53192 - 1974 Caterpillar 613 Elevating Motor Scraper  Location: Boring Oregon ***End-User Consignment*** S/N: 71M2852 Engine: Caterpillar 1160 Diesel OROPS, Paddle Wheel, 23.5-25 Tires, *This item is located in Boring, Oregon and can be viewed by appointment only. To schedule a preview or to ask questions about this item call 888-230-8840 *, Receipt # offsite	1 x 12,000.00	12,000.00 . .
		Buyer's Premium -	1,200.00 . .

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224



**UNPAID**

Invoice #:	19617
Date:	4/28/2023
Page:	2

#144521 Moe Truman

Lot#	INVENTORY# - DESCRIPTION	UNIT PRICE	EXTENDED PRICE
		-----	-----
		Internet Service Fee -	300.00 . .
		-----	-----
113	52038 - 1985 Caterpillar D9L Crawler Dozer	1 x 77,500.00	77,500.00 . T
	Location: Spokane Washington		
	***End-User Consignment***		
	S/N: 4Y031156		
	Engine: Caterpillar 3412 Diesel Transmission: 3 Speed		
	4-Way 16' U-Blade, EROPS, Cab, CB Radio, 4-Barrel Multi-Shank		
	Ripper w/2 Shanks, 24" Single Bar Tracks, "Hydraulic Leak", "Ripper		
	Shanks & Blade Tips Were Removed For Transportation but Come		
	With the Unit", **Per Seller work done - Ripper Contol Valve & Track		
	Link Assembly @ 4993 Hours, Complete Undercarriage &		
	Reseal/Rerod Bklade Lift Cylinders @2226 Hours, New Hydraulic Oil		
	Cooler @ 3477 Hours, Re-seal Blade Lift Cylinders @ 4601 Hours**		
	Hours: 6,125		
		Buyer's Premium -	7,750.00 . T
		-----	-----
		Internet Service Fee -	750.00 . T
		-----	-----
		Total Quantity:	4.00
		Total Extended Price:	92,600.00
		0% Buyer's Premium:	0.00
		Buyer's Premium:	9,260.00
		Internet Service Fee:	1,127.50
		Tax1 Washougal, WA (8.5%) 0606:	296.44
		Tax2 Spokane City, WA 3210 (9.0%):	7,740.00
		Invoice Total:	\$111,023.94
		Remaining Invoice Balance:	\$111,023.94

All items must be removed from the auction site by 7 days from the sale date or storage fees will be charged per the terms of the sale.

I acknowledge that all sales are "As Is, Where Is" with no warranties or guarantees and that no sale shall be invalidated; nor shall the auctioneers be liable as a result of inaccuracies of description, condition or defect of any item being sold.

Signature

Date

## WIRE TRANSFER INSTRUCTIONS

Please send wires to :

C/o:

J. Stout Auctions

US Bank

Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671  
Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224

**Auction Sale - 248 - Day 1 Live Online Auction 4/27/23**



**UNPAID**

Invoice #:	19617
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Page:	3

520 S. 28th Street  
Washougal, WA 98671

16415 SE McGillivray Blvd.  
Vancouver WA 98683

Routing # 125000105    Account # 153568618240

Please reference your Buyer # and Invoice #

**Washougal Sale Center & Corporate Office: 520 S. 28th St. Washougal, WA 98671**  
**Spokane Sale Center: 8018 W. Sunset Hwy. Spokane, WA 99224**  
**Portland Retail Sale Center: 12841 NE Whitaker Way, Portland, OR 97230**  
**\* (888) 230-8840 \* [www.jstoutauction.com](http://www.jstoutauction.com)**

# Secure Message Center

## Invoice: Auction 248 - 144521 - Invoice# 19617

moe@eton.me

**Received:** May 8, 2023 8:35 AM  
**Expires:** May 22, 2023 8:35 AM  
**From:** kari@jstoutauction.com  
**To:** moe@eton.me, crs@eton.me, kathy@eton.me  
**Cc:**  
**Subject:** Invoice: Auction 248 - 144521 - Invoice# 19617

**Attachments:**  Invoice\_19617.pdf

This message was sent securely using Zix

**\*\*Read below to avoid delays - Updated Payment & Pickup Instructions\*\***

### PAYMENT INSTRUCTIONS:

Payment is due in full by end of day on May 4<sup>th</sup>. Failure to pay by this date will result in automatic late fees added to your balance due. We CANNOT release ANY items until payment is received and you receive a "Paid in Full" Invoice. Your items **MUST** be removed from the auction location by May 12<sup>th</sup> by scheduling a PICKUP APPOINTMENT. Failure to pick up by this date will result in storage charges, that are due before removal of your items.

### Payment Methods:

Credit/Debit cards. We can process only \$5,000 per card. To use your card, complete the Credit Card Authorization Form attached and email it back to this same email address. The name on the credit card must match the name on the invoice. There is a 3% charge for paying by credit card.

Wire Transfer. Bank account and routing numbers are at the end of your invoice. Please include your invoice number on the wire transfer. Note: your bank might charge a fee for wire transfers. We recommend that you call us to verify the account information before sending wire.

569

**Bank Deposit.** Go to any US Bank and deposit funds by cash with exact change, check or cashier's check. Our bank account information is located at the end of the invoice.

**Cashier's, Personal or Business Check Deposits:** Your deposit will not be posted until the funds have cleared the bank, including cashier's checks. This could take 1 to 3 business days.

**Cash Deposits :** Please bring exact change, the bank does not give cash back. U.S. Bank may ask for personal information along with your government issued photo ID. Cash payments will be posted the following business day.

**WE DO NOT ACCEPT CASH ONSITE.**

**WE DO NOT ACCEPT CHECKS, OR MONEY ORDERS OF ANY KIND ONSITE.**

### **SALES TAX:**

Sales tax is added to all invoices for items located in Washington or any other state locations where sales tax is charged. You must pay the sales tax based on where you take possession of your items. Unless you provide documentation that proves you hold a status of tax exempt.

### **Resellers :**

Provide your state Reseller Permit or Resale Certificate and/or Dealer License.

Your business name on your invoice must match your resale documentation.

Provide a statement indicating what items on your invoice are for resale.

Non-Resident businesses will need to complete a Washington approved tax exempt form.

### **Other Tax Exemptions:**

Notify us if you are exempt from tax for any other reason.

Provide tax exemption form for review. You may be required to complete an additional state approved form.

J. Stout Auctions holds the right to refuse tax exemption without the appropriate state approved documentation.

### **Non-Residents:**

Once yearly, you can request a refund of a portion of your Washington state tax you paid from the Washington DOR website here: <https://dor.wa.gov/file-pay-taxes/apply-tax-refund/state-sales-tax-refund-qualified-nonresidents>

If you are having your items shipped to you, your transport company can provide us with a bill of lading (BOL)/Export documentation that shows the items being delivered, for a tax rate adjustment.

The BOL must show the pickup and delivery address and a description of the item(s) being shipped.

The BOL must include a verifiable Motor Carrier (MC) # or USDOT #.

If J. Stout Auctions has Nexus in the state in which you are having your item(s) delivered, we will adjust the tax to the delivery location tax rate. Note: If the tax rate is higher this will increase your total amount due.

WE DO NOT PROVIDE/CREATE BOLs ; that is for the shipping company to provide to the buyer or J. Stout Auctions.

**PICKUP:**

**PICK UP HOURS:** Monday – Friday from 8am – 4pm

Once J. Stout receives your payment in full, you will receive a “paid in full” receipt that you will need to take with you to pick up your items. You CANNOT pick up your items without a paid in full receipt.

When you get your receipt, please email back a requested appointment day and time and Tanya will put you on our schedule. Or you can call our main line at 888-230-8840.

We will provide you with a gate release upon scheduling an appointment for offsite locations. Please bring your paid in full receipt when picking up your items.

Please pay close attention to the OFFSITE PICKUP INSTRUCTIONS described in your Lot description on your invoice. There may be different deadlines, etc. We have multiple offsite locations in this auction.

J. Stout Auctions does not provide shipping. Shipping/Transport is the sole responsibility of the buyer.

**\*\* MAKE SURE YOUR SHIPPER KNOWS YOUR FULL NAME AND INVOICE NUMBER AS A REFERENCE UPON PICK UP\*\***

**\*\*We do not have the supplies or resources to package or ship your materials. Any pallets you may see in the pictures are for pictures only and may not be included with your items\*\***

Thank you for your business.

If you cannot open the attached file you will need to download the Adobe Acrobat Reader from:  
<http://get.adobe.com/reader/>

This message was secured by Zix®

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This service is hosted by Zix on behalf of JSTOUT Auction More Information

# Exhibit 7B





# Exhibit 8



## Compliance

CONTACT US <<https://epa.gov/compliance/forms/contact-us-about-compliance>>

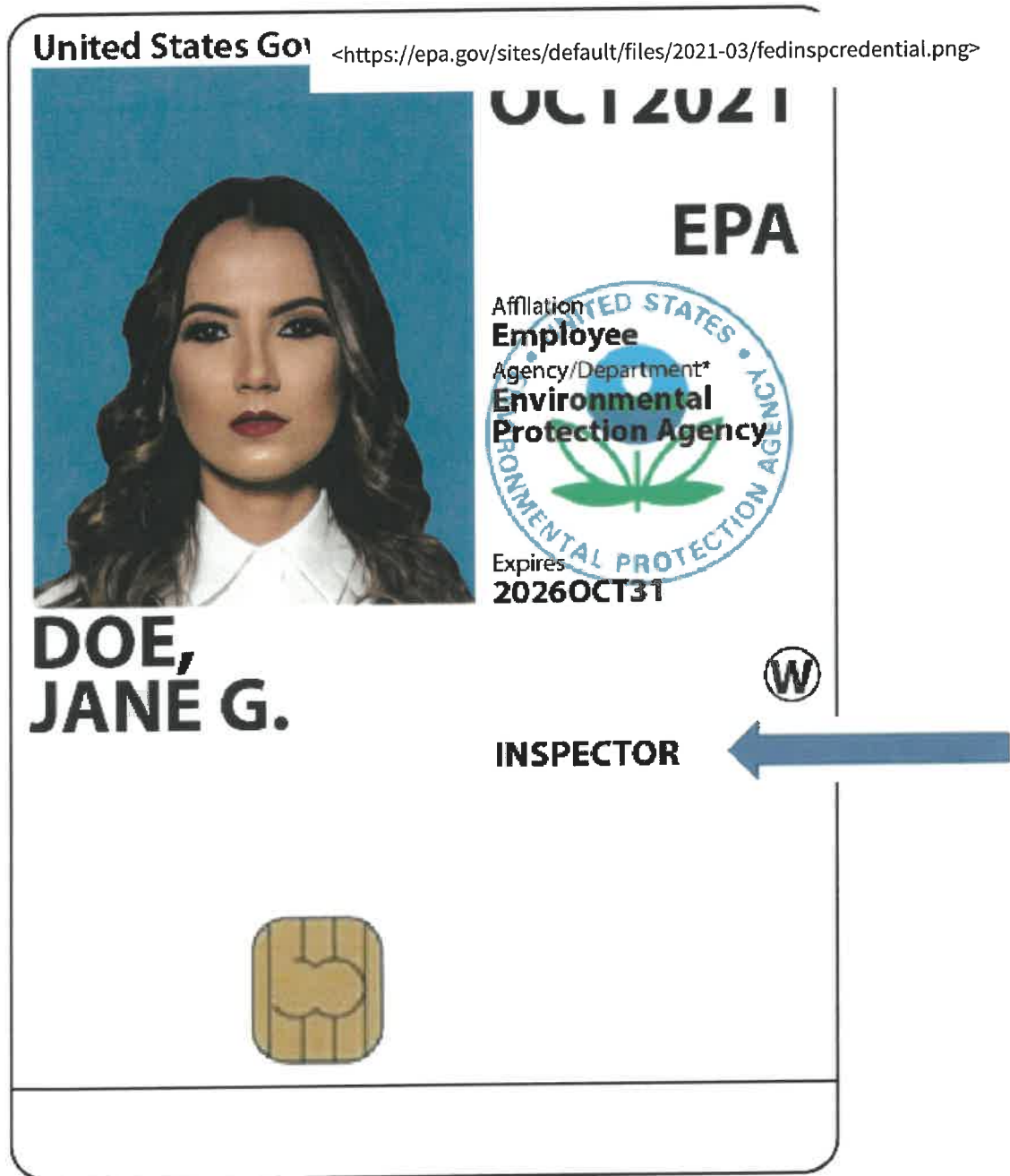
# What is an EPA Inspector Credential?

EPA Inspector credentials may be issued to federal EPA employees, employees of other federal agencies, contractors, senior environmental employees, states, tribes, territories, and local governments who are authorized by EPA to conduct inspections or investigations and take samples on EPA's behalf under the various federal environmental statutes.

## Federal EPA Inspector Credentials

Federal EPA inspector credentials include an "inspector" designation in the center of the badge.

## Federal EPA Inspector Credential



# Non-Federal EPA Inspector Credentials

EPA Inspector credentials issued to non-federal employees are laminated and often carried in bifolds. They have a hologram of the EPA emblem and a statute specific designation on them. Inspector credentials issued to non-federal employees include the following codes to designate the inspector's affiliation:

- **St** (State)
- **Tr** (Tribe)
- **Te** (Territory)
- **SE** (Senior Environmental Employee or SEE)
- **Co** (Contractor)

## 2-Piece Laminated Non-Federal EPA Inspector Credential



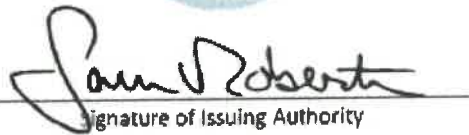
**Credential Number:** 2200122611D

**Expiration Date:** 12/26/2025

This person is authorized to conduct inspections, collect samples, and secure information and records in connection with the enforcement of the following programs:

| CAA |



  
Signature of Issuing Authority



  
Signature of Bearer

[Compliance Home <https://epa.gov/compliance>](https://epa.gov/compliance)

[How We Monitor Compliance <https://epa.gov/compliance/how-we-monitor-compliance>](https://epa.gov/compliance/how-we-monitor-compliance)

## Compliance Monitoring Programs <<https://epa.gov/compliance/compliance-monitoring-programs>>

CAA <<https://epa.gov/compliance/clean-air-act-cao-compliance-monitoring>>

CERCLA <<https://epa.gov/compliance/superfund-cercla-compliance-monitoring>>

CWA <<https://epa.gov/compliance/clean-water-act-cwa-compliance-monitoring>>

FIFRA <<https://epa.gov/compliance/federal-insecticide-fungicide-and-rodenticide-act-compliance-monitoring>>

RCRA <<https://epa.gov/compliance/resource-conservation-and-recovery-act-rcra-compliance-monitoring>>

SDWA <<https://epa.gov/compliance/safe-drinking-water-act-compliance-monitoring>>

TSCA <<https://epa.gov/compliance/toxic-substances-control-act-tsca-compliance-monitoring>>

Good Laboratory Practices (GLP) <<https://epa.gov/compliance/good-laboratory-practices-standards-compliance-monitoring-program>>

State Review Framework <<https://epa.gov/compliance/state-review-framework>>

NPDES Electronic Reporting <<https://epa.gov/compliance/npdes-e-reporting>>

Compliance Assistance Centers <<https://epa.gov/compliance/compliance-assistance-centers>>

National Enforcement Training Institute (NETI) <<https://epa.gov/compliance/national-enforcement-training-institute-neti>>

Resources and Guidance Documents <<https://epa.gov/compliance#resources>>

Compliance Assistance <<https://epa.gov/compliance/resources-and-guidance-documents-compliance-assistance>>

Compliance Monitoring <<https://epa.gov/compliance/resources-and-guidance-documents-compliance-monitoring>>

State Oversight <<https://epa.gov/compliance/state-oversight-resources-and-guidance-documents>>

Contact Us <<https://epa.gov/compliance/forms/contact-us-about-compliance>> to ask a question, provide feedback, or report a problem.

LAST UPDATED ON OCTOBER 25, 2023

**Assistance** <<https://epa.gov/lep/assistance>>

مساعدة <<https://epa.gov/lep/assistance#ar>>

幫助 (繁體版)

<<https://epa.gov/lep/assistance#chi-tr>>

**Asistans** <<https://epa.gov/lep/assistance#hc>>

**Assistância**

<<https://epa.gov/lep/assistance#port>>

**Tulong** <<https://epa.gov/lep/assistance#tag>>

**Ayuda** <<https://epa.gov/lep/assistance#esp>>

幫助 (簡體版)

<<https://epa.gov/lep/assistance#chi-s>>

**Aide** <<https://epa.gov/lep/assistance#fr>>

지원 <<https://epa.gov/lep/assistance#kor>>

Помощь <<https://epa.gov/lep/assistance#rus>>

**Trợ Giúp** <<https://epa.gov/lep/assistance#viet>>



## Discover

•

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<<https://epa.gov/accessibility/epa-accessibility-statement>>

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<<https://epa.gov/contracts>>

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### EPA Disclaimers

<<https://epa.gov/web-policies-and-procedures/epa-disclaimers>>

### Hotlines

<<https://epa.gov/aboutepa/epa-hotlines>>



## **EPA www Web Snapshot**

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## **Grants**

<<https://epa.gov/grants>>

## **No FEAR Act Data**

<<https://epa.gov/ocr/whistleblower-protections-epa-and-how-they-relate-non-disclosure-agreements-signed-epa>>

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<<https://epa.gov/web-policies-and-procedures/plain-writing>>

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<<https://www.whitehouse.gov/>>

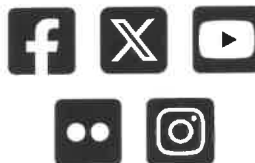
## **FOIA Requests**

<<https://epa.gov/foia>>

## **Frequent Questions**

<<https://epa.gov/home/frequent-questions-specific-epa-programstopics>>

## **Follow.**



# Exhibit 9







# Exhibit 10

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF JOE MILLER  
IN SUPPORT OF RESPONSE TO  
NOTICE OF VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Joe Miller, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.
2. I received my engineering credentials from the University of Minnesota.
3. I have worked for the following Construction companies in Las Vegas, Nevada

- a. Ames Construction
- b. Frehner Construction
- c. Agg Industries.

4. I have been involved in all aspect of soil stabilization for over 20 years in while I managed project Clark County.

5. Six inches of roto milling is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act.

6. For companies that use tracked equipment such as bulldozers, trenches, rail equipment, and back hoes in their businesses, black top is not a viable palliative, and roto milling is the only viable dust palliative.

7. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property").

8. Professionally, the roto milling on the Property is more than an adequate dust palliative to meet the fugitive dust requirement of the EPA clean air act.

Further, the Declarant saith naught.

DATED: September 5, 2024

  
\_\_\_\_\_  
Joe Miller



# Exhibit 11

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF PAUL HARBER  
IN SUPPORT OF RESPONSE TO  
NOTICE OF VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Paul Harber, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I was a principal for the construction company, Harbor Company, which has been in business since 1995.

3. Based on my years in construction in the Las Vegas Valley, I am under the opinion that roto milling meets or exceeds the requirement as a comparable palliative for dust abatement, particularly when there is track equipment operating on the property.

4. Black top is not a viable palliative when there is track equipment operating on the property. Roto milling is the only viable dust palliative when there is track equipment operating on the property.

5. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property"), which is covered with roto milling, and meets the requirements as a comparable palliative for dust abatement.

Further, Declarant saith naught.

DATED: 9/5/2024

A handwritten signature in black ink, appearing to read 'Paul Harber', written over a horizontal line.

Paul Harber

# Exhibit 12

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF DAVID M  
MCDONOUGH IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, David M. McDonough, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I am the president of Aztech Materials Testing, Inc., located at 4700 Cooper Sage St A, Las Vegas, NV 89115.

3. I am an accredited tech in material testing for the State of Nevada.

4. I have personally performed material testing for the following governmental agencies: Department of Defense, Nevada Department of Transportation, United States Bureau of Reclamation, Clark County, City of Las Vegas, and many others.

5. As an accredited tech, for a property to be used for parking trucks, I can tell no difference in the fugitive dust emission leaving a property from a lot paved with asphalt compared to a property covered in roto milling.

6. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property"), which is covered with roto milling, and meets the requirements as an adequate comparable palliative for dust abatement.

7. Further, Declarant saith naught.

DATED: September 5, 2024

  
David M. McDonough

# Exhibit 13



Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF FLOYD  
MELDRUM IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Floyd Meldrum, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.
2. I graduated from the University of Utah with a degree in Engineering, and received my wet stamp as an engineer in 1963 in the State of Utah.

3. I was the owner of a construction and engineering company called Southern Nevada Paving, Inc. ("SNP") from 1964 until 2009.

4. I am familiar with roto milling, as it is a palliative that is more than adequate to suppress fugitive dust for a trucking or rail yard.

5. I have reviewed the property located at 2596 Stratford Ave, Las Vegas, NV 89121 (the "Property"), which is covered with roto milling.

6. It is my professional opinion, as an engineer, that roto milling will allow the Property to be in compliance with the Clean Air Act. Similarly, roto milling is a recycled material that works just as well as asphalt for tracked equipment.

7. By requiring the Property to be paved with asphalt, as opposed to roto milling, Clark County will create more air pollution from its activities. The following required items are needed to make virgin asphalt (all of which are activities that release CO2 into the atmosphere, require additional water to stop dust, and/or wash the material to have it prepared to make asphalt):

- a. Mining the rock;
- b. Fuel manufacturing to prepare fuel for the quarry equipment;
- c. Transportation of the fuel to the paving yard;
- d. Power generation to move the fuel from the refinery to the local fuel terminal;
- e. Transportation of the rock by haul trucks from the quarry site to the crusher;
- f. Generator to power the crushing equipment.

- g. Fuel usage to move the material by a loader to and around the plant;
- h. Fuel usage to transport the asphalt oil to the hot plant;
- i. Fuel usage to transfer the asphalt oil from the refiner to the local terminal;
- j. Fuel usage to heat the plant to heat the rock to allow the asphalt oil to adhere to the rock;
- k. Fuel usage for the hot asphalt to be delivered to the site.
- l. Fuel usage for the laydown machine to lay the asphalt.

8. If it is necessary, I can figure out the CO2 emissions that are generated for a ton of asphalt to show the increase in global warming to which the County is contributing.

9. As an engineer, I am concerned that Clark County would want paving for trucking lots, instead of roto milling. I believe that Air Quality Management's insistence on paving a parking lot in this application is a short-sighted practice, as the this not the best practices, when the use of a recycled material will meet the need, while reducing CO1 emissions.

Further, Declarant saith naught.

DATED: September 4, 2024



Floyd Meldrum

Set 3  
2024

# Exhibit 14

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

---

In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF MICHAEL  
MONTANDON IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Michael Montandon, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.
2. I was the Mayor of the City of North Las Vegas from 1997-2009.
3. While I was Mayor, NLV was a proponent of using roto millings for a dust palliative for several reasons: (1) roto milling worked to keep dust reduced to more than

acceptable limits; (2) NLV found that roto millings produced less of a heat load back into the atmosphere than black-top paving, and as a result, kept our neighborhoods around the property with roto millings cooler; (3) the use of roto millings kept the product from going to the land fill; and (4) for the companies in NLV with tracked equipment, roto millings provide a way to keep the dust reduced to acceptable limits, while not destroying the black top.

Further, Declarant saith naught.

DATED: September 5, 2024



---

Michael Montandon

# Exhibit 15



# Boulder City Railroad



Search OpenWeb



## Property Information

Parcel: 18608398001  
Jurisdiction: Boulder City - 89005  
Sale Date: Not Available  
Sale Price: Not Available  
Aerial Flight Date: []



## Zoning and Planned Land Use

## Legal Description

## Ownership

## Parcel Owners

Parcel	Owners	Recorded Document	Recorded Date
--------	--------	-------------------	---------------



## Flood Zone

## Elected Officials

## Links

Current Tool: Select Property  
Coords in State Plane ft  
X: 870871 Y: 26692123  
Flight Date: Most Current Flight  
Current View: Aerial Imagery Only  
1: 1,000

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# Clark County Aviation

Search OpenWeb

### Property Information

Parcel: 17706301025  
Owner Name(s): COUNTY OF CLARK(AVIATION)  
Jurisdiction: CC Enterprise - 89118  
Sale Date: Not Available  
Sale Price: Not Available  
Estimated Lot Size: 16.23  
Recorded Doc Number: 1994020400000080  
Aerial Flight Date: []

### Zoning and Planned Land Use

### Legal Description

### Ownership

### Flood Zone

### Elected Officials

### Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 767472 Y: 26725869

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 1.000

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100ft

## Clark County Owned Property



Property Information

Parcel: 17706101003  
Owner Name(s): COUNTY OF CLARK(PUBLIC WORKS)  
Site Address: 0  
Jurisdiction: CC Enterprise - 89118  
Sale Date: 01/1999  
Sale Price: \$370,000  
Estimated Lot Size: 3.12  
Recorded Doc Number: 2007012000003077  
Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property  
Coords in State Plane ft. v  
X: 768347 Y: 26727640  
Flight Date: Most Current Flight  
Current View: Aerial Imagery Only  
1: 2,000

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# Dodge Commercial Rail Line





Search OpenWeb



### Property Information

Parcel: 14006110005

Owner Name(s): DODGE COMMERCIAL HOLDINGS L L C

Site Address: 4611 MITCHELL ST

Jurisdiction: North Las Vegas - 89081

Sale Date: 01/2003

Sale Price: \$1,007,500

Estimated Lot Size: 3.63

Construction Year: 1997

Recorded Doc Number: 2013050900001803

Aerial Flight Date: []



### Zoning and Planned Land Use

### Legal Description

### Ownership

### Flood Zone

### Elected Officials

### Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 800030 Y: 26791061

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 500

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40ft

609

# Eastgroup Properties



☰

Search OpenWeb

✕ 🔍

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Property Information

⋮

Parcel: 16230801001

Owner Name(s): EASTGROUP PROPERTIES LP

Site Address: 5580 ARVILLE ST

Jurisdiction: CC Paradise - 89118

Sale Date: 05/2009

Sale Price: \$11,050,000

Estimated Lot Size: 9.39

Construction Year: 1998

Recorded Doc Number: 2009052700003654

Aerial Flight Date: []

🏠

Zoning and Planned Land Use

📄

Legal Description

👤

Ownership

🌊

Flood Zone

🗳️

Elected Officials

🔗

Links

🛠️

Current Tool: Select Property

📍

Coords in State Plane ft. ▾

X: 769954 Y: 26734837

📅

Flight Date: Most Current Flight

👁️

Current View: Aerial Imagery Only

📏

1: 2.000

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# Hidden Valley Rails LLC



OpenWeb

## Property Information

Parcel: 03132801005  
Owner Name(s): HIDDEN VALLEY RAIL LLC  
Site Address: 0  
Jurisdiction: CC Moapa - 89025  
Sale Date: 04/2013  
Sale Price: \$900,000  
Estimated Lot Size: 32.87  
Recorded Doc Number: 202206110001471  
Aerial Flight Date: []

## Zoning and Planned Land Use

## Legal Description

## Ownership

## Flood Zone

## Elected Officials

## Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 937173 Y: 26946826

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

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100ft

## JR Simplot



Search OpenWeb

Property Information

Parcel: 07130601001  
Owner Name(s): SIMPLOT J R CO  
Site Address: 1551 S MOAPA VALLEY BLVD  
Jurisdiction: CC Moapa Valley - 89040  
Sale Date: Not Available  
Sale Price: Not Available  
Estimated Lot Size: 17.62  
Construction Year: 1953  
Recorded Doc Number: 00001843 01802463  
Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft

X: 996191 Y: 26891958

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 500

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# Lhoist North America

OpenWeb

## Property Information

Parcel: 10326000003

Owner Name(s): LHOIST NORTH AMERICA OF ARIZONA

Site Address: 12101 LAS VEGAS BLVD

Jurisdiction: CC Unincorporated - 89124

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 39.4

Recorded Doc Number: 2012121300001378

Aerial Flight Date: []

## Zoning and Planned Land Use

## Legal Description

## Ownership

## Flood Zone

## Elected Officials

## Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 854059 Y: 26832680

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

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200ft

# Nevada Ready Mix

Parcel: 16230701009

Owner Name(s): NEVADA READY MIX CORPORATION

Site Address: 4301 W HACIENDA AVE

Jurisdiction: CC Paradise - 89118

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 2.45

Recorded Doc Number: 19901221 00001362

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 770283 Y: 26735773

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

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# Oil Terminal



☰

Search OpenWeb

✕ 🔍

📌 Property Information

Parcel: 16231698001

Jurisdiction: CC Paradise - 89118

Sale Date: Not Available

Sale Price: Not Available

Aerial Flight Date: []

🏠 Zoning and Planned Land Use

📄 Legal Description

👤 Ownership

🌊 Flood Zone

🗳 Elected Officials

🔗 Links

🛠 Current Tool: Select Property

📍 Coords in State Plane ft. ▾

X: 771570 Y: 26731276

📅 Flight Date: Most Current Flight

👁 Current View: Aerial Imagery Only

1: 1,000

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🖨 Print

📏 100ft



# Pabco Gypsum 1



Search OpenWeb

Property Information

Parcel: 14200001003

Owner Name(s): PABCO BUILDING PRODUCTS LL C

Site Address: 4001 STATE HWY 147

Jurisdiction: CC Unincorporated - 89124

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 639.2

Construction Year: 1964

Recorded Doc Number: 20031201 00003053

Aerial Flight Date: []

Zoning and Planned Land Use

Legal Description

Ownership

Flood Zone

Elected Officials

Links

Current Tool: Select Property

Coords in State Plane ft

X: 864532 Y: 26785023

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

L: 1.000

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Print



## Pabco Gypsum 2





# Pioneer Americas



Search OpenWeb



### Property Information

Parcel: 17813101012

Owner Name(s): PIONEER AMERICAS L L C

Site Address: 435 FOURTH ST

Jurisdiction: CC Unincorporated - 89015

Sale Date: Not Available

Sale Price: Not Available

Estimated Lot Size: 214.3

Construction Year: 1942

Recorded Doc Number: 1987120300000100

Aerial Flight Date: []

Print

### Zoning and Planned Land Use

### Legal Description

### Ownership

### Flood Zone

### Elected Officials

### Links

Current Tool: Select Property

Coords in State Plane ft. ▾

X: 823563 Y: 26718862

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

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# Private Owner



Search OpenWeb

## Property Information

Parcel: 16230501046  
Owner Name(s): TASSAINER MINNIE  
Site Address: 0  
Jurisdiction: CC Paradise - 89118  
Sale Date: Not Available  
Sale Price: Not Available  
Estimated Lot Size: 1.5  
Recorded Doc Number: 20170405 00000520  
Aerial Flight Date: []

## Zoning and Planned Land Use

## Legal Description

## Ownership

## Flood Zone

## Elected Officials

## Links

Current Tool: Select Property  
Coords in State Plane ft. ▾  
X: 770180 Y: 26737639  
Flight Date: Most Current Flight  
Current View: Aerial Imagery Only  
1: 2.000

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# Rockview Dairies



San Joaquin



### Property Information

Parcel: 04202201002  
Owner Name(s): ROCKVIEW DAIRIES INC  
Site Address: 2055 E STATE HWY 168  
Jurisdiction: CC Moapa - 89025  
Sale Date: 04/2000  
Sale Price: \$376,834  
Estimated Lot Size: 5.04  
Construction Year: 1973  
Recorded Doc Number: 20000428 00001954  
Aerial Flight Date: []



### Zoning and Planned Land Use

### Legal Description

### Ownership

### Flood Zone

### Elected Officials

### Links

Current Tool: Select Property

Coords in State Plane ft

X: 950383 Y: 26943933

Flight Date: Most Current Flight

Current View: Aerial Imagery Only

1: 2.000

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200ft

# Exhibit 16

# Elko Rail Yard

TRANSLOAD FACILITIES

- Auburn, Maine >
- Birmingham, Alabama >
- Bowbells, North Dakota >
- Brownsville, Texas >
- Butte, Montana >
- Cedar City, Utah >
- Chehalis, Washington >
- Denver, Colorado >
- Detroit, Michigan >
- Doraville, Georgia >
- DuBois, Pennsylvania >
- El Dorado, Kansas >
- Elko, Nevada >
- Fernandina Beach, Florida >
- Greeley, Colorado >
- Hammond, Indiana >
- Junction City, Oregon >
- Los Angeles, California >
- Miami, Florida >
- New Stanton, Pennsylvania >
- Odessa, Texas >
- Pocatello, Idaho >
- Pocatello, Idaho Intermodal >
- Price, Utah >
- Rifle, Colorado >
- Rochester, New York >
- Salem, Oregon >
- Sayre, Pennsylvania >
- Shelby, Montana >
- Stockton, California >
- Tooele, Utah >
- Trenton, North Dakota >
- Westlake, Louisiana >

ELKO, NEVADA  
TRANSLOAD FACILITY



As the preferred storage and transportation hub for partners like Nevada Gold and Nevada Drilling, the Elko facility is a major player in the ground journey of valuable commodities such as sulphur, ammonium nitrate prill, concentrate, and cathodes, to name a few.

RAIL SERVICES

- 60 railcar spots
- UP access
- Rail switching for industrial-served Customers

TRANSLOAD SERVICES

- Rail-to-truck, truck-to-rail service
- Dry bulk transloading via conveyor
- Liquid bulk transportation
- Dimensional product handling
- Boxcar loading and unloading
- HAZMAT capable
- On-site boiler
- Trucking service available
- Certified truck scale

INVENTORY MANAGEMENT

- Laydown space available upon request



8852 E IDAHO ST  
ELKO, NV 89801

[View Google Map >](#)

[Elko, NV Fact Sheet >](#)

[Transload Network Book >](#)

[CONTACT US >](#)

# Ely NV Rail Yard







# Fernly Rail Site



## Track expansion completed at Western Nevada Rail Park in Fernley



Industrial Realty Group in November 2020 purchased the Western Nevada Rail Park east of Fernley to construct a major railroad freight operations and commerce center site.

NNBW staff report

Tuesday, November 16, 2021

Discuss Share this  
Comment, Blog about Email, Facebook, Twitter

Los Angeles-based Industrial Realty Group, LLC, recently announced it completed installation of an additional mile of rail track and improvements to the existing infrastructure at the 224-acre Western Nevada Rail Park site in Fernley.

With the new extension of 5,000 feet, the site now includes over 7,000 linear feet of track, according to a Nov. 1 press release.



NNBW on Facebook



# Fernly Oil Terminal



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Dwight D. Eisenhower Hwy

Purple Heart Trl

Purple Heart Trl

Dwight D. Eisenhower Hwy

Logan Ln

Logan Ln

Logan Ln

Fremont St

Fremont St

Fremont St

Fremont St 640

Google

# Reno Rail Yard

# THE RENO-SPARKS TRANSLOAD FACILITY

Nexxt Logistics is a full-service transportation and distribution subsidiary of NEXXT Rail, LLC. We offer Rail and Truck Loading / Unloading and full Transloading services.



# Exhibit 17



Search

[Home](#) / [Railroad Safety](#)

IN THIS SECTION



## Trespass Prevention

FRA works in partnership with railroads, state and local governments, and organizations to conduct outreach efforts to raise awareness about the inherent dangers and consequences of trespassing on railroad property—illegally entering or remaining on a railroad right-of-way. FRA also provides multiple resources to assist these stakeholders and the public to prevent trespassing.

### Trespassing Is Dangerous and Illegal

Trespassing is the leading cause of rail-related deaths in the United States. Nationally, more than 500 trespass fatalities occur each year. The number of trespassing occurrences on railroad property each year far exceeds the number of fatalities, which means the potential for more trespasser accidents.

It is illegal to access private railroad property anywhere other than a designated pedestrian or roadway crossing. Trespassers are most often pedestrians who walk across or along railroad tracks as a shortcut to another destination. Some trespassers are loitering or are engaged in recreational activities such as taking photographs, jogging, bicycling, hunting, or operating recreational off-highway vehicles (ROVs). Riding ROVs along railroad tracks leads to the erosion of an important part of the track foundation known as ballast, or the rock and soil material that supports the ties and rail. Damage to the ballast degrades the entire track structure and can lead to a train derailment—which can cause a hazardous materials spill or damage to other people and property.



### Always Expect a Train!

- Trains do not follow a set schedule, so they can come at any time of day from either direction.
- A train traveling at 55 miles per hour can take more than a mile to stop.
- Trains overhang railroad tracks by three feet or more on either side. Even when you are not standing directly on the tracks, you risk being hit by a train by being on railroad property.
- Despite their size, trains are relatively quiet and do not always sound warning horns when approaching a crossing.
- Never attempt to walk under, around, or between train cars, even when a train is at a complete stop.
- For more safety tips, view FRA's [I am a Pedestrian/Motorist](#) webpage.

## Community Trespass Prevention Program

The [Community Trespass Prevention Guide](#) is a program for local, state, and national partnerships aimed at reducing trespassing and its related injuries and deaths. The goal of the program is to create safer communities by fostering the development of long-term trespass prevention strategies through community problem-solving partnerships. The program incorporates a problem-solving model with a step-by-step approach for dealing with trespassing issues in communities.

## Trespass & Suicide Prevention Toolkit

FRA has an interactive resource, the [Trespass & Suicide Prevention \(TSP\) Toolkit](#), to identify effective strategies for trespass and suicide prevention and mitigation on the Nation's railroads. The TSP Toolkit is useful for individuals who work in railroad safety and for researchers, community members, suicide prevention groups, or other individuals or organizations with an interest in preventing trespassing and suicide.



## National Strategy to Prevent Trespassing on Railroad Property

FRA's National Strategy to Prevent Trespassing on Railroad Property is a 2018 Report to Congress that includes four strategic focus areas: data gathering and analysis, community site visits, funding, and partnerships with stakeholders.

Data gathering and analysis of trespass incidents and close calls enables FRA to target resources to trespassing "hot spots." Conducting community site visits helps FRA to learn more about the specific local circumstances that contribute to trespassing and work with partners to help implement and evaluate targeted mitigation strategies. Requesting and providing funding supports community-based efforts to deter trespassing. Finally, building strong and enduring partnerships with communities, law enforcement, railroads, and organizations with a shared interest in saving lives enables FRA to leverage and concentrate available resources, expertise, and local knowledge to reduce trespassing.

Click [here](#) to access the report.

## Resources

Expand All

Collapse All

### Trespass Prevention Materials



### Rails With Trails



### Multimedia



### External Links



Last updated: Friday, August 2, 2024

U.S. DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

1200 NEW JERSEY AVENUE, SE

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# Exhibit 18

## Safety

### Trespassing

Railroads are private property. Trespassers are those who are on railroad property without permission. Trespassing along railroad rights-of-way is the leading cause of rail-related fatalities in America. Trespassers are most often pedestrians who walk across or along the railroad tracks as a shortcut, or are loitering or engaging in recreational activities. Trespassing on railroad property is a property crime and a general offense.



### Highway/Railway Crossings

A highway-railroad crossing is an intersection of railroad tracks and highway at the same grade level. It is critically important that drivers and pedestrians take special care at these crossings to ensure safety. The U.S. Department of Transportation offers the following steps for safety at highway/rail grade crossings:

- Approach with care
- Warn others that you are slowing down
- Turn on 4-way flashers
- Use pull-out lane if available
- Prepare to Stop
- Turn off fans and radio and roll down windows
- Be aware of the location of your cell phone for use in emergency
- Stop at least 15 feet, but not more than 50 feet from nearest rail
- Look and listen both ways, carefully
- Bend forward to see around mirrors and A-pillars
- If it won't fit, don't commit
- Trains extend beyond the width of the rails at least 3 feet on each side. Remember your vehicle – and cargo-overhang.
- Look again. Before you move, look again in both directions.
- Signal, watch for a safe gap, pull back onto the road if you used a pull-out lane
- Use the highest gear that will let you cross without shifting

### Operation Lifesaver

Operation Lifesaver's mission is to end collisions, deaths and injuries at highway-rail grade crossings and on rail property through a nationwide network of volunteers who work to educate people about rail safety.

#### Larry Hamilton

Nevada Operation Lifesaver  
600 Yucca Street

Boulder City, NV. 89005

(702) 286-3246

[real.larry.hamilton@gmail.com](mailto:real.larry.hamilton@gmail.com)

# Exhibit 19



[Skip to Main Content](#)



Nevada Governor Joe Lombardo

# Governor Sisolak Signs Executive Order Directing Administration to Collaborate on Achieving Nevada's Climate Goals

CARSON CITY, NV - November 22, 2019

Today, Governor Steve Sisolak signed Executive Order 2019-22 (EO) directing his administration, under the leadership of Director Bradley Crowell of the Nevada Department of Conservation and Natural Resources (DCNR) and Director David Bobzien of the Nevada Governor's Office of Energy (GOE), to collaborate with public, private, and tribal partners to help implement and accelerate cutting-edge solutions to advance the State of Nevada's ambitious climate goals.

The EO directs State of Nevada agencies to identify and evaluate policies and regulatory strategies to achieve the long-term goals of greenhouse gas emissions reductions, as required by Senate Bill 254 and in accordance with Nevada's commitments as a member of the US Climate Alliance. To help achieve these reduction targets, the administration, led by DCNR and GOE, will coordinate statewide efforts, including the facilitation of agency and stakeholder participation.

In addition to producing reports as required by Senate Bill 254, the Governor's administration will develop a State Climate Strategy, to be delivered by December 1, 2020, that will include recommendations to reduce carbon pollution from the electricity and transportation sectors, buildings, state operations, and other relevant sectors.

"This executive order will ensure Nevada continues to promote ambitious carbon-reduction standards that will help tackle the devastating impacts of climate change while creating good, high-paying jobs for Nevadans," **Gov. Steve Sisolak said**. "The impacts of climate change, and a job market that demands renewable energy and other clean technologies, are already here. For the sake of Nevada's future, and our children's future, we must take action."

"As the climate continues to warm, the science community has reported a significant increase in the severity and length of droughts and the frequency and intensity of wildfires," **DCNR Director Bradley Crowell said**. "With Nevada being the driest state in the nation, coupled with the risks and realities our State faces from climate change, smart climate solutions are critical to the long-term health and sustainability of our state. Under the Executive Order, we look forward to advancing strategies that reduce Nevada's climate footprint, promote clean energy, and foster a healthy and sustainable future for all."

"Pursuing these ambitious emissions reductions goals will require collaboration with local governments, tribal governments, businesses, and stakeholders from all across Nevada," **GOE Director David Bobzien said**. "This Executive Order provides the direction and framework for both combating climate change and realizing the economic opportunities of a decarbonized economy."

The Governor held the press conference at the Regional Transportation Commission of Washoe County, which has been a leader in investing in electric vehicle technology. The RTC was the first public agency in the State of Nevada to operate electric buses and added 17 to its fleet just last year.

The text of Executive Order 2019-22 is below:

## EXECUTIVE ORDER 2019-22 ORDER DIRECTING EXECUTIVE BRANCH TO ADVANCE NEVADA'S CLIMATE GOALS

**WHEREAS**, climate change poses a serious threat to Nevada's natural resources, public health, communities, and economy;

**WHEREAS**, on March 12, 2019, the State of Nevada joined the U.S. Climate Alliance and committed to supporting the United Nations Climate Goals established at the 2015 Paris Conference. The primary U.S. Climate Alliance goal is to reduce greenhouse gas emissions by at least 26-28 percent below 2005 levels by 2025;

**WHEREAS**, as part of the U.S. Climate Alliance, Nevada will implement policies to reduce greenhouse gas emission, track and report progress on its efforts to achieve greenhouse gas emission reduction goals, and accelerate new and existing policies to reduce carbon pollution and promote clean energy deployment;

**WHEREAS**, the State of Nevada's electricity generation portfolio consists of approximately two-thirds imported fossil fuels and there is opportunity for greater in-state production of renewable electricity resources;

**WHEREAS**, on April 22, 2019, Senate Bill 358 was signed into law raising Nevada's renewable portfolio standard to 50 percent by 2030;

**WHEREAS**, as of 2015, fossil fuel use in the transportation sector is now the largest greenhouse gas and carbon emitting sector in Nevada;

**WHEREAS**, on June 3, 2019, Senate Bill 254 was signed into law directing the Nevada Department of Conservation and Natural Resources (the "Department") to "not later than December 31, 2019, and each year thereafter, issue a report that includes an annual statewide inventory of greenhouse gas emissions in this State and a projection of annual greenhouse gas emissions in this State for the 20 years immediately following the date of the report;"

**WHEREAS**, the report required by Senate Bill 254 shall include an annual inventory and projection of greenhouse gas emissions from

**WHEREAS**, the report required by Senate Bill 254 shall include an annual inventory and projection of greenhouse gas emissions from the electricity production and transportation sectors, and it shall include an inventory and projection of greenhouse gas emissions every fourth year for the industry, commercial and residential, agriculture, and land use and forestry sectors;

**WHEREAS**, pursuant to Senate Bill 254, the report shall include a statement of policy options needed to reach the economy-wide greenhouse gas emission reduction goals called for in Senate Bill 254 of 28 percent below 2005 levels by 2025 and 45 percent below 2005 levels by 2030;

**WHEREAS**, Senate Bill 254 directs the Governor to "designate an entity or entities to consult with the Department and identify for the Department the policies required pursuant to paragraph (c) of subsection 2;"

**WHEREAS**, the statement of policy options required under SB 254 will be developed through consultation and coordination among applicable state agencies as established by this Executive Order and under the leadership and direction of the Department and the Governor's Office of Energy with a focus on achieving greenhouse gas emission reductions in the areas of electricity production, transportation, industry, commercial and residential, agriculture, and land use and forestry;

**WHEREAS**, climate change poses significant threats to vulnerable communities who may lack the resources, geographic mobility, and technological expertise to adapt to changes, including pronounced threats to cultural resources, economic vitality, and the human health of all of Nevada's communities and Indian tribes;

**WHEREAS**, Las Vegas, Nevada is the nation's fastest warming city, with a temperature increase of 5.76 degrees Fahrenheit between 1970 and 2018, a trend posing significant impacts to public health and economic prosperity now and in the future;

**WHEREAS**, protection of Nevada's iconic hunting, fishing, and outdoor recreation opportunities is critical to our heritage, quality of life, economy, and ability to attract and retain businesses in diverse industries;

**WHEREAS**, Nevada's abundant solar, geothermal and wind renewable energy resources, along with a skilled and capable workforce, provide jobs and economic opportunities to Nevada families as a pillar of Nevada's leadership in establishing a competitive clean energy and decarbonized economy;

**WHEREAS**, changing national and global market conditions demand that Nevada's businesses seek pragmatic solutions to climate change that maintain competitiveness and create a stable investment environment;

**WHEREAS**, Nevada's growing clean energy sector has driven economic diversification throughout the state leading to a nationwide leading annual growth of over 34 percent in clean energy jobs from 2017 to 2018, for a total of 32,311 clean energy jobs in Nevada as of 2018; and

**WHEREAS**, States have continued to lead on climate change, have taken state-level action that is benefitting state economies and strengthening communities, and are demonstrating leadership to the nation and the world that ambitious climate action is achievable and imperative.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and laws of the State of Nevada and the United States, it is hereby ordered as follows:

**SECTION 1:** State agencies within the Executive branch of Nevada government shall collaborate, as applicable, to advance Nevada's climate goals.

**SECTION 2:** The Director of the Department of Conservation and Natural Resources and the Director of the Governor's Office of Energy shall coordinate the work of the state agencies through convening meetings, facilitating stakeholder participation, and providing strategic direction for meeting the goals and requirements as directed under the Executive Order.

**SECTION 3:** For purposes of fulfilling the requirements of Senate Bill 254, the Administrators or Directors (or designees) of the Public Utilities Commission of Nevada, the Department of Transportation, and the Department of Motor Vehicles shall participate as required under Section 2, subsection 3 of Senate Bill 254.

**SECTION 4:** The administration's effort shall also include participation from representatives of the Department of Administration and the other state agencies as appropriate in fulfilling the requirements of Senate Bill 254. The administration will continue to work with its partners at the Nevada System of Higher Education to achieve the broader goals and objectives established under this Executive Order.

**SECTION 5:** The administration's effort shall proceed in phases:

A. Phase 1 shall be completed by December 31, 2019 for purposes of finalizing the first annual report as required under Senate Bill 254. The report, as described in Senate Bill 254, shall include:

i. An annual report of Nevada's greenhouse gas emission completed by the Nevada Division of Environmental Protection; and

ii. A statement of policy options completed by the appropriate state agencies as defined under Senate Bill 254 and included in this Executive Order that could achieve reductions in projected greenhouse gas emissions by the sectors set forth under Section 2. 653

subsection 2(b) of Senate Bill 254.

B. Phase 2 shall build upon the work of Phase 1 and will culminate in a State Climate Strategy to be delivered to the Governor by December 1, 2020. The document shall include specific policy and budget recommendations to reduce greenhouse gas emissions and mitigate the effects of climate change as needed to meet the goals set forth under this Executive Order.

**SECTION 6:** The administration shall identify and evaluate policies and regulatory strategies, including but not limited to those identified pursuant to Senate Bill 254, to achieve reductions in greenhouse gas emissions, consistent with Nevada's commitment as a member of the U.S. Climate Alliance, across all categories of emission sources, and to further Nevada's resilience to climate change. Such policies and regulatory strategies shall include, but not be limited to, the following:

A. Comprehensive economy-wide or sector-specific programs to reduce carbon dioxide and other greenhouse gas pollution across Nevada, including market-based mechanisms that may be appropriate for Nevada's greenhouse gas emissions profile;

B. Support for transportation electrification and demand management, including infrastructure, fleet procurement, alternative funding mechanisms and other programs;

C. Building codes, and other programs to increase residential and commercial building energy efficiency; and

D. Enhancement of climate resiliency and mitigation of the impacts of climate change in urban and rural areas, including adoption of approaches to increase conservation, restoration and management of Nevada's forests, rangelands, and water resources.

**SECTION 7:** The administration shall prepare an agency risk assessment survey for all state agencies to identify and evaluate the potential impacts of climate change on their programs and operations, and to establish options for the integration of climate change mitigation and adaptation practices for their programs and operations.

**SECTION 8:** Each state agency shall prepare priority lists for building energy efficiency projects to be shared with the administration. The administration shall explore financing options and needed strategies for completion of these projects to achieve energy savings across state owned or leased buildings.

**SECTION 9:** The administration shall collaborate with local governments and tribal nations.

**SECTION 10:** The administration shall coordinate as much as possible with federal bureaus and agencies that manage land and natural resources in Nevada to help advance the priorities identified in the Executive Order.

**SECTION 11:** The administration shall consider the impact of proposed policies and programs on low-income and disadvantaged communities in Nevada.

**SECTION 12:** This order is effective upon signature and shall remain in effect until December 31, 2029 unless it is terminated earlier or extended beyond that date by subsequent Executive Order.

## Contact

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## Attachments

[Executive Order 2019-22 Directing Executive Branch to Advance Nevada's Climate Goals](#)

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*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #9994 and #10078

Hearing Officer: Holly Fic

**REPLY IN SUPPORT OF RESPONSE  
TO NOTICE OF VIOLATION #9994  
AND #10078**

Date of Hearing: October 29, 2024

Time of Hearing: 9:00 a.m.

---

**NOW COME** Tonopah & Tidewater Railroad Co. ("Railroad Co."), ETON Transportation Corp. ("ETON"), and Moe Truman (collectively, the "Respondents"), by and through their attorneys of the law firm of JOHNSON & GUBLER, P.C., and submit this Reply in support of its response to Clark County's Notice of Violation #9994 and 10078.

For the reasons stated herein, Respondents request that the hearing officer reject the violations and the fines, or alternatively, remove the matter to state court.

**Argument:**

***A. The Railroad Co. is a railroad company under Nevada law.***

DES argues that the Railroad Co. is not a rail carrier, and therefore, all of its allegations as a rail carrier are not applicable. DES cites to the 2006 Federal Register that states that the agreement between Pan Western and the Railroad Co. was never consummated. However, DES's argument fails for several reasons. A railroad company may be formed by organizing a corporation under NRS Chapter 78. *See* NRS 78.075. Tonopah & Tidewater Railroad Co. is such a corporation that was organized under NRS Chapter 78, with the designation of the words, "Railroad Co." *See* Exhibit 2.

Further, the Nevada legislature has never otherwise defined the term, "railroad company". As a result, the Supreme Court of Nevada looked to the Black's Law Dictionary to define the term. *Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019). The term is defined by Black's Law Dictionary as "[a] corporation organized to construct, maintain, and operate railroads." Railroad Corporation, Black's Law Dictionary (10th ed. 2014). This is consistent with the common meaning of railroads and other statutes wherein the Legislature has defined railroads as operating on railways. *See, e.g.*, NRS 484A.200 (defining "railroad" as one that operates on "stationary rails"); NRS 484B.050 (same); NRS 710.300 (requiring a "railway" or "railway lines" for railroad utilities). *Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019).

Here, Las Vegas Paving Corporation obtained an easement on certain property from Pan Western, which is on the same property mentioned in the Federal Register. *See* Exhibit 20. This easement was recorded and runs with the land. *Id.* Thereafter, in 2008, the Railroad Co. obtained a Licensing Agreement with Las Vegas Paving Corporation that allows the Railroad Co. to

*“Operate [an] industrial railroad on the property.”* Exhibit 21, Licensing Agreement (emphasis added). In 2010, the Railroad Co. purchased the physical steel rails from Pan Western that are held on the property. Exhibit 22, Purchase Agreement. These rails are stationary on the Property. Exhibit 23, photograph of rails. Further, cars are able to switch lanes, which requires an operator. *Id.* These are all features common to rails and trains. Thus, the Railroad Co. is a railroad company under Nevada law as it maintains and operates a railroad, and holds itself out as a railroad company. *See Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm’r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019).<sup>1</sup>

DES argues that the Railroad Co. is not a rail carrier. However, the federal register states that the Railroad Co. will become a Class III rail carrier. Exhibit 3. DES points out that the agreement with Pan Western was never consummated to lease the property. However, this is irrelevant. The Railroad Co. later consummated an agreement with Las Vegas Paving Corporation that allows the Railroad Co. to “operate” the rails on the property. Exhibit 21. Further, as indicated in the STB Finance Document No. 34958, attached as Exhibit D to DES’s Reply, the grant of authority is permissive. Once a Board exemption has become effective, it is up to the parties to move forward with the underlying transaction. Thus, the STB refused to publicly confirm that the lease and operating exemption for the Railroad Co. was null and void. *See* Exhibit D of DES’s Reply. Besides, the Federal Register only applies to whether or not the Railroad Co. is a class-three carrier, which is one that is not as heavily regulated by the STB as opposed to some other carrier. It does not, however, prohibit the Railroad Co. from being a railroad company under Nevada law.

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<sup>1</sup> Further, the Railroad Co. is a railroad company, as the Public Utilities Commission regulates it.



Thus, for these reasons, all arguments that Respondents have made pursuant to the status as a railroad company, *are applicable*, and DES has failed to otherwise oppose them.<sup>2</sup>

Further, respectfully, Respondents renew their argument that this is not the proper forum. The United States Supreme Court's recent rulings in *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_\_\_ (2024) and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. \_\_\_\_ (2024), both ended the *Chevron* doctrine that gave preferences to agencies in interpreting statutes. Thus, this forum further does have jurisdiction to determine whether the AQR has the force and effect of federal law, or to define railroad or railroad company.

***B. DES has failed to meet the conditions precedent under AQR 4.1 and NRS 445B.580. Respondents are not in violation of these statutes or regulations.***

Respondents previously argued that Violation 2 did not apply because AQR 4.1(d)(1) required the Control Officer to first request entry for inspection and then to present appropriate credentials. Now, DES argues that Respondents consented to the inspection of the site during normal hours, and the Responsible Official must acknowledge the permittee's consent.<sup>3</sup> See Response, p. 5. In making the argument, DES cites to NRS 445B.580. However, Violation 2 only cites to AQR Section 4.1(d)(1) – not NRS 445B.580. See NOV#10078, p. 4. Therefore, for DES to now argue NRS 445B.580 fails to give Respondents proper notice, and therefore, fails to give Responds Due Process by a government entity. Therefore, the argument must fail, and the

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<sup>2</sup> Failure to respond to or oppose arguments as set forth serves as an admission of merit and as a consent to the dismissal. *Ln Mgmt. Llc Series 2937 Barboursville v. Fairbrook Cmty. Ass'n*, LEXIS 535 (D. Nev. 2020); *Grove v. Kadtic*, 986 F.Supp. 510, 516 (D. Nev. 1997) (holding a non-opposition is tantamount to an admission that a motion is meritorious is equally applicable when there is a failure to oppose specific arguments advocating dismissal).

<sup>3</sup> "Nevada has long recognized that corporations are generally to be treated as separate legal entities". *LFC Mktg. Group, Inc, v. Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 846 (2000).

hearing officer should dismiss the case because DES has failed to show that DES personnel (1) requested entry; (2) showed their credentials; and/or (3) even have credentials to show.

In Respondents' experience, the following government agencies all carry credentials and show their credentials: FEEMA, asking to conduct on-site training; FBI, for a background check of a neighbor; FBI, illegal dumping of medical waste by another shipper; FBI, for campaign contribution violation; Federal Department of Justice, in a witness tampering case; Federal Railroad Administration, during a safety audit; State of Nevada Public Utilities Commission, railroad section, conducting an audit; Trucking, for conducting an audit; Federal Department of Transportation, to conduct an audit; State of Nevada Department of Taxation, to conduct an audit of ethanol coming in by rail; Clark County Coroner's Office, to investigate the death in a rail car; Federal Treasury Department, for REM taxes; Federal Homeland Security, for training on site; Metro for a death next to the property; Las Vegas Fire department, for an inspection; ATS, for an inspection of rail cars from Mexico; DEA, for an inspection of rail cars from Mexico; Nevada Highway patrol, requesting an audit; State of Nevada OSHA, for a death investigation on site; Federal Department of Bureau of Land Management, for potential trespassing; IRS, for an audit of REM on Alcohol taxes; Department of Energy, for Income nuclear waste from Fermi lab and hauling Nuclear waste; Clark County Aviation, for a site tour; UP Railroad police, checking on rail theft; United States Air Force, Checking on property owned next to Nellis; Department of Defense, working on storage of a train's load of tanks; Pipeline & Hazardous Material Safety Administration, for an audit of safety plan; Clark County Dog catcher, asking about a dog; Federal Mine Safety Administration, for a site audit; Constable office, to Execute a writ of garnishment; USA Remote sensing lab, wanting to install air pollution monitoring station; Metro (in uniforms), various reasons over the years; Metro (under cover), regarding a robbery at

Sahara and Buffalo; FDIC Auditor, related to the failed bank Community Bank of Nevada; and Vegas Valley Water District Safety.

Further, NRS 445B.580 does not even apply to DES. NRS 445B.580 states:

1. It is a condition of the issuance of any operating permit required by the Commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by any ***authorized officer of the Department*** at any time during the holder's hours of operation without prior notice. This condition must be stated on each application form and operating permit.
2. If a source of air contaminant exists or is constructed or operated without an operating permit, such an officer may inspect it at any reasonable time, and may enter any premises to search for such a source. If entry is refused, or before attempting to enter, such an officer may apply to any magistrate for a search warrant. The magistrate shall issue the warrant if the magistrate believes from the supporting affidavit or affidavits that there is probable cause to believe that a source of air contaminant exists or is being constructed or operated on the premises to be searched.

(emphasis added). Under NRS 445B.125, "Department" means ***the State Department of Conservation and Natural Resources*** (emphasis added).

Here, DES is the Department of Environment and Sustainability, for Clark County. This is not the same Department or the meaning of the term "Department" in NRS 445B.580.

Alternatively, even if NRS 445B.580 did apply, DES is still held to the same condition precedent. NRS 445B.240 (Power of representatives of Department to enter and inspect premises), states:

1. Any duly authorized officer, employee or representative ***of the Department*** may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time ***for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640,***<sup>4</sup> inclusive, and rules and regulations in force pursuant thereto.
2. No person shall:

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<sup>4</sup> This includes NRS 445B.580.

(a) Refuse entry or access to any authorized representative of the Department who *requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.*

(b) Obstruct, hamper or interfere with any such inspection.

3. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

NRS 445B.240 (emphasis added).

Again, on January 8 and 9, 2024, Canduella Rowsell and/or Katrinka Byers appeared at the Property, wanting to perform an “inspection.”. Similarly, on or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an “inspection.” On January 8/9, 2024, Rowsell and/or Byers appeared at the Property, but did not request to enter the Property. Similarly, on January 9, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, but did not request to enter the Property. Further, at no time on any of these dates (or before) did any of the individuals purportedly from the County ever present or attempt to present any credentials, showing that they were officers with Air Quality. Exhibit 7, Declaration of Mitchell Truman.

On information and belief, these individuals do not possess appropriate credentials that would verify that they are inspectors for Air Quality. Appropriate credentials would be a badge, with a name, photograph, credential number, department, affiliation, chip, and an indication of the person’s authority. *See e.g., Exhibit 8, Federal EPA Inspector Credentials.* On or about August 28, 2024, Rowsell or Crandall were asked for their Credentials, to which they showed a card to obtain access to an office somewhere not on the Property.

Thus, DES has failed to meet the conditions precedent, set forth in NRS 445B.240 and NRS 445B.580 (as well as AQR 4.1(d)(1)), and therefore, cannot prevail on Violation 2.

Further, even if the permit was signed, allowing a DES worker on the property, Respondent is required by federal regulations to maintain security on the property, which is superior to state law. *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 472, 133 S. Ct. 2466, 2468 (2013) (Under the Supremacy Clause, U. S. Const. art. VI, cl. 2, state laws that require a private party to violate federal law are preempted and, thus, are without effect.)<sup>5</sup> The Railroad Co. is required to maintain a Security Plan by the U.S. Department of Transportation. *See* Exhibit 24, DOT, Security Requirements.<sup>6</sup> Pursuant to the security requirements, the Railroad Co. maintains a Security Plan. Exhibit 25, Security Plan. As part of the security plan, the Railroad Co. is responsible to check any suspicious activity, which includes Fake IDs and badges. *Id.* Therefore, the Railroad Co. checks all persons coming into the property, as it is required to do so.

During the dates in interest, Canduella Rowsell, Noel Crandall, and/or Katrinka Byers were trespassing, as they merely entered the Property. Clearly marked on the Property was a sign that all visitors must sign in to enter the Property. As explained previously in their response, these people did not request to enter the Property.

***C. AQR is not consistent with a state-wide program***

Again, the Court in the *Association of American Railroads*, 622 F.3d at 1098, required *statewide plans and statewide implementation plan*. DES fails to show that the AQR is a statewide program. Instead, DES states that Respondents' arguments seem to be based on a fundamental misunderstanding of the Clean Air Act, its regulations, Nevada's state implementation Plan, the NRS, the NAC, and the AQRs. However, statewide implementation plan, as required in *Association of American Railroads* is pretty clear, and DES fails to properly

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<sup>5</sup> The Supremacy Clause, found in Article VI, paragraph 2 of the U.S. Constitution, establishes that federal law takes precedence over state law when the two laws conflict. This means that federal law can preempt state law, either expressly or impliedly.

<sup>6</sup> DOT HM-232

respond after Respondents showed that the AQR and NRS do not hold the same standards or that the standards are implemented evenly. Further, DES fails to show how the AQR does not unreasonably burden or interfere with Interstate Commerce. Rather, DES states that it will respond at the time of the hearing. However, this, again, does not afford Respondents Due Process. Proper notice is necessary from a government entity. DES cannot hold a trial by ambush.

### **CONCLUSION**

For the reasons started herein, Respondents request that DES take nothing by way of the violations, or alternatively, that this matter be removed to State Court to make certain determinations.

DATED this 21<sup>st</sup> day of October, 2024.

JOHNSON & GUBLER, P.C.

*/s/ Russell G. Gubler*

---

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*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2024, I caused to be sent a true and correct copy of the foregoing REPLY IN SUPPORT OF RESPONSE TO NOTICE OF VIOLATION #9994 AND #10078 via electronic mail, as indicated, to the following parties:

Pam Thompson  
aqenforcement@clarkcountynv.gov

Catherine Jorgenson  
Catherine.Jorgenson@clarkcountyda.com

*/s/ Russell G. Gubler*

---

An Employee of Johnson & Gubler, P.C.



# EXHIBIT 20

**AGREEMENT TO CONVEY EASEMENT**

(13)

THIS AGREEMENT TO CONVEY EASEMENT (hereinafter referred to as "Agreement") is made and executed by and between PAN WESTERN CORPORATION, having its principal office at 4755 West University Avenue, Las Vegas, Nevada, hereinafter referred to as ("PWC"), and LAS VEGAS PAVING CORPORATION, having its principal office at 4420 S. Decatur Boulevard, Las Vegas, Nevada, hereinafter referred to as ("LVP").

**WITNESSETH:**

WHEREAS, PWC currently owns certain real property located in Clark county, Nevada (the legal description and assessor's parcel map of which are attached hereto as Exhibit "A" and "B", respectively, and made a part hereof and hereinafter referred to as "PWC's property"); and

WHEREAS, PWC has applied with Union Pacific Railroad, and has received the right to construct a railroad spur on PWC's property from the main railroad line, the construction thereof which is intended to begin in the near future, and a diagram thereof is attached hereto as Exhibit "C" and made a part hereof; and

WHEREAS, LVP currently owns certain real property contiguous with PWC's property (the legal description and assessor's parcel map of which are attached hereto as Exhibit "D" and "E", respectively, and made a part hereof, hereinafter referred to as "LVP's property"), and is desirous to, at some point in time in the future, connect to and continue from on LVP's property that portion of the railroad spur to be constructed by PWC (being at the common property boundary found at Point C on Exhibit "C"), and thereafter, to commonly use with PWC that portion of PWC's railroad spur to exist from the parties' common property line to the main line of Union Pacific Railroad (found at points AC on Exhibit "C").

NOW THEREFORE, in consideration of the sum of One Hundred Eighty Three Thousand Two Hundred Eighty Seven (\$183,287.00) Dollars, and other

consideration as hereinafter provided and reserved, and the mutual covenants, conditions and promises of the parties as herein stated, the parties hereto agree as follows:

1. PWC hereby agrees to grant and convey to LVP a permanent easement and right of way to use as means of ingress and egress to and from LVP's property and the Union Pacific main line, a certain portion of the railroad spur to be constructed and located on PWC's property, the same being more particularly described as that portion of PWC's railroad spur to be constructed and designated as Points AC on Exhibit "C", attached hereto and made a part hereof. A copy of the Grant of Permanent Easement to be executed shall be substantially in the form as is set forth in Exhibit "F", attached hereto and made a part hereof.

2. The approximate location of the railroad spur to be constructed by PWC that will be subject to the easement as set forth in this Agreement is indicated as Points AC on Exhibit "C", attached hereto and made a part hereof. It is presently intended that Point C shall exist at the common boundary of the parties' respective real properties. However, the exact location of the railroad spur, and thus the easement and right of way, will solely be determined by PWC in its placement of the railroad spur.

3. Except as otherwise provided in this Agreement, the easements and right of ways herein declared are easements and right of ways appurtenant and shall run with the land, touch and concern the same and are intended to both benefit and burden the land subject thereto. Except as otherwise provided in the Agreement, the easements and right of ways herein declared shall continue perpetually without limitation, defeat, diminution, or discharge, by lapse of time, change of ownership of the parcels, change of use of any parcel, or increase in extent of use burden.

4. Unless otherwise stated in this Agreement, all notices or demands in this Agreement provided, to be given by either party hereto to the other, shall be deemed to have been fully given when made in writing and (1) personally delivered, or (2)

deposited in the United States Mail, registered or certified, and postage prepaid,  
and addressed as follows:

To PWC: PAN WESTERN CORPORATION  
Attn: Mitchell Truman  
4755 West University Avenue  
Las Vegas, Nevada 89103

To LVP: LAS VEGAS PAVING CORPORATION  
Attn: Robert Mendenhall  
4420 South Decatur Boulevard  
Las Vegas, Nevada 89103

The address to which any notice or demand may be given to any party, may be changed from time to time by written notice given by such party as above provided.

5. If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.

6. Time is of the essence of this Agreement, and of each and every covenant, term, condition, and provision hereof.

7. In the event any section, paragraph, sentence, or clause of this Agreement is held invalid or unenforceable for any reason, then such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement.

8. This Agreement may not be modified, amended, or changed, except by a writing specifying the modification, amendment, or change which is signed by all of the parties hereto.

9. This Agreement contains the entire understanding of the parties hereto, and there are no warranties, representations, or covenants other than those expressly set forth herein.

10. The parties hereto acknowledge ample opportunity and time to consult independent legal counsel in connection with the negotiation and execution of the Agreement.

11. This Agreement is governed by the laws of the State of Nevada.

12. The (a) waiver of any terms, covenant, or condition of this Agreement; or (b) waiver of any breach of any term, covenant, or condition contained therein; or (c) failure of either party to take action with respect to any breach of the other of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of such term, covenant, or condition, nor shall it be deemed a waiver of any subsequent default under the same or any other term, covenant, or condition, unless it is specified in writing and signed by the waiving party.

13. This Agreement shall, subject to the provisions as to assignment and transfer, bind and inure to the respective assigns, successors, heirs and personal representatives of the parties hereto, and to all those who may now and hereafter claim either through or under them.

14. This Agreement has been mutually prepared by the parties hereto, and may be executed in duplicate originals, the same of which shall be signed by all parties hereto, each of which shall be deemed an original, but all of which shall constitute one instrument.

15. This Agreement shall be recorded.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date and year set below their respective names.

PAN WESTERN CORPORATION

By



RICHARD TRUMAN, PRESIDENT

Dated: Feb 10, 1997

LAS VEGAS PAVING CORP.

By



ROBERT L. MENDENHALL,  
PRESIDENT

Dated: March 2, 1997

[illegible]

RICHARD



**STATE OF NEVADA** )  
 ) SS.  
**COUNTY OF CLARK** )

Frank J. Lyons  
Notary Public in and for Said County and State





### GRANT OF PERMANENT EASEMENT

PAN WESTERN CORPORATION, a Nevada Corporation, having its principal office at 4755 West University Avenue, Las Vegas, Nevada, hereinafter referred to as ("Grantor"), for and in consideration of the sum of Ten (\$10.00) Dollars, and other valuable consideration, receipt of which is acknowledged, does hereby grant to LAS VEGAS PAVING CORPORATION, a Nevada Corporation, having its principal office at 4420 South Decatur Boulevard, Las Vegas, Nevada, hereinafter referred to as ("Grantee"), a permanent easement to use as means of ingress and egress to and from Grantee's real property (legally described at Exhibit "A", attached hereto and made a part hereof and hereinafter referred to as ("Grantee's Property"), the same being APN: 520-530-016 and the Union Pacific Railroad main line, a certain portion of the railroad spur located on Grantor's real property (legally described at Exhibit "B", attached hereto and made a part hereof and hereinafter referred to as ("Grantor's Property"), the same being APN: 520-520-002, the same being more particularly described as that portion of grantor's railroad spur designated as Points AC on Exhibit "C", attached hereto and made a part hereof.

This Grant of Permanent Easement is conditioned upon the following:

1. The term "means of ingress and egress" shall mean the ability of Grantee to transport railroad cars on and over that portion of grantor's railroad spur subject to this easement (the same being Points AC on Exhibit "C") to and from the main line of Union Pacific Railroad.

Unless otherwise provided herein, Grantee shall have no other right of ingress and egress over Grantor's Property, it being the clear intent and understanding of Grantor and Grantee hereto that in order for Grantee to effectively use the grant of easement, that Grantee will be required to connect to and continue from the end of Grantor's railroad spur (the same being Point C on Exhibit "C", which is the common boundary of the parties) their own spur on

Grantee's Property, in order to load and unload railroad cars. Grantee shall have no right to load or unload any railroad cars from Grantor's Property.

2. Grantee, or its assigns, shall in no way cause or allow, directly or indirectly, any third party to transport railroad cars over the easement created herein that have no direct relationship to the business affairs of Grantee, or its assigns.

3. The easement granted Grantee on the railroad spur as hereinabove described, shall not be an exclusive right to use the same. Grantee shall use said rights commonly with Grantor, and with due regard to the unencumbered rights of Grantor to use the same. Grantee shall not use the railroad spur in any way that will impair the rights of Grantor to use it, nor shall Grantor use the railroad spur in any way that will impair the rights of Grantee to use it, nor shall either obstruct, directly or indirectly, the other's passage thereon. Grantor shall maintain specific right to transport on or over the easement along Grantor's North property line.

4. Grantor and Grantee shall share one-half the costs and expenses of maintaining the above-described easement (including the switch at Point B on Exhibit "C" attached hereto) in good repair throughout the term of the easement. Grantor and Grantee, their successors and assigns, understand and agree that each shall be responsible to pay his proportionate share of any and all costs associated with the installation of a automated railroad crossing if and when requested to be installed by the Union Pacific Railroad.

5. Grantee shall in no way cause or allow the Easement to be used for any unlawful purpose, and shall comply with all city, county, state and/or federal laws, rules and/or regulations respecting its use and the materials to be transported on and over said railroad spur. Grantee shall not cause or allow directly or indirectly, any form of hazardous materials or waste to be transported on or over the easement, other than those which may be deemed necessary and essential to the general business enterprise of Grantee. Any form of spillage of any materials or waste whatsoever on, over or around the easement and/or Grantor's Property by Grantee (or its agents, employees, servants, visitors, invitees or otherwise), shall be the sole

responsibility of Grantee to clean up and to assume the same in total, holding grantor harmless therefrom, and to indemnify Grantor for any costs, expenses or loss accruing therefrom. Grantee shall have the right of ingress and egress over Grantor's Property, subject to Grantor's consent, to perform the promises, covenants and conditions set forth in the Paragraph 5.

6. Grantor shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Grantee or by any person whosoever that may, at any time, be using or occupying or visiting the easement and/or Grantor's Property, or be in or about the same, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of, any act, omission, or negligence of Grantee (its agents, employees, servants, visitors, invitees or otherwise), or of any occupant, subtenant, visitor, or user of any portion of the easement or Grantor's property, or shall result from or be caused by any other matter or thing, whether of the same kind or of a different kind, than the matters or things above set forth, and Grantee shall indemnify Grantor for and/or against all claims, liability, loss or damage whatsoever, on account of such loss, injury, death or damage. The preceding sentence shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of Grantor, its agents, employees or servants.

7. Grantee shall, at a minimum, and at all times maintain in effect throughout the term of the easement, personal injury liability insurance covering Grantor's property (its improvements and appurtenances thereto and thereon) within a distance of 50 feet each direction from the centerline of the easement, in the amount of One Million Dollars (\$1,000,000.00), for injury to, or the death of, any one person, and One Million Dollars (\$1,000,000.00), for injury to, or the death of, any number of persons in one occurrence, and property damage liability insurance in the amount of One Million Dollars (\$1,000,000.00). Such insurance shall specifically insure Grantee against all liability assumed by it hereunder, as well as liability imposed by law, and shall insure both Grantor and Grantee, but shall be so

endorsed as to create the same liability on the part of the insurer, as though separate policies had been written for Grantor and Grantee.

The policies of insurance referred to in this paragraph shall be written in a form satisfactory to Grantor and by insurance companies satisfactory to Grantor, such satisfaction not to be unreasonably withheld. Grantee shall pay all of the premiums therefor and deliver such policies, or certificates thereon, to Grantor, and in the event of failure of Grantee either to effect such insurance in the names herein called for, or to pay the premiums therefor or to deliver such policies, or certificates thereof, to Grantor, Grantor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable immediately to Grantor. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Grantor, that it will give to Grantor thirty (30) days written notice before the policy or policies in question shall be altered or canceled. Grantor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by Grantee.

In the event that either Grantor or Grantee shall at any time deem the limits of the personal injury or property damage, public liability insurance then carried to be either excessive or insufficient, the Grantor and Grantee shall endeavor to agree on the proper and reasonable limits for such insurance then to be carried and such insurance shall thereafter be carried with the limits thus agreed on.

8. Except as otherwise provided in this Grant of Permanent Easement, the easements and right of ways herein declared are easements and right of ways appurtenant and shall run with the land, touch and concern the same and are intended to both benefit and burden the land subject thereto.

9. Except as otherwise provided in this Grant of Permanent Easement, the easements and right of ways herein declared shall continue perpetually without limitation, defeat, diminution, or discharge, by lapse of time, change of ownership of the parcels, change of use of any parcel, or increase in extent of use burden.

10. Occurrence of any of the following events shall constitute a default hereunder:

- a. Delay in, nonperformance or failure of Grantee in keeping or performing any of the terms and conditions of this Grant of Permanent Easement;
- b. Failure in, or suspension of, business by Grantee for any reason; or
- c. Insolvency or bankruptcy of Grantee from any cause whatsoever.

11. A default on the part of Grantee as set forth in paragraph 10, for fifteen (15) days after notice from Grantor to Grantee, shall entitle Grantor, at Grantor's option, to declare, without further notice, this Grant of Permanent Easement, and all rights hereunder, terminated.

12. If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Grant of Permanent Easement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.

13. All remedies hereinbefore and hereafter conferred on Grantor shall be deemed cumulative, and no one is exclusive of the other or of any other remedy conferred by law.

14. Unless otherwise stated herein, all notice or demands in this Grant of Permanent Easement provided, to be given by either Grantor or Grantee to the other, shall be deemed to have been fully given when made in writing and (1) personally delivered, or (2) deposited in the United States Mail, registered or certified, and postage prepaid, and addressed as follows:

To Grantor: PAN WESTERN CORPORATION  
Attn: Richard Truman  
4755 West University Avenue  
Las Vegas, Nevada 89103

To Grantee: LAS VEGAS PAVING CORPORATION  
Attn: Robert L. Mendenhall  
4420 S. Decatur Boulevard  
Las Vegas, Nevada 89103

The address to which any notice or demand may be given to any party, may be changed from time to time by written notice given by such party as above provided.

15. The (a) waiver of any terms, covenant, or condition contained herein; or (b) waiver of any breach of any term, covenant, or condition contained herein; or (c) failure of either party to take action with respect to any breach of the other of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of such term, covenant, or condition, nor shall it be deemed a waiver of any subsequent default under the same or any other term, covenant, or condition, unless it is specified in writing and signed by the waiving party.

16. This Grant of Permanent Easement shall, subject to the provisions as to assignment and transfer, bind and inure to the respective assigns, successors, heirs and personal representative of Grantor and Grantee, and to all those who may now and hereafter claim either through or under them.

17. The rights hereunder granted are subject to any reservations, restrictions and conditions if any, rights of way, easements or other encumbrances of record or in any way existing on Grantor's Property.

WITNESS my hand this 10<sup>th</sup> day of February, 1997

PAN WESTERN CORPORATION

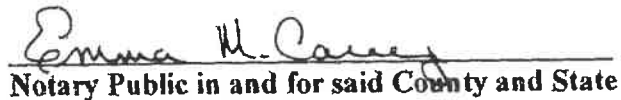
By

Richard Truman

RICHARD TRUMAN, PRESIDENT

STATE OF NEVADA )  
 ) SS.  
COUNTY OF CLARK )

RICHARD



**LAS VEGAS PAVING CORPORATION**  
**4420 South Decatur Boulevard**  
**Las Vegas, Nevada 89103**

FEE: 19.00 RPTT: 678 .00





*Debbie Conway*  
**RECORDER**

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

**Instrument Number: 199703060001677**

# EXHIBIT 21

**Licensing Agreement**

**THIS LICENSING AGREEMENT (the "Agreement") dated this 6th day of March, 2008**

**BETWEEN:**

Las Vegas Paving Corporaton of 4420 S Decatur Blvd, Las Vegas, NV 89103  
(the "Licensor")

**OF THE FIRST PART**

**- AND -**

Tonopah & Tidewater Railroad Company of 4755 Donovan Way, North Las Vegas,  
NV 89081 (the "Licensee")

**OF THE SECOND PART**

(individually the "Party" and collectively the "Parties")

**IN CONSIDERATION OF** the Licensee paying the License Fee to the Licensor, the receipt and sufficiency of which consideration is hereby acknowledged, the Licensor grants the License to the Licensee on the following terms:

**Licensed Intellectual Property**

1. The Licensor owns and is granting to the Licensee the right to use the following licensed property (the "Property"): Railroad right of way across described property with a APN of 123-31-302-001.

**Grant of License**

2. The Licensor grants to the Licensee an exclusive license to use the Property (the "License"), from March 6th , 2008 until one of the Parties provides to the other Party 60 days' written notice to terminate the Agreement (such period, the "Term").

**Permitted Use**

3. The Licensee is permitted to use the Property in the following way: Operate a industrial railroad on the property.

4. The Licensee may not modify or change the Property in any way.

**License Fee**

5. The Licensee will pay the Licensors a license fee (the "License Fee") composed of:
  - a. California Portland Cement will pay Las Vegas, Paving \$50,000.00 (Fifty Thousand Dollars) every month for rent on behalf of Tonopah & Tidewater Railroad company..

**Payment Details**

6. The License Fee will be paid by check.

**Assignment**

7. The Licensee shall not allow others to use the Property and shall not use the Property in a way that allows others to use the Property except in accordance with this Agreement.
8. The Licensee may not assign or transfer the Agreement or any rights granted within without the prior written consent of the Licensors, and any attempted assignment or delegation without such consent will be void.

**Sublicensing**

9. The Licensee may not sublicense the Property or any rights granted in this Agreement without the prior written consent of the Licensors, and any attempted sublicense without such consent will be void.

**Warranties**

10. The Property is provided "as is" to the Licensee. The Licensors, and its officers, employees, agents and suppliers, do not provide any warranty, whether express or implied, as to the Property.

**Liability & Indemnity**

11. The Licensors will not be liable for any third party claims, losses, damages, liabilities, penalties, punitive damages, expenses, legal fees or costs of any kind or amount whatsoever resulting from the Licensee's use of the Property.
12. The Licensee agrees to defend, indemnify and hold harmless the Licensors and its officers, employees, agents and suppliers against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or

amount whatsoever resulting from or arising out of the use of the Property by the Licensee, or its officers, employees, agents or suppliers, or the Licensee's breach of this Agreement.

**Termination**

13. This Licensor shall have the option to terminate the Agreement immediately upon the failure of the Licensee to comply with the terms and conditions herein.
14. The Licensor reserves the right to cancel this Agreement immediately:
  - a. if the Licensee fails to make a payment when due; or
  - b. in the event of the Licensee's insolvency or bankruptcy.
15. The Licensor reserves the right to discontinue the License and terminate the Agreement immediately, as well as to commence legal proceedings, if any copyright infringement has taken place due to the Licensee's unauthorized use of the Property.
16. Upon expiry or termination of this Agreement, the Licensee shall immediately discontinue the use of the Property and, where applicable, shall return all Property, as per the instructions of the Licensor.

**Default**

17. Notwithstanding anything to the contrary in this Agreement, if the Licensee defaults in the performance of any obligation under this Agreement, then the Licensor may declare the entire amount owing under this Agreement calculated at the time of default to be immediately due and payable.

**Property Rights**

18. The Licensor retains ownership of the Property.
19. The Property shall not be copied, published, or used in any way except as provided for in this Agreement.
20. The Licensee shall not falsely represent that they are the original creator of the Property.

**Confidentiality**

21. Any Confidential Information exchanged between the Parties will not be shared or disclosed to any person except with prior, written consent of the other Party, or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.
22. Confidential information refers to any data or information relating to the Party, whether business or personal, which would reasonably be considered to be private or proprietary to the Party and that is not generally known and where the release of that confidential information could reasonably be expected to cause harm to the Party, and includes trade secrets, moral rights, goodwill, copyrights, patents, trademarks, know-how, research, drawings, plans, designs, standards, specifications, and methods ("Confidential Information").
23. Confidential Information does not include: information that is available to the public other than through the Licensee's actions or inactions; information that is rightfully received from a third party, legally in possession of it; and information that is independently developed by the Licensee without the use of the Confidential Information.

#### **General Provisions**

24. If there is a conflict between any provision of this Agreement and the applicable legislation of the United States (the "Act"), the Act will prevail and such provision of the Agreement will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement.
25. If any terms or provisions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected and each unaffected term and provision will remain in full force and effect.
26. This Agreement will be governed by and construed in accordance with the laws of the State of Nevada, without regard to the jurisdiction in which any action may be instituted. The Licensee agrees to submit to the jurisdiction of the courts of Nevada to bring any action or for the enforcement of this Agreement. Notwithstanding, the Licensor reserves the right to commence legal action to obtain injunctive relief in any court of competent jurisdiction.
27. The Agreement will inure to the benefit and be binding upon the Licensor and the Licensee and their respective successors and assigns.

28. This Agreement constitutes the entire agreement between the Licensor and the Licensee with respect to the subject matter hereof and there are no further items or provisions, either oral or otherwise.
29. The provisions contained in this Agreement cannot be changed except by the signed and delivered written consent of both Parties.
30. Headings are inserted for convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
31. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
32. All monetary amounts in this Agreement refer to the United States dollar (USD), and all payments required to be paid under this Agreement will be paid in USD unless the Parties agree otherwise in writing.
33. Time is of the essence in this Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Licensing Agreement on this 6th day of March 2008.

Connie Smith  
(Witness)

Las Vegas Paving Corporation (Licensor)

By [Signature]

Connie Smith  
(Witness)

Tonopah & Tidewater Railroad Company  
(Licensee)

By Mr. J. [Signature]





# EXHIBIT 22

**Purchase Agreement**

**THIS PURCHASE AGREEMENT (the "Agreement") dated this 10th day of October, 2010**

**BETWEEN:**

Pan Western Corporation of 4910 Donovan Way, North Las Vegas, NV 89081, USA  
( the "Seller")

OF THE FIRST PART

- AND -

Tonopah & Tidewater of 4910 Donovan Way, North Las Vegas, NV 89081, USA  
( the "Buyer")

OF THE SECOND PART

**IN CONSIDERATION OF THE COVENANTS and agreements contained in this Purchase Agreement the parties to this Agreement agree as follows:**

**Sale of Goods**

1. The Seller will sell, transfer and deliver to the Buyer the following goods on or before October 15, 2010 (the "Goods"):
  - 28,090 feet of 135 pound rail, 2,340 #1 railroad ties, 4,680 tie plates, 18,726 spikes, 14 spring loaded switches, and 12 #2 frogs,

**Purchase Price**

2. The Buyer will accept the Goods and pay for the Goods with the sum of \$750,000.00 (USD) (the "Purchase Price"), paid by intercompany transfer as required in clause 5 of this Agreement.
3. The Seller and the Buyer both acknowledge the sufficiency of this consideration. In addition to the Purchase Price specified in this Agreement, the amount of any present or future use, excise, or similar tax applicable to the sale of the Goods will be paid by the Buyer, or alternatively, the Buyer will provide the Seller with a tax exemption certificate acceptable to the applicable taxing authorities.

4. The Purchase Price is inclusive of sales tax, and is payable by the Buyer unless the Buyer provides the Seller with a tax exemption certificate acceptable to the applicable taxing authorities, in which case the amount of sales tax will be subtracted from the Purchase Price payable by the Buyer.

**Payment**

5. The Buyer will make payment for the Goods at the time when, and at the place where, the Goods are received by the Buyer or, in the alternative, when any document of title or registrable bill of sale, bearing any necessary endorsement, is tendered to the Buyer.

**Delivery of Goods**

6. The Goods will be delivered to Items to be left on site. The Seller agrees to furnish the facilities and at its cost to load the Goods on trucks furnished by the Buyer. The method of shipment will be within the discretion of the Buyer. However, the Seller will only be responsible for the lesser of truck freight or rail freight to the Buyer.

**Risk of Loss**

7. Risk of loss will be on the Buyer from the time of delivery to the carrier. The Buyer will provide, at its expense, insurance on the Goods insuring the Seller's and the Buyer's interest as they appear, until payment in full to the Seller.

**Warranties**

8. THE GOODS ARE SOLD 'AS IS' AND THE SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Seller does not assume, or authorize any other person to assume on the behalf of the Seller, any liability in connection with the sale of the Goods. The Seller's above disclaimer of warranties does not, in any way, affect the terms of any applicable warranties from the manufacturer of the Goods.
9. The Buyer has been given the opportunity to inspect the Goods or to have it inspected and the Buyer has accepted the Goods in its existing condition. Further, the Seller disclaims any warranty as to the condition of the Goods.

**Title**

10. Title to the Goods will remain with the Seller until delivery and actual receipt of the Goods by the Buyer or, in the alternative, the Seller delivers a document of title or registrable bill of sale of the Goods, bearing any necessary endorsement, to the Buyer.

**Security Interest**

11. The Seller retains a security interest in the Goods until paid in full.

**Inspection**

12. Inspection will be made by the Buyer at the time and place of delivery.
13. Any refund will not include costs of delivery or installation/de-installation. Those costs will be borne by the Buyer.

**Claims**

14. The Buyer's failure to give notice of any claim within 10 days from the date of delivery will constitute an unqualified acceptance of the Goods and a waiver by the Buyer of all claims with respect to the Goods.

**Excuse for Delay or Failure to Perform**

15. The Seller will not be liable in any way for any delay, non-delivery or default in shipment due to labor disputes, transportation shortage, delays in receipt of material, priorities, fires, accidents and other causes beyond the control of the Seller or its suppliers. If the Seller, in its sole judgment, will be prevented directly or indirectly, on account of any cause beyond its control, from delivering the Goods at the time specified or within one month after the date of this Agreement, then the Seller will have the right to terminate this Agreement by notice in writing to the Buyer, which notice will be accompanied by full refund of all sums paid by the Buyer pursuant to this Agreement. In all other cases, if the Seller fails to deliver the Goods to the Buyer within the time and manner specified in this Agreement, the Buyer may provide written notice of the default to the Seller. If within seven (7) days of the notice being received, or within such other time period as agreed to by the parties, the default is not corrected, the Buyer may immediately terminate this Agreement.

**Remedies**

16. The Buyer's exclusive remedy and the Seller's limit of liability for any and all losses or damages resulting from defective goods or from any other cause will be for the Purchase Price of the particular delivery with respect to which losses or damages are claimed, plus any transportation charges actually paid by the Buyer.

**Cancellation**

17. The Seller reserves the right to cancel this Agreement:

- a. if the Buyer fails to pay for any shipment when due;
- b. in the event of the Buyer's insolvency or bankruptcy; or
- c. if the Seller deems that its prospect of payment is impaired.

**Notices**

18. Any notice to be given or document to be delivered to either the Seller or Buyer pursuant to this Agreement will be sufficient if delivered personally or sent by prepaid registered mail to the address specified below. Any written notice or delivery of documents will have been given, made and received on the day of delivery if delivered personally, or on the third (3rd) consecutive business day next following the date of mailing if sent by prepaid registered mail:

**SELLER:**

- Pan Western Corporation of 4910 Donovan Way, North Las Vegas, NV 89081, USA

**BUYER:**

- Tonopah & Tidewater of 4910 Donovan Way, North Las Vegas, NV 89081, USA

**General Provisions**

19. Headings are inserted for convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
20. All representations and warranties of the Seller contained in this Agreement will survive the closing of this Agreement.
21. Either party to this Agreement may assign its rights under this Agreement, but the assignment will not change the duty of either party, increase the burden or risk involved, or impair the chances of obtaining the performance of the Agreement. However, no obligation for performance imposed on either party by this Agreement may be delegated to any other person without the prior written consent of the other party. Each party has a substantial interest in having the other party perform or control the acts required by this Agreement.

22. This Agreement cannot be modified in any way except in writing signed by all the parties to this Agreement.
23. This Agreement will be governed by and construed in accordance with the laws of the State of Nevada, including the Nevada Uniform Commercial Code and the Seller and the Buyer hereby attorn to the jurisdiction of the Courts of the State of Nevada.
24. Except where otherwise stated in this Agreement, all terms employed in this Agreement will have the same definition as set forth in the Uniform Commercial Code in effect in the State of Nevada on the date of execution of this Agreement.
25. If any clause of this Agreement is held unconscionable by any court of competent jurisdiction, arbitration panel or other official finder of fact, the clause will be deleted from this Agreement and the balance of this Agreement will remain in full force and effect.
26. This Agreement will inure to the benefit of and be binding upon the Seller and the Buyer and their respective successors and assigns.
27. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
28. Time is of the essence in this Agreement.
29. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise. The Buyer acknowledges that it has not relied upon any representations of the Seller as to prospective performance of the Goods, but has relied upon its own inspection and investigation of the subject matter.

**IN WITNESS WHEREOF** the parties have executed this Purchase Agreement on this 10th day of October , 2010



Connie Smith

(Witness)

K. Kuman

Tonopah & Tidewater (Buyer)

Connie Smith

(Witness)

M. J. Jensen

Pan Western Corporation (Seller)

# EXHIBIT 23



# EXHIBIT 24

HAZARDOUS MATERIALS TRANSPORTATION

# SECURITY

REQUIREMENTS



U.S. Department of Transportation  
Pipeline and Hazardous Materials  
Safety Administration

## Hazardous Materials Transportation

### Enhanced Security Requirements

The Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for the safe and secure transportation of hazardous materials (hazmat). Hazmat is essential to the economy of the United States and the well-being of its people. Hazmat fuels our cars and trucks and heats and cools our homes and offices.

Hazmat is used in farming and medical applications as well as manufacturing, mining, and other industries. Every day millions of tons of hazmat are safely transported by air, train, truck, or vessel in quantities ranging from several ounces to thousands of gallons. In the wrong hands, however, hazmat can pose a significant security threat, particularly those that can be used as weapons of mass destruction. Addressing this security threat is vital to the safety of our citizens and security of our economy.

PHMSA, in consultation with the Transportation Security Administration of the Department of Homeland Security, published final rule HM-232F, titled *Risk-Based Adjustment of Transportation Security Plan Requirements* on March 9, 2010. This final rule modified the security plan requirements applicable to the commercial transportation of hazmat. Based on an evaluation of the security threats associated with specific types and quantities of hazmat considered to be "high consequence" if stolen and used for pernicious reasons, this final rule, effective 1 October 2010, narrows the list of materials subject to security plan requirements, thus reducing associated regulatory costs and paperwork.

This final rule also clarifies certain requirements related to security planning, training, and documentation. This information will assist you in managing the potential security risks associated with the transportation of hazmat in commerce, as well as identifying and understanding the recent changes to security plan requirements.





## Security Plans

You *must* develop and implement a security plan if you offer for transportation or transport the following types or quantities of hazmat. "Large bulk quantity" refers to a quantity greater than 3,000 kg., (6,614 lbs.,) for solids or 3,000 liters (792 gal.,) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container:

- Any quantity of a Division 1.1, 1.2, or 1.3 material;
- A quantity of a Division 1.4, 1.5, or 1.6 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;
- A large bulk quantity of Division 2.1 material;
- A large bulk quantity of Division 2.2 material with a subsidiary hazard of 5.1;
- Any quantity of a material poisonous by inhalation as defined in §171.8 of this subchapter;
- A large bulk quantity of a Class 3 material meeting the criteria for Packing Group I or II;
- A quantity of a desensitized explosive meeting the definition of a Division 4.1 or Class 3 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;
- A large bulk quantity of a Division 4.2 material meeting the criteria for Packing Group I or II;
- A quantity of a Division 4.3 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;





- A large bulk quantity of a Division 5.1 material in Packing Groups I and II: perchlorates; or ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions, suspensions, or gels;
- Any quantity of organic peroxide, Type B, liquid or solid, temperature controlled;
- A large bulk quantity of Division 6.1 material (for a material poisonous by inhalation see above);
- A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR Part 73 or the U.S. Department of Agriculture under 9 CFR Part 121;
- A quantity of uranium hexafluoride requiring placarding under §172.505(b);
- International Atomic Energy Agency (IAEA) Code of Conduct Category 1 and 2 materials including Highway Route Controlled quantities as defined in 49 CFR 173.403 or known as radionuclides in forms listed as RAM-QC by the Nuclear Regulatory Commission; and
- A large bulk quantity of Class 8 material meeting the criteria for Packing Group I.

At a minimum, your security plan *must* address *personnel security*, *unauthorized access*, and *en route security*, as well as include the following elements:

- An assessment of transportation security risks for shipments of hazmat listed in §172.800, including site- or location-specific risks associated with facilities where hazmat is prepared for transportation, stored, or unloaded; and measures to address the assessed risks;
- Name/job title of senior official responsible for developing/implementing the security plan;



- Specific security duties for each position/department responsible for implementing the plan, or a portion thereof, and the process of notifying employees when specific elements must be implemented;
- A plan for training hazmat employees in accordance with §172.704(a)(4) and (5);
- The security plan, including the transportation security risk assessment, must be in writing and retained as long as in effect;
- The security plan must be reviewed at least annually, and revised and/or updated as necessary;
- The security plan must be available to responsible employees—consistent with security clearance/background investigation/need-to-know;
- When updated/revised, the most current copies of the security plan must be maintained, and responsible employees must be notified; and
- Persons responsible for developing/implementing a security plan must maintain copies, including electronic, that are accessible at/through their place of business, or make available, upon request, to authorized officials of DOT or the Department of Homeland Security.

The following table provides a comparison listing of previous versus newly revised threshold levels of hazmat requiring a Security Plan, and specific ruling changes:

## Training

Each hazmat employee of a person/company required to have a security plan, who handles, performs a regulated function related to, or implements the security plan, *must* receive in-depth training that provides an awareness of the security risks associated with hazmat transportation and methods to enhance transportation security. This training should cover the following topics:

Hazard Class	Previous Threshold for Hazmat	
1.1	Any quantity	
1.2	Any quantity	
1.3	Any quantity	
1.4	A quantity requiring placarding	
1.5	A quantity requiring placarding	
1.6	A quantity requiring placarding	
2.1	A quantity requiring placarding	
2.2	A quantity requiring placarding	
2.3	Any quantity	
3	A quantity requiring placarding	
4.1	A quantity requiring placarding	
4.2	A quantity requiring placarding	
4.3	Any quantity	
5.1	A quantity requiring placarding	
5.2	Any quantity of organic peroxide, Type B, liquid or solid, temperature controlled, otherwise a placarded quantity	
6.1	Any quantity of PIH material otherwise a quantity requiring placarding	
6.2	Select agents	
7	Shipments requiring Yellow III label; highway route-controlled quantity	
8	A quantity requiring placarding	
9	Capacity >3,500 gallons for liquid/gas; volumetric capacity > 468 cubic feet for solids	

New Threshold for Hazmat	Ruling Change
Any quantity	None
Any quantity	None
Any quantity	None
A quantity requiring placarding in accordance with Subpart F of this Part	None
A quantity requiring placarding in accordance with Subpart F of this Part	None
A quantity requiring placarding in accordance with Subpart F of this Part	None
A large bulk quantity	Security plan not required for less than 3,000 L (792 gallons)
A large bulk quantity of materials with an oxidizer subsidiary	Security plan not required for less than 3,000 L (792 gallons) of materials with oxidizer subsidiary
Any quantity	None
PG I and II in a large bulk quantity; placarded quantity desensitized explosives	Security plan not required for PG III; or less than 3,000 L (792 gallons) PG I or II - except for desensitized explosives
A quantity of desensitized explosives requiring placarding in accordance with Subpart F of this Part	Security plan not required except for desensitized explosives in a placarded quantity
PG I and II in a large bulk quantity	Security plan not required for PG III, or less than 3,000 kg (6,614 lbs.) PG I or II
A quantity requiring placarding in accordance with Subpart F of this Part	None
Large bulk quantity of Division 5.1 materials in PG I and II, and PG III perchlorates, ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions or suspensions or gels in a large bulk quantity	Security plan not required for most PG III materials and PG I and II materials in less than a large bulk quantity 3,000 L (792 gallons)
Any quantity organic peroxide, Type B, liquid or solid, temperature controlled	Security plan only required for Type B, liquid or solid, temperature controlled, no longer required at placarded level for others
Any quantity PIH or a large bulk quantity of a material that is not a PIH	Security plan not required for less than 3,000 L (792 gallons) of a non-PIH material
Select agents	None
IAEA Categories 1 & 2; HRCQ; known radionuclides in forms listed as RAM-QC by NRC; or a quantity of uranium hexafluoride requiring placarding under §172.505(b)	Security plan only required for Class 7 materials that pose transportation security risk
PG I in a large bulk quantity	Security plan not required for PG II or III materials; and less than a large bulk quantity of a PG I
Not subject	Security plan not required for Class 9 materials



- Company security objectives;
- Organizational security structure;
- Specific security procedures, duties, and responsibilities for each employee;
- Specifics on how to recognize and respond to possible security threats; and
- Specific actions to be taken by each employee in the event of a security breach.

For in-depth security training required under §172.704 (a)(5) and (c)(2), a hazmat employee must be trained at least once every three years or, if the security plan for which training is required is revised during the three-year recurrent training cycle, within 90 days of implementation of the revised plan.

The following guidance—while not required by the HMR—should assist you in developing a security plan appropriate to your industry and operations. You may want to review your current security program and make any necessary adjustments to improve it.

#### **Begin with a Security Assessment**

To develop a security plan, you should begin with a security assessment. List the materials you handle, and identify those with the potential for use as a weapon or target of opportunity. Then, review your current activities and operations from a transportation security perspective. Ask yourself, “*What are we doing now? What could go wrong? What can we do differently?*” You can use a security-risk assessment model to identify risks and develop appropriate measures to reduce or eliminate them. The Risk Management Self-Evaluation Framework



Security Template found on PHMSA's hazmat safety homepage <http://phmsa.dot.gov/hazmat/risk/rmsef> utilizes the following steps:

- **Scoping** – determine the scope of operations that should be subject to security risk management. Identify the types of hazmat you handle and the modes of shipment used.
- **Knowledge of operations** – collect detailed information about your transportation operations: (1) quantities of material transported; (2) baseline security programs; (3) current security procedures; and (4) related safety programs and procedures.
- **Assessment** – analyze potential security threats and identify security risk control points. Risk control points are points in the transportation process where you can make an impact by improving procedures or operations.
- **Strategy** – rank or group security risks, prioritize opportunities for security risk reduction, and decide on preventative actions. Create a written document summarizing your decisions. This written document is your security plan.
- **Action** – implement your security plan.
- **Verification** – monitor implementation of your security plan.
- **Evaluation** – determine if goals are being met and compare your strategy and results with others in your field.





## Suggested Security Measures

At a minimum, a security plan *must* include the following elements: *personnel security*, *unauthorized access*, and *en route security*. The following are suggestions on how to address these required elements—not detailed in the HMR—that you may want to consider for inclusion in your security plan.

### Personnel Security

Be aware of the possibility that someone you hire may pose a potential security risk. You may want to establish a process to confirm applicant information, and check with former and current employers and personal references. Such confirmation must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy. Conversely, your employees can be one of your most critical assets as you endeavor to improve the security of your shipping or transportation operations. Under the new PHMSA security requirements, you must ensure your employees are familiar with your security plan and are properly trained in its implementation. Training should include company security objectives, specific security procedures, employee responsibilities, and organizational security structure. In addition, consider taking one or more of the following actions:

- Encourage your employees to report suspicious incidents or events.
- Implement routine security inspections.
- Convene regular employee/management meetings on security measures and awareness.





- Communicate with your staff using an *internal communication system* to provide information on facts, trends, and other security issues.

#### Unauthorized Access

Another security concern that must be addressed is access to hazmat in transportation and at your facility. You may consider using one or more of the following security measures to prevent unauthorized access:

- Establish partnerships with local law enforcement officials, emergency responders, and other public safety agencies with jurisdiction over your facility. Through such relationships, you can exchange information about threats, trends, and unsuccessful security programs.
- Request a review of your facility and security program by local law enforcement and fire safety officials, as applicable.
- Restrict the availability of information related to your facility and the materials you handle. Encourage authorities in possession of information regarding your facility to limit its disclosure on a need-to-know basis.
- Add security guards and increase off-hour patrols by private security personnel. Request that law enforcement personnel increase off-hour patrols.
- Check the adequacy of locks and other protective equipment. Consider equipping access gates with timed closure devices. Conduct frequent inspections.



- Install additional lights, alarm systems, or surveillance cameras.
- Restrict access to a single entry or gate.
- Secure hazmat in locked buildings or fenced areas. Institute a sign-out system for keys.
- Secure valves, manways, and other fixtures on transportation equipment when not in use. Lock all vehicle and delivery trailer doors when not in use. Secure all rail, truck, and intermodal containers when stored at your location.
- Use tamper-resistant or tamper-evident seals and locks on cargo compartment openings.
- Periodically inventory the quantity of hazmat you have on site in order to recognize if a theft has occurred.
- Keep records of security incidents. Review records to identify trends and potential vulnerabilities.
- Report any suspicious incidents or individuals to your local Federal Bureau of Investigation (FBI) office, and local law enforcement officials.

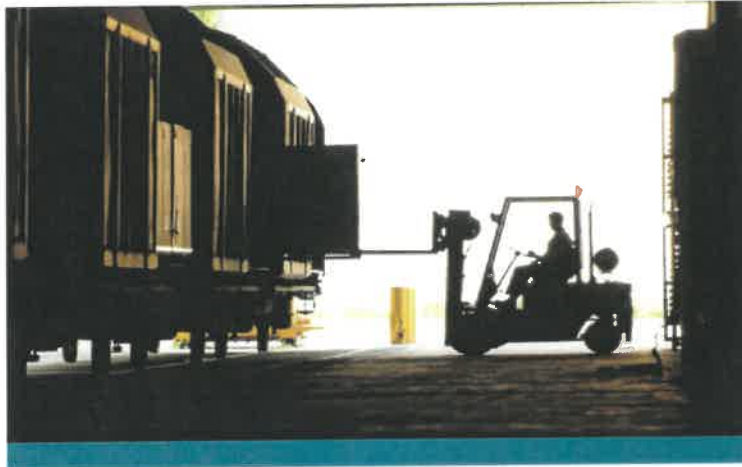
### En Route Security

Shippers and carriers should work together to assure the security of hazmat shipments en route from origin to destination. Shippers must assess the security of transportation modes or combinations of modes available for transporting specific materials and select the most appropriate method of transportation to ensure their efficient and secure movement.

Transportation security is a shared function. Security functions performed by shippers and carriers often overlap. Shippers and carriers are encouraged to consider implementing one or more of the following measures:



- Use carrier safety ratings, assessments, safety surveys, or audits, and ask the carrier to provide information on security measures it has implemented.
- Verify the carrier has an appropriate employee hiring/review process, including background checks, and an on-going security training program.
- Verify the identity of the carrier and/or driver prior to loading hazmat.
- Ask the driver for photo identification and a commercial driver's license for comparison with information provided by the carrier.
- Ask the driver to tell you the name of the consignee and the destination for the material and confirm with your records before releasing shipments.
- Identify preferred and alternative routing, including acceptable deviations.
- Strive to minimize product exposures to communities or populated areas, including downtown areas; avoid tunnels and bridges where possible; and expedite transportation of the shipment to its final destination.
- Minimize stops en route; if you must stop, select locations with adequate lighting on well-traveled roads, and check your vehicle after each stop to make sure nothing has been tampered with.
- Consider using two drivers or driver relays to minimize stops during the trip. Avoid layovers, particularly for high-hazard materials.
- Shippers and rail carriers should cooperate to assure the security of rail cars stored temporarily on leased tracks.



- If materials must be stored during transportation, make sure they are stored in secure facilities.
- Train drivers on how to avoid hijacking or stolen cargo; keep vehicles locked when parked and avoid casual conversations with strangers about cargo and routes.
- Consider whether a guard or escort for a specific shipment of hazmat is appropriate.
- Consider using advanced technology to track or protect shipments en route to their destinations. For example, you may wish to install tractor and trailer anti-theft devices or use satellite tracking or surveillance systems.
- Install tamper-proof seals on all valves, package, or container openings.
- Establish a communication system with transport vehicles and operators, including a crisis communication system with primary and back-up means of communication among the shipper, carrier, law enforcement, and emergency response officials.
- Implement a system for a customer to alert the shipper if a hazmat shipment is not received when expected.
- When products are delivered, check the carrier's identity with shipping documents provided by the shipper.
- Get to know your customers and their hazmat programs. If you suspect you have shipped or delivered hazmat to someone who may intend to use it for a criminal purpose, notify local law enforcement officials or your local FBI office.



- Report any suspicious incidents or individuals to local law enforcement officials or your local FBI office.

#### Additional Information

Up-to-date information is a key element of any security plan. You should consider methods to:

- Gather as much data as you can about your own operations and those of other businesses with similar product lines and transportation patterns;
- Develop a communications network to share best practices and lessons learned;
- Share information on security incidents to determine if there is a pattern of activities that, when considered in isolation are not significant, but when taken as a whole generate concern; and
- Revise your security plans as necessary to take into account changing circumstances and new information.

Any other person who has knowledge of the theft or loss of any explosive materials shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll-free number) and in writing to the nearest ATF office. Theft or loss shall be reported to appropriate local authorities.

## Federal Agencies

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### Pipeline and Hazardous Materials Safety Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Hazardous Materials Info-Line: 800-467-4922

### Publications and Reports

Fax: 202-366-7342;  
Telephone: 202-366-4900  
E-Mail: [training@dot.gov](mailto:training@dot.gov)  
<http://hazmat.dot.gov>

### Federal Aviation Administration

U.S. Department of Transportation  
800 Independence Avenue, SW., Washington, DC 20591  
Telephone: 1-866-TELL-FAA (1-866-835-5322)  
<http://www.faa.gov>

### Federal Motor Carrier Safety Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Telephone: 800-832-5660  
<http://www.fmcsa.dot.gov>

### Federal Railroad Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Telephone: 202-493-6024  
<http://www.fra.dot.gov>

### Bureau of Alcohol, Tobacco, Firearms and Explosives

Explosives Industry Programs Branch  
99 New York Avenue, NE, Room 6N-672  
Washington, DC 20226  
202-648-7120  
E-Mail: [EIPB@atf.gov](mailto:EIPB@atf.gov)  
<http://www.atf.gov/>

### Bureau of Alcohol, Tobacco, Firearms and Explosives

U.S. Bomb Data Center  
99 New York Avenue, NE, Room 8S-295  
Washington, DC 20226  
800-461-8841  
E-Mail: [USBDC@atf.gov](mailto:USBDC@atf.gov)  
<http://www.atf.gov/>



### **Transportation Security Administration**

601 South 12th Street  
Arlington, VA 20598  
Telephone: 866-289-9673  
<http://www.tsa.gov>

### **United States Coast Guard**

2100 Second Street, SW., STOP 7000  
Washington, DC 20593  
Telephone: 202-493-1713  
<http://www.uscg.mil>

## **Industry Associations/Organizations**

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### **American Chemistry Council**

700 Second Street, NE.  
Washington, DC 20002  
Telephone: 202-249-7000  
<http://www.americanchemistry.com>

### **American Petroleum Institute**

1220 L Street, NW.  
Washington, DC 20005  
Telephone: 202-682-8000  
<http://www.api.org>

### **American Society for Industrial Security**

1625 Prince Street  
Alexandria, VA, 22314  
Telephone: 703-519-6200  
<http://www.asisonline.org>

### **American Trucking Association**

950 North Glebe Road, Suite 210  
Arlington, VA 22203  
Telephone: 703-838-1700  
<http://www.truckline.com>



#### **Association of American Railroads**

425 Third Street, SW.  
Washington, DC 20024  
Telephone: 202-639-2100  
<http://www.aar.org>

#### **Center for Chemical Process Safety American Institute of Chemical Engineers**

3 Park Avenue  
New York, N.Y. 10016-5991  
Telephone: 212-591-7319  
<http://www.aiche.org/ccp>

#### **Chlorine Institute**

1300 Wilson Blvd, Suite 525  
Arlington, VA 22209  
Telephone: 703-894-4140  
<http://www.chlorineinstitute.org>

#### **Compressed Gas Association**

4221 Walney Road, 5th Floor  
Chantilly, VA 20151  
Telephone: 703-788-2700  
<http://www.cganet.com>

#### **The Fertilizer Institute**

425 Third Street SW, Suite 950  
Washington, DC 20024  
Telephone: 202-962-0490  
<http://www.tfi.org>

#### **Institute of Makers of Explosives**

1120 19th Street, Suite 310, NW.  
Washington, DC 20036  
Telephone: 202-429-9280  
<http://www.ime.org>

#### **National Association of Chemical Distributors**

1555 Wilson Blvd, Suite 700  
Arlington, VA 22209  
Telephone: 703-527-6223  
<http://www.nacd.com>

### **National Propane Gas Association**

1899 L Street NW, Suite 350,  
Washington, DC 20036  
Teléfono: 202-466-7200  
<http://www.npga.org>

### **National Tank Truck Carriers**

950 North Glebe Road, Suite #520  
Arlington, Virginia 22203-4183  
Telephone: 703-838-1960  
<http://www.tanktransport.com>

### **Security Industry Association**

635 Slaters Lane  
Alexandria, Virginia 22314  
Telephone: 866-817-8888  
<http://www.siaonline.org>

### **Synthetic Organic Chemical Manufacturers Association**

1850 M Street, NW, Suite 700  
Washington, DC 20036  
Telephone: 202-721-4100  
<http://www.socma.com>

## **Additional Security Requirement Resources**

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### **TSA Security Requirements**

[http://www.tsa.gov/travelers/airtravel/acceptable\\_documents.shtm](http://www.tsa.gov/travelers/airtravel/acceptable_documents.shtm)  
[http://www.tsa.gov/assets/pdf/cargo\\_final\\_rule\\_5-26-06.pdf](http://www.tsa.gov/assets/pdf/cargo_final_rule_5-26-06.pdf)

### **NRC Security Requirements:**

<http://www.nrc.gov/security/byproduct/orders.html>

### **NNSA Security:**

<http://nnsa.energy.gov/>

### **PHMSA Security:**

<http://www.phmsa.dot.gov/hazmat/security>

### **USCG Facility Requirements:**

<http://www.uscg.mil/hq/cg5/cg522/cg5222/>

PHH50-0124-0312

U.S. Department  
of Transportation  
Pipeline and  
Hazardous Materials  
Safety Administration



1200 New Jersey Avenue, SE, PHH-50  
Washington, DC 20590-0001

# EXHIBIT 25

# Tonopah & Tidewater Railraod

## SECURITY PLAN

### PURPOSE:

The purpose of this security plan is to ensure the safe and secure transfer of hazardous materials from the point of origin to the final destination.

### SCOPE:

The requirements of this rule requires all shippers and carriers subject to the Hazardous Materials Registration requirements found in 49 CFR Part 107 provide for:

- security vulnerability assessment (SVA)
- countermeasures with appropriate actions to address identified vulnerabilities
- security awareness training
- in-depth security training
- measures to confirm information on job applicants
- measures to address the risks of unauthorized access
- measures to address the risks of en route security

### STATEMENT OF COMPANY POLICY:

It is the policy of this company to comply with the requirements of 49 CFR 172 (HM-232) as it specifically pertains to the security requirements for shippers and carriers of hazardous materials. Our company is committed to ensuring the safety of all employees, the public and to prevent all security-related opportunities for theft or misuse of hazardous materials.

### SECURITY ASSESSMENT

Our company utilized the Asmark Security Vulnerability Assessment (ASVA) tool may be utilized to assess potential facility and transportation security risks for shipments of hazardous materials.

### SECURITY TRAINING

Security awareness training will be provided primarily through .....

In-depth security training will be conducted for all HazMat employees by providing each person with access to our written security plan. Training will be conducted by company management (or their appointed representative) and consist of the following:

- a review of the written plan,

- presentation of the security objectives of the company,
- presentation of the security procedures of the company,
- employee responsibilities,
- emergency actions and organizational structure

The Emergency Response Plan for this facility is updated at least annually and may be used to satisfy and document many of the requirements associated with the in-depth training.

### **RESPONSIBILITIES:**

The management of this company will ensure that all employees are provided with thorough security training. All employees will be trained and are expected to be familiar with the company's security plans and procedures.

List of general employee security responsibilities:

- Employees are responsible for adhering and conforming to all security-related work activities, processes, and procedures. In addition, employees are encouraged to provide feedback and suggestions on ways to improve the organization's security program.
- All employees are expected to understand and adhere to the following corporate suspicious activity reporting procedures. They are intended for all employees to follow in the event any unusual or suspicious activity that poses a threat to the safety of our employees and the security of our equipment, facilities, or hazardous materials cargo, is observed.
- The company will provide a work environment that is reasonably free of hazards and threats of violence which may cause damage to property or harm to people. It is also the company's policy to establish an effective and continuous safety and security program that incorporates educational and monitoring procedures. All supervisors and managers are responsible for ensuring that their employees are trained in appropriate security and suspicious activity reporting procedures.
- All employees have a responsibility to themselves and to the company to observe and report any suspicious or unusual activity that threatens safety or security.
- Employees are expected to use common sense and good judgment when assessing the threat potential of any suspicious activity. Depending on the given situation, employees will be expected to report any observed suspicious activity to their immediate supervisor, next level manager, the corporate safety director, or the local law enforcement official or fire department.

Suspicious activity is defined to include (but not limited to) any of the following situations:

- Unidentified person(s) attempting to gain access to property, equipment, or facilities.
- Unidentified person(s) in any area of the company, office, yard or parking lot.
- An employee, unescorted vendor, or supplier visiting a part of the company for no known reason.
- Fake ID Look for ID on Badge
- Any unescorted or unaccompanied visitor anywhere in the building or wondering around the yard or parking lot.

- Any person (employee or otherwise) who appears to be hiding something or is acting nervous, anxious, or secretive.
- Any employee or visitor making unusual or repeated requests for sensitive or important company documents or information.
- Any person asking an employee to make unauthorized movement (pick-up and delivery) for cash (motor carrier specific).
- Any person or group loitering outside a company facility or premises.
- Any person claiming to be a representative of a utility (gas, water, electric) but cannot produce valid company identification.
- Any person carrying a weapon such as a gun or a knife.
- After hours, any vehicle driving by a company facility with the lights off.
- Any occupied vehicle parked outside a company facility especially if the vehicle has been sitting for a long period or after normal work hours.
- An unfamiliar vehicle that appears to be abandoned near a company building or parking lot.

The above list is not all inclusive, but rather is meant to provide possible examples of suspicious activities. Once, and if, a suspicious activity is identified, the next step is to act. Employees not only need to be able to identify suspicious activity, they also need to know what to do about it.

#### **MEASURES TO CONFIRM INFORMATION ON JOB APPLICANTS:**

All applicants applying for any position involving access to, handling, storing, preparing for transport, and/or transport of hazardous materials for the company shall submit an accurate, complete, signed and dated application for employment. The hiring and screening process requires the information provided by the applicant on the application be verified as true and accurate.

An inquiry into the previous employment history shall be made for every hazmat employee applicant. Hazmat employee applicants shall provide accurate and complete previous and current employer information upon request, including but not limited to:

- Names and addresses of previous employers;
- Names and titles of previous supervisors;
- Phone numbers or other contact information for both of the above.

All hazmat employee applicants applying for positions with our company shall be given a personal interview by the appropriate responsible company personnel. Personal interviews will be used to determine fit for both the applicant and the company. In addition, the personal interview should be used to verify any gap(s) in employment, reason(s) for job or career changes, or any other important or unexplained behavior or history.

All applicants applying for any position involving the handling, storing, preparing for transport, and/or transport of hazardous materials for the company shall be required to provide either proof of U.S. citizenship or proof of their legal right to work in the United States.

The company's driver qualification and hiring procedures shall be in compliance with applicable state and federal regulations, and meet the security standards as established for this facility.

Applicants shall not be considered for employment as drivers by our company unless they meet the following requirements. Persons applying for the position of driver must:



- Meet the company's minimum age and experience requirements.
- Have a driving record that is in line with the company's safety standards.
- Be able to read and speak English sufficiently as required by subsection 391.11(b)(2).
- Be physically qualified to drive a company vehicle.
- Possess a current and valid commercial driver's license of the correct type and with the proper endorsements.
- Not be disqualified to drive a commercial motor vehicle under the rules set forth in subsection 391.15.

An inquiry into the driving record during the preceding 3 years (10 years for positions requiring a CDL) shall be made for every driver applicant. The inquiry shall be made to the appropriate agency of the state in which the applicant holds a motor vehicle operator's license or permit.

An investigation into the employment record during the preceding 3 years (10 years for positions requiring a CDL) shall be made for every driver applicant. Driver applicants shall provide accurate and complete previous and current employer information upon request, including but not limited to:

- Names and addresses of previous employers;
- Names and titles of previous supervisors and dispatchers;
- Phone numbers or other contact information for both of the above.

An investigation into the drug and alcohol history with regard to previous employers shall be made for every driver applicant per subsection 40.25. The driver qualification and hiring process shall not be finalized until drug and alcohol information from previous employees for the preceding 2 years has been obtained and verified.

All applicants applying for the position of CDL driver with the company shall submit to a pre-employment drug screen as required by subsection 382.301, and no driver applicant shall perform any work or activity for our company until a verified negative test result has been obtained for the applicant.

All applicants applying for the position of driver must be medically examined and certified as physically qualified (or present a current Medical Examiner's Certificate) to operate a commercial motor vehicle by a licensed medical examiner.

#### **MEASURES TO ADDRESS THE RISKS OF UNAUTHORIZED ACCESS:**

The company will continue to establish a working relationship with local law enforcement officials, emergency responders, and other public safety and security agencies. These partnerships will include the sharing of the operation, work processes, and hazardous materials stored on site or transported. Information regarding its hazmat operation, locations, and potential threats will be shared as appropriate with these agencies.

Local law enforcement officials, emergency responders, and other public safety and security agencies will be periodically invited on-site to discuss and evaluate potential security risks, vulnerabilities, and to assist in the development or enhancement of security program.

All suspicious activities or apparent criminal acts affecting the safety or security will be reported immediately to the proper law enforcement agencies and appropriate company officials. In addition, documentation should be recorded of any security-related incident.

A complete listing of emergency telephone numbers (found in the emergency plan) shall be provided to all dispatchers, supervisors, and managers. This list shall include the numbers for local police and fire departments, regional state police offices, the FBI, and all company managers and executives.

The company may also elect to request an increase in off-hours law enforcement patrols to coincide with increases in national security threat/risk levels.

All information (electronic and hard copy) relating to the storage and/or transporting of hazardous material shall be restricted to employees on a need-to-know basis. All hazmat-related paperwork and other documentation shall be maintained and retained in a secure area with limited and controlled access.

All work/load assignment sheets involving the transportation of hazardous materials shall be maintained in a secure location. Access to hazardous materials load information shall be limited to operations personnel only, including dispatchers, the operation manager, and other designated employees. Dispatch personnel are responsible for the security and proper issuance of all hazardous materials load-related work assignment documents. When providing load information to drivers, dispatchers must review the load information to ensure that it is complete and accurate. For security purposes, it is extremely important that:

- Loadout paperwork (invoices, shipping tickets, etc.) are checked and verified;
- Spreader or trailer numbers on all load assignments are verified; and
- Load assignment numbers are clearly communicated.

Drivers failing to abide by any of the procedures in this plan are subject to disciplinary action.

#### **MEASURES TO ADDRESS THE RISKS OF EN ROUTE SECURITY:**

The following guidelines and procedures apply to all shipments of hazardous materials. All company personnel will be expected to be knowledgeable of, and adhere to, these guidelines and procedures when performing any hazardous material-related activity.

Before using any motor carrier for the purposes of transporting hazardous materials, each carrier should satisfy themselves the motor carrier has a satisfactory rating and uses safe and qualified drivers and equipment.

Before loading any hazardous material onto a commercial carrier, the identity of the driver and motor carrier shall be verified. Drivers may be asked to produce photo identification and current operator's or commercial driver's license (CDL), and the carrier shall be contacted to verify the:

- Driver's name and license number; and
- Tractor/trailer number.

After loading any hazardous materials cargo onto a commercial carrier has been completed, the company should ensure the trailer is sealed with a company-issued barrier-type seal. All seal numbers, along with the date and time, shall be recorded in the presence of the driver on all shipping documents.

When all loading activity has been completed, drivers are responsible for making sure the cargo is secure and to check the bill of lading or the delivery manifest to ensure cargo count is accurate. Once drivers are satisfied that the cargo matches the shipping papers, they should:

1. Close the trailer doors and witness the shipper sealing of the trailer;
2. Record the seal number(s) on the shipping papers; and
3. Have the shipping papers signed by the responsible shipping personnel before leaving.
4. Contact their supervisor/dispatch to verify all pertinent load-related information and the loading process has been completed.

If a discrepancy is found between the cargo and bill of lading or shipping manifest, drivers shall contact their supervisor immediately for instructions.

In the event the shipper fails to supply a seal, drivers are required to use a company-issued seal. Seals can be obtained from any reputable source.

Before leaving any shipper, drivers must make a thorough visual observation of their immediate surroundings and report any unusual or suspicious activity to their supervisor immediately. Drivers, together with their supervisor/dispatcher, shall prepare and execute trip plans for all hazardous materials movements that list:

1. Routing schedules that avoid highly populated areas, bridges and tunnels when possible;
2. Fueling and break locations;
3. Dates and times of daily/routine check calls; and
4. Estimated times of arrival to stop offs and final destination.

These trip plans shall also include potential alternate routes and acceptable deviations.

For all hazardous materials movements, drivers shall minimize stops en route. Proper execution of thorough trip plans will help reduce the need for unnecessary or unplanned stops.

In the event a load containing hazardous materials need to be staged at a company terminal or facility while en route, it shall be stored in a secured location with limited and controlled access.

When deemed necessary for high hazard materials, the company will consider either the use of a team driver operation, escort service or an additional person to ensure security.

While in transit, drivers are prohibited from discussing information related to their load, route, or delivery schedule with any person(s) other than authorized company officials. Drivers are to report any suspicious activity such as load-related inquiries from strangers, to their supervisors immediately.

Drivers are expected to take all reasonable and responsible precautions to prevent damage to company vehicles and theft of hazardous material(s) cargo while in transit.

For personal protection and safety, and the security of the cargo, drivers are expected to park in safe, well lit parking locations only. In all cases, drivers are required to inspect their vehicle and trailer for evidence of tampering after each stop.

Drivers should lock their vehicles and have all windows in the closed position at all times while in transit) especially during all time spent in urban areas, and parked at truck stops and rest areas.

When possible, dispatch shall contact receivers for the purpose of arranging secure overnight or after hours parking for drivers who can safely and legally arrive at their destinations ahead of schedule.

Drivers are prohibited from taking their equipment (loaded or empty) to or through home, or parking in any unsecured area.

Drivers are expected to maintain regular communications with the company while in transit. Any incident of drivers failing to check in when required shall be assumed by the company to be suspicious and highly irregular. Immediate action shall be taken in such situations. Drivers are expected to fully understand this procedure and make every effort to maintain regular contact and communication with dispatch.

In the event of an attempted vehicle hijacking or cargo theft situation while the vehicle is in motion, the company has adopted a NO STOP policy. Drivers who believe a vehicle hijacking is, or may be, in progress, are instructed to keep the vehicle moving as safely and responsibly as possible until the attempt has ceased and/or the authorities have been notified. However, in any hijack situation, drivers should use their own judgment (whether to stop or keep moving) based on the degree to which they feel their personal safety is at risk. Nothing our drivers do is worth getting hurt over. Drivers who do fall victim to vehicle hijackers or cargo thieves are instructed to notify police as soon as possible. Once the proper authorities have been notified, drivers are required to contact an appropriate company official and follow all subsequent instructions.

Drivers are prohibited from picking up and transporting any unauthorized person.

Drivers failing to abide by any of the procedures in this plan are subject to disciplinary action.

# EXHIBIT 26

26

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF WILLIARD  
STICKLER IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

---

I, Willard Stickler, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.

2. I was a security guard at the 2596 Stratford Ave, Las Vegas site on or about January 9th. I was in the security shack when I saw a white pickup with several people blowing by my security office and paid no attention to the posted sign that all visitors must sign in at the corner of the property entrance.

3. I called Moe Truman on the radio and let him know we had an active intruder on the property, and I was heading over. Moe told me he was closer, and I saw him intercept the intruder.

4. I watched him intercept the car and saw the people in the car get out and one used the company rest room and observed him talking to the car occupants. When I saw all the safe signs from Moe Truman I went back to my safety station.

Further, the Declarant saith naught.

DATED: September 16, 2024

  
\_\_\_\_\_  
Willard Stickler



# EXHIBIT 27

27

Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
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[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

---

**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #10078

Hearing Officer: Holly Fic

**DECLARATION OF CRYSTAL  
THORNE IN SUPPORT OF  
RESPONSE TO NOTICE OF  
VIOLATION #10078**

Date of Hearing: September 19, 2024

Time of Hearing: 9:00 a.m.

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I, Crystal Thorne, under oath and under penalty of perjury, state as follows:

1. I am over 18 years of age, am competent to testify of the things stated herein, and make this Declaration in support of the Response to Notice of Violation #10078.
2. I was a security guard on duty at the 2596 Stratford Ave, Las Vegas site on or about January 8th. I tried to flag down a white sedan that breached the security perimeter of the site and paid no heed to the sign that was posted to check in before

entering the site and would not stop for me to check her identification. The car had one female occupant. I contacted Moe Truman to let him know we had an intruder on property.

3. I then witnessed Moe Truman rush out to the car to identify the intruder, he gave me directions to call the police for backup if I observed the pre-arranged sign to call for police help.
4. I witnessed what looked like a verbal exchange between the car's occupant and Mr. Truman and then I observed the car leave the property.

Further, the Declarant saith naught.

DATED: September 16, 2024

Crystal Thorne  
Crystal Thorne

# EXHIBIT 28

28





**Moe Truman**

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**From:** Amazon.com <auto-confirm@amazon.com>  
**Sent:** Monday, November 13, 2023 2:45 PM  
**To:** Moe Truman  
**Subject:** Your Amazon.com order of "Office Neon Sign".



## Order Confirmation

Hello m,

Thank you for shopping with us. We'll send a confirmation when your item ships.

### Details

Order #113-9298595-6697807

Arriving:  
**November 27 -**  
**Tuesday, November 28**

Ship to:  
**eton**  
**LAS VEGAS, NV**

**Order Total: \$391.78**

[View or manage order](#)



Office Neon Sign  
Qty : 1

We hope to see you again soon.

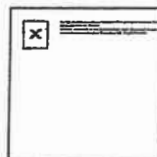
Amazon.com

### Top picks for you



CT CAPETRONIX 12v  
LED Interior Light...

\$23.99



OYMSAE 25Feet SAE  
to SAE Extension...

\$17.99



The payment for your invoice is processed by Amazon Payments, Inc. P.O. Box 81226 Seattle, Washington 98108-1226. If you need more information, please contact (866) 216-1075

By placing your order, you agree to Amazon.com's Privacy Notice and Conditions of Use. Unless otherwise noted, items sold by Amazon.com are subject to sales tax in select states in accordance with the applicable laws of that state. If your order contains one or more items from a seller other than Amazon.com, it may be subject to



**Moe Truman**

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**From:** Everything Neon <sales@everythingneon.com>  
**Sent:** Wednesday, November 15, 2023 7:32 AM  
**To:** Moe Truman  
**Subject:** 18252-1: Your Order has entered our Manufacturing System



**Call Us At:** 512-765-4470  
**Email:** sales@everythingneon.com

**Sign Order Status**

Dear moe truman,

We are pleased to inform you that the following order has been entered in our System.

**Order Number:** 18252-1

**Shipping Address:** 2596 STRATFORD AVE  
LAS VEGAS, NV 89121

**Shipping Method:** FedEx

**Expected Ship Date:** 11/25/2023

Item	Qty	Item Description
N105-3394	2	Office With Arrow LED Neon Sign  Color:Red and White  Backing Material : Black Backing Outdoor : No Thanks Size : 13 x 32 inches

Upon receipt of this email, please check to make sure the shipping address and items are correct.

**Thank you**  
**Everything Neon**

BEFORE THE AIR POLLUTION CONTROL HEARING OFFICER  
CLARK COUNTY, NEVADA

In the Matter of the Notice of Violation #9994 ) ORDER  
Issued to )  
ETON TRANSPORTATION CORP., )  
Respondent. )  
\_\_\_\_\_ )

The above-entitled matter was heard on November 5, 2024, before Hearing Officer Holly Fic on the Contested Docket. Representatives of both the Clark County Department of Environment and Sustainability, Division of Air Quality (**Air Quality**) and ETON TRANSPORTATION CORP. (**ETON**) appeared, testified and submitted evidence for consideration by the Hearing Officer. Having considered the evidence presented at the hearing, the Hearing Officer hereby finds and orders as follows:

1. Notice of Violation (**NOV**) #9994 was issued by Air Quality to Respondent ETON on May 15, 2024, for alleged violation(s) of Dust Control Operating Permit #57148 (**Permit**) and the Clark County Air Quality Regulations (**AQRs**) at the STRATFORD-1 construction site located at 2596 Stratford Avenue, in Clark County, Nevada. The violation(s) alleged in the NOV include:

(a) Violation of AQR Sections 94.13(a) and (b) for failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week.

2. The penalty recommended by Air Quality in NOV #9994 was \$4,687.50.

3. The Hearing Officer finds that the violation(s) alleged in NOV #9994 occurred in that ETON violated AQR Sections 94.13(a) and (b) on January 8, 9, and 17, 2024.

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4. **IT IS HEREBY ORDERED** that ETON pay a penalty of Three Thousand Five Hundred and no/100 Dollars (\$3,500.00) within 30 days of the date of this ORDER.

5. ETON has the right to appeal this ORDER to the Clark County Air Pollution Control Hearing Board. Any appeal of this ORDER shall be: (1) on a form provided by Air Quality specifying the reason(s) for the appeal, (2) accompanied by a filing fee of One Hundred Forty and no/100 Dollars (\$140.00), and (3) received by Air Quality within ten (10) days of ETON's receipt of this ORDER.

DATED this 7th day of November, 2024.

Holly Fic

Holly Fic  
Hearing Officer

BEFORE THE AIR POLLUTION CONTROL HEARING OFFICER  
CLARK COUNTY, NEVADA

In the Matter of the Notice of Violation #10078 ) ORDER  
Issued to )  
ETON TRANSPORTATION CORP., )  
ENVIRONMENTAL TRANSPORTATION )  
OF NEVADA, LLC D/B/A ETON, and )  
MOE TRUMAN, Respondents. )

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The above-entitled matter was heard on November 5, 2024, before Hearing Officer Holly Fic on the Contested Docket. Representatives of both the Clark County Department of Environment and Sustainability, Division of Air Quality (**Air Quality**) and ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and MOE TRUMAN (**TRUMAN**) appeared, testified and submitted evidence for consideration by the Hearing Officer. Having considered the evidence presented at the hearing, the Hearing Officer hereby finds and orders as follows:

1. Notice of Violation (**NOV**) #10078 was issued by Air Quality to Respondents ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN on August 29, 2024, for alleged violation(s) of Dust Control Operating Permit #57148 (**Permit**) and the Clark County Air Quality Regulations (**AQRs**) at the STRATFORD-1 construction site located at 2596 Stratford Avenue, in Clark County, Nevada. The violation(s) alleged in the NOV include:

(a) Violation of AQR Sections 94.13(a) and (b) for failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week; and

(b) Violation of AQR Section 4.1(d)(1) for refusing entry or access to the Control Officer who requests entry for purposes of inspection.

2. The penalty recommended by Air Quality in NOV #10078 was \$31,562.50.

3. The Hearing Officer finds that the violation(s) alleged in NOV #10078 occurred in that ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN violated AQR Sections 94.13(a) and (b) on July 17, 2024, and AQR Section 4.1(d)(1) on August 7 and 14, 2024.

4. **IT IS HEREBY ORDERED** that ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN pay a penalty of Seventeen Thousand Two Hundred Fifty and no/100 Dollars (\$17,250.00) within 30 days of the date of this ORDER.

5. ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN have the right to appeal this ORDER to the Clark County Air Pollution Control Hearing Board. Any appeal of this ORDER shall be: (1) on a form provided by Air Quality specifying the reason(s) for the appeal, (2) accompanied by a filing fee of One Hundred Forty and no/100 Dollars (\$140.00), and (3) received by Air Quality within ten (10) days of ETON TRANSPORTATION CORP., ENVIRONMENTAL TRANSPORTATION OF NEVADA, LLC D/B/A ETON, and TRUMAN's receipt of this ORDER.

DATED this 7th day of November, 2024.

Holly Fic

Holly Fic  
Hearing Officer

**From:** [Russell Gubler](#)  
**To:** [Catherine Jorgenson](#); [AQ Enforcement](#)  
**Cc:** [Pamela Thompson](#)  
**Subject:** RE: Reply re: NOVs #9994 and #10078  
**Date:** Monday, October 21, 2024 3:08:21 PM  
**Attachments:** [Reply with attached exhibits.pdf](#)

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Attached please find my clients' Reply in Support of Response to Notice of Violation #9994 and #10078.

Thank you,

Russell G. Gubler  
Johnson & Gubler, P.C.  
Lakes Business Park  
8831 W. Sahara Avenue  
Las Vegas, Nevada 89117  
(702) 471-0065  
(702) 471-0075 facsimile  
[www.johnsongubler.com](http://www.johnsongubler.com)

Johnson & Gubler, PLLC  
162 N 400 E, Ste. A-204  
St. George, UT 84770  
(435) 574-4909  
\* Licensed in Nevada, Utah, & Arizona

This communication may contain information that is privileged under the attorney-client privilege, or the work product doctrine, and should be read only by the person to whom it is addressed. If you have received this communication in error, please delete it immediately.  
Johnson & Gubler, P.C.

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**From:** Pamela Thompson <[Pamela.Thompson@clarkcountynv.gov](mailto:Pamela.Thompson@clarkcountynv.gov)>  
**Sent:** Tuesday, October 15, 2024 7:18 AM  
**To:** Catherine Jorgenson <[catherine.jorgenson@clarkcountydav.gov](mailto:catherine.jorgenson@clarkcountydav.gov)>  
**Cc:** Russell Gubler <[RGubler@mjohnsonlaw.com](mailto:RGubler@mjohnsonlaw.com)>  
**Subject:** RE: Reply re: NOVs #9994 and #10078

Will do. Thank you Ms. Jorgenson.

Thank you,

*Pamela R. Thompson*

Pamela R. Thompson, Senior Secretary  
Department of Environment and Sustainability,  
Division of Air Quality  
4701 West Russell Road, Suite 200  
Las Vegas, NV 89118

Office #: 702.455.3126

Fax #: 702.383.9994

E-mail: [Pamela.Thompson@clarkcountynv.gov](mailto:Pamela.Thompson@clarkcountynv.gov)

*Clark County Offices are closed on Fridays.*

Website for the Compliance & Enforcement Section:

[https://www.clarkcountynv.gov/government/departments/environment\\_and\\_sustainability/compliance/index.php](https://www.clarkcountynv.gov/government/departments/environment_and_sustainability/compliance/index.php)

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**From:** Catherine Jorgenson <[Catherine.Jorgenson@clarkcountydav.gov](mailto:Catherine.Jorgenson@clarkcountydav.gov)>

**Sent:** Monday, October 14, 2024 5:35 PM

**To:** Pamela Thompson <[Pamela.Thompson@clarkcountynv.gov](mailto:Pamela.Thompson@clarkcountynv.gov)>; Russell Gubler  
<[RGubler@mjohnsonlaw.com](mailto:RGubler@mjohnsonlaw.com)>

**Subject:** Reply re: NOVs #9994 and #10078

Attached please find a copy of DAQ's Reply in support of NOVs 9994 and 10078 for the hearing scheduled on October 29, 2024.

Catherine Jorgenson  
Deputy District Attorney  
Office of the District Attorney|Civil Division  
Clark County, Nevada  
702.455.4761  
[Catherine.Jorgenson@ClarkCountydanv.gov](mailto:Catherine.Jorgenson@ClarkCountydanv.gov)



Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
JOHNSON & GUBLER, P.C.  
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Las Vegas, Nevada 89117  
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Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

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**AIR POLLUTION CONTROL HEARING OFFICER MEETING**

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In the matter of:

ETON TRANSPORTATION CORP.,

Respondent.

NOV #9994 and #10078

Hearing Officer: Holly Fic

**REPLY IN SUPPORT OF RESPONSE  
TO NOTICE OF VIOLATION #9994  
AND #10078**

Date of Hearing: October 29, 2024

Time of Hearing: 9:00 a.m.

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**NOW COME** Tonopah & Tidewater Railroad Co. (“Railroad Co.”), ETON Transportation Corp. (“ETON”), and Moe Truman (collectively, the “Respondents”), by and through their attorneys of the law firm of JOHNSON & GUBLER, P.C., and submit this Reply in support of its response to Clark County’s Notice of Violation #9994 and 10078.

For the reasons stated herein, Respondents request that the hearing officer reject the violations and the fines, or alternatively, remove the matter to state court.

**Argument:**

***A. The Railroad Co. is a railroad company under Nevada law.***

DES argues that the Railroad Co. is not a rail carrier, and therefore, all of its allegations as a rail carrier are not applicable. DES cites to the 2006 Federal Register that states that the agreement between Pan Western and the Railroad Co. was never consummated. However, DES's argument fails for several reasons. A railroad company may be formed by organizing a corporation under NRS Chapter 78. *See* NRS 78.075. Tonopah & Tidewater Railroad Co. is such a corporation that was organized under NRS Chapter 78, with the designation of the words, "Railroad Co." *See* Exhibit 2.

Further, the Nevada legislature has never otherwise defined the term, "railroad company". As a result, the Supreme Court of Nevada looked to the Black's Law Dictionary to define the term. *Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019). The term is defined by Black's Law Dictionary as "[a] corporation organized to construct, maintain, and operate railroads." Railroad Corporation, Black's Law Dictionary (10th ed. 2014). This is consistent with the common meaning of railroads and other statutes wherein the Legislature has defined railroads as operating on railways. *See, e.g.*, NRS 484A.200 (defining "railroad" as one that operates on "stationary rails"); NRS 484B.050 (same); NRS 710.300 (requiring a "railway" or "railway lines" for railroad utilities). *Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019).

Here, Las Vegas Paving Corporation obtained an easement on certain property from Pan Western, which is on the same property mentioned in the Federal Register. *See* Exhibit 20. This easement was recorded and runs with the land. *Id.* Thereafter, in 2008, the Railroad Co. obtained a Licensing Agreement with Las Vegas Paving Corporation that allows the Railroad Co. to

***“Operate [an] industrial railroad on the property.”*** Exhibit 21, Licensing Agreement (emphasis added). In 2010, the Railroad Co. purchased the physical steel rails from Pan Western that are held on the property. Exhibit 22, Purchase Agreement. These rails are stationary on the Property. Exhibit 23, photograph of rails. Further, cars are able to switch lanes, which requires an operator. *Id.* These are all features common to rails and trains. Thus, the Railroad Co. is a railroad company under Nevada law as it maintains and operates a railroad, and holds itself out as a railroad company. *See Bombardier Transp. (Holdings) USA, Inc. v. Nev. Labor Comm'r*, 135 Nev. 15, 26, 433 P.3d 248, 258 (2019).<sup>1</sup>

DES argues that the Railroad Co. is not a rail carrier. However, the federal register states that the Railroad Co. will become a Class III rail carrier. Exhibit 3. DES points out that the agreement with Pan Western was never consummated to lease the property. However, this is irrelevant. The Railroad Co. later consummated an agreement with Las Vegas Paving Corporation that allows the Railroad Co. to “operate” the rails on the property. Exhibit 21. Further, as indicated in the STB Finance Document No. 34958, attached as Exhibit D to DES’s Reply, the grant of authority is permissive. Once a Board exemption has become effective, it is up to the parties to move forward with the underlying transaction. Thus, the STB refused to publicly confirm that the lease and operating exemption for the Railroad Co. was null and void. *See* Exhibit D of DES’s Reply. Besides, the Federal Register only applies to whether or not the Railroad Co. is a class-three carrier, which is one that is not as heavily regulated by the STB as opposed to some other carrier. It does not, however, prohibit the Railroad Co. from being a railroad company under Nevada law.

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<sup>1</sup> Further, the Railroad Co. is a railroad company, as the Public Utilities Commission regulates it.

Thus, for these reasons, all arguments that Respondents have made pursuant to the status as a railroad company, *are applicable*, and DES has failed to otherwise oppose them.<sup>2</sup>

Further, respectfully, Respondents renew their argument that this is not the proper forum. The United States Supreme Court's recent rulings in *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_\_\_ (2024) and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. \_\_\_\_ (2024), both ended the *Chevron* doctrine that gave preferences to agencies in interpreting statutes. Thus, this forum further does have jurisdiction to determine whether the AQR has the force and effect of federal law, or to define railroad or railroad company.

***B. DES has failed to meet the conditions precedent under AQR 4.1 and NRS 445B.580. Respondents are not in violation of these statutes or regulations.***

Respondents previously argued that Violation 2 did not apply because AQR 4.1(d)(1) required the Control Officer to first request entry for inspection and then to present appropriate credentials. Now, DES argues that Respondents consented to the inspection of the site during normal hours, and the Responsible Official must acknowledge the permittee's consent.<sup>3</sup> See Response, p. 5. In making the argument, DES cites to NRS 445B.580. However, Violation 2 only cites to AQR Section 4.1(d)(1) – not NRS 445B.580. See NOV#10078, p. 4. Therefore, for DES to now argue NRS 445B.580 fails to give Respondents proper notice, and therefore, fails to give Responds Due Process by a government entity. Therefore, the argument must fail, and the

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<sup>2</sup> Failure to respond to or oppose arguments as set forth serves as an admission of merit and as a consent to the dismissal. *Ln Mgmt. Llc Series 2937 Barboursville v. Fairbrook Cmty. Ass'n*, LEXIS 535 (D. Nev. 2020); *Grove v. Kadtic*, 986 F.Supp. 510, 516 (D. Nev. 1997) (holding a non-opposition is tantamount to an admission that a motion is meritorious is equally applicable when there is a failure to oppose specific arguments advocating dismissal).

<sup>3</sup> "Nevada has long recognized that corporations are generally to be treated as separate legal entities". *LFC Mktg. Group, Inc, v, Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 846 (2000).

hearing officer should dismiss the case because DES has failed to show that DES personnel (1) requested entry; (2) showed their credentials; and/or (3) even have credentials to show.

In Respondents' experience, the following government agencies all carry credentials and show their credentials: FEEMA, asking to conduct on-site training; FBI, for a background check of a neighbor; FBI, illegal dumping of medical waste by another shipper; FBI, for campaign contribution violation; Federal Department of Justice, in a witness tampering case; Federal Railroad Administration, during a safety audit; State of Nevada Public Utilities Commission, railroad section, conducting an audit; Trucking, for conducting an audit; Federal Department of Transportation, to conduct an audit; State of Nevada Department of Taxation, to conduct an audit of ethanol coming in by rail; Clark County Coroner's Office, to investigate the death in a rail car; Federal Treasury Department, for REM taxes; Federal Homeland Security, for training on site; Metro for a death next to the property; Las Vegas Fire department, for an inspection; ATS, for an inspection of rail cars from Mexico; DEA, for an inspection of rail cars from Mexico; Nevada Highway patrol, requesting an audit; State of Nevada OSHA, for a death investigation on site; Federal Department of Bureau of Land Management, for potential trespassing; IRS, for an audit of REM on Alcohol taxes; Department of Energy, for Income nuclear waste from Fermi lab and hauling Nuclear waste; Clark County Aviation, for a site tour; UP Railroad police, checking on rail theft; United States Air Force, Checking on property owned next to Nellis; Department of Defense, working on storage of a train's load of tanks; Pipeline & Hazardous Material Safety Administration, for an audit of safety plan; Clark County Dog catcher, asking about a dog; Federal Mine Safety Administration, for a site audit; Constable office, to Execute a writ of garnishment; USA Remote sensing lab, wanting to install air pollution monitoring station; Metro (in uniforms), various reasons over the years; Metro (under cover), regarding a robbery at

Sahara and Buffalo; FDIC Auditor, related to the failed bank Community Bank of Nevada; and Vegas Valley Water District Safety.

Further, NRS 445B.580 does not even apply to DES. NRS 445B.580 states:

1. It is a condition of the issuance of any operating permit required by the Commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by any ***authorized officer of the Department*** at any time during the holder's hours of operation without prior notice. This condition must be stated on each application form and operating permit.
2. If a source of air contaminant exists or is constructed or operated without an operating permit, such an officer may inspect it at any reasonable time, and may enter any premises to search for such a source. If entry is refused, or before attempting to enter, such an officer may apply to any magistrate for a search warrant. The magistrate shall issue the warrant if the magistrate believes from the supporting affidavit or affidavits that there is probable cause to believe that a source of air contaminant exists or is being constructed or operated on the premises to be searched.

(emphasis added). Under NRS 445B.125, "Department" means ***the State Department of Conservation and Natural Resources*** (emphasis added).

Here, DES is the Department of Environment and Sustainability, for Clark County. This is not the same Department or the meaning of the term "Department" in NRS 445B.580.

Alternatively, even if NRS 445B.580 did apply, DES is still held to the same condition precedent. NRS 445B.240 (Power of representatives of Department to enter and inspect premises), states:

1. Any duly authorized officer, employee or representative ***of the Department*** may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time ***for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640,***<sup>4</sup> inclusive, and rules and regulations in force pursuant thereto.

2. No person shall:

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<sup>4</sup> This includes NRS 445B.580.

(a) Refuse entry or access to any authorized representative of the Department who *requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.*

(b) Obstruct, hamper or interfere with any such inspection.

3. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

NRS 445B.240 (emphasis added).

Again, on January 8 and 9, 2024, Canduella Rowsell and/or Katrinka Byers appeared at the Property, wanting to perform an “inspection.” Similarly, on or about July 17, 2024, July 25, and 31, 2024, and August 7 and 14, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, wanting to perform an “inspection.” On January 8/9, 2024, Rowsell and/or Byers appeared at the Property, but did not request to enter the Property. Similarly, on January 9, 2024, Canduella Rowsell and Noel Crandall appeared at the Property, but did not request to enter the Property. Further, at no time on any of these dates (or before) did any of the individuals purportedly from the County ever present or attempt to present any credentials, showing that they were officers with Air Quality. Exhibit 7, Declaration of Mitchell Truman.

On information and belief, these individuals do not possess appropriate credentials that would verify that they are inspectors for Air Quality. Appropriate credentials would be a badge, with a name, photograph, credential number, department, affiliation, chip, and an indication of the person’s authority. *See e.g.*, Exhibit 8, Federal EPA Inspector Credentials. On or about August 28, 2024, Rowsell or Crandall were asked for their Credentials, to which they showed a card to obtain access to an office somewhere not on the Property.

Thus, DES has failed to meet the conditions precedent, set forth in NRS 445B.240 and NRS 445B.580 (as well as AQR 4.1(d)(1)), and therefore, cannot prevail on Violation 2.



Further, even if the permit was signed, allowing a DES worker on the property, Respondent is required by federal regulations to maintain security on the property, which is superior to state law. *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 472, 133 S. Ct. 2466, 2468 (2013) (Under the Supremacy Clause, U. S. Const. art. VI, cl. 2, state laws that require a private party to violate federal law are preempted and, thus, are without effect.)<sup>5</sup> The Railroad Co. is required to maintain a Security Plan by the U.S. Department of Transportation. *See* Exhibit 24, DOT, Security Requirements.<sup>6</sup> Pursuant to the security requirements, the Railroad Co. maintains a Security Plan. Exhibit 25, Security Plan. As part of the security plan, the Railroad Co. is responsible to check any suspicious activity, which includes Fake IDs and badges. *Id.* Therefore, the Railroad Co. checks all persons coming into the property, as it is required to do so.

During the dates in interest, Canduella Rowsell, Noel Crandall, and/or Katrinka Byers were trespassing, as they merely entered the Property. Clearly marked on the Property was a sign that all visitors must sign in to enter the Property. As explained previously in their response, these people did not request to enter the Property.

***C. AQR is not consistent with a state-wide program***

Again, the Court in the *Association of American Railroads*, 622 F.3d at 1098, required ***statewide*** plans ***and statewide implementation plan***. DES fails to show that the AQR is a statewide program. Instead, DES states that Respondents' arguments seem to be based on a fundamental misunderstanding of the Clean Air Action, its regulations, Nevada's state implementation Plan, the NRS, the NAC, and the AQRs. However, statewide implementation plan, as required in *Association of American Railroads* is pretty clear, and DES fails to properly

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<sup>5</sup> The Supremacy Clause, found in Article VI, paragraph 2 of the U.S. Constitution, establishes that federal law takes precedence over state law when the two laws conflict. This means that federal law can preempt state law, either expressly or impliedly.

<sup>6</sup> DOT HM-232

respond after Respondents showed that the AQR and NRS do not hold the same standards or that the standards are implemented evenly. Further, DES fails to show how the AQR does not unreasonably burden or interfere with Interstate Commerce. Rather, DES states that it will respond at the time of the hearing. However, this, again, does not afford Respondents Due Process. Proper notice is necessary from a government entity. DES cannot hold a trial by ambush.

### **CONCLUSION**

For the reasons started herein, Respondents request that DES take nothing by way of the violations, or alternatively, that this matter be removed to State Court to make certain determinations.

DATED this 21<sup>st</sup> day of October, 2024.

JOHNSON & GUBLER, P.C.

*/s/ Russell G. Gubler*

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Matthew L. Johnson (6004)  
Russell G. Gubler (10889)  
Lakes Business Park  
8831 West Sahara Avenue  
Las Vegas, Nevada 89117  
Phone: (702) 471-0065  
Fax: (702) 471-0075  
[mjohnson@mjohnsonlaw.com](mailto:mjohnson@mjohnsonlaw.com)  
[rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2024, I caused to be sent a true and correct copy of the foregoing REPLY IN SUPPORT OF RESPONSE TO NOTICE OF VIOLATION #9994

AND #10078 via electronic mail, as indicated, to the following parties:

Pam Thompson  
agenforcement@clarkcountynv.gov

Catherine Jorgenson  
Catherine.Jorgenson@clarkcountyda.com

*/s/ Russell G. Gubler*

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An Employee of Johnson & Gubler, P.C.

## **EXHIBITS**

	<b><u>DESCRIPTION</u></b>
1.	Grant, Bargain, Sale Deed
2.	NV Secretary of State Entity Information
3.	Federal Register, 58594
4.	Federal Register, 75293
5.	Commercial Lease Agreement
6.	Local News 8 Report
7.	Declaration of Mitchell Truman
7A.	Invoice
7B.	Photograph of Dozer at Property
8.	Information on EPA Inspector Credentials
9.	Photographs of Property
10.	Declaration of Joe Miller
11.	Declaration of Paul Harber
12.	Declaration of David M McDonough
13.	Declaration of Floyd Meldrum
14.	Declaration of Michael Montandon
15.	Rails/rail yards in Clark County, Nevada
16.	Rails/rail yards outside of Clark County, Nevada
17.	US Trespass Information
18.	NV Trespass Information
19.	Executive Order
20.	Agreement to Convey Easement
21.	Licensing Agreement
22.	Purchase Agreement.
23.	Photo of rails
24.	Hazardous Materials Transportation Security Requirements
25.	Railroad Co. Security Plan

# EXHIBIT 20

(12)

**AGREEMENT TO CONVEY EASEMENT**

**THIS AGREEMENT TO CONVEY EASEMENT** (hereinafter referred to as "Agreement") is made and executed by and between **PAN WESTERN CORPORATION**, having its principal office at 4755 West University Avenue, Las Vegas, Nevada, hereinafter referred to as ("PWC"), and **LAS VEGAS PAVING CORPORATION**, having its principal office at 4420 S. Decatur Boulevard, Las Vegas, Nevada, hereinafter referred to as ("LVP").

**WITNESSETH:**

**WHEREAS**, PWC currently owns certain real property located in Clark county, Nevada (the legal description and assessor's parcel map of which are attached hereto as Exhibit "A" and "B", respectively, and made a part hereof and hereinafter referred to as "PWC's property"); and

**WHEREAS**, PWC has applied with Union Pacific Railroad, and has received the right to construct a railroad spur on PWC's property from the main railroad line, the construction thereof which is intended to begin in the near future, and a diagram thereof is attached hereto as Exhibit "C" and made a part hereof; and

**WHEREAS**, LVP currently owns certain real property contiguous with PWC's property (the legal description and assessor's parcel map of which are attached hereto as Exhibit "D" and "E", respectively, and made a part hereof, hereinafter referred to as "LVP's property"), and is desirous to, at some point in time in the future, connect to and continue from on LVP's property that portion of the railroad spur to be constructed by PWC (being at the common property boundary found at Point C on Exhibit "C"), and thereafter, to commonly use with PWC that portion of PWC's railroad spur to exist from the parties' common property line to the main line of Union Pacific Railroad (found at points AC on Exhibit "C").

**NOW THEREFORE**, in consideration of the sum of One Hundred Eighty Three Thousand Two Hundred Eighty Seven (\$183,287.00) Dollars, and other

consideration as hereinafter provided and reserved, and the mutual covenants, conditions and promises of the parties as herein stated, the parties hereto agree as follows:

1. PWC hereby agrees to grant and convey to LVP a permanent easement and right of way to use as means of ingress and egress to and from LVP's property and the Union Pacific main line, a certain portion of the railroad spur to be constructed and located on PWC's property, the same being more particularly described as that portion of PWC's railroad spur to be constructed and designated as Points AC on Exhibit "C", attached hereto and made a part hereof. A copy of the Grant of Permanent Easement to be executed shall be substantially in the form as is set forth in Exhibit "F", attached hereto and made a part hereof.

2. The approximate location of the railroad spur to be constructed by PWC that will be subject to the easement as set forth in this Agreement is indicated as Points AC on Exhibit "C", attached hereto and made a part hereof. It is presently intended that Point C shall exist at the common boundary of the parties' respective real properties. However, the exact location of the railroad spur, and thus the easement and right of way, will solely be determined by PWC in its placement of the railroad spur.

3. Except as otherwise provided in this Agreement, the easements and right of ways herein declared are easements and right of ways appurtenant and shall run with the land, touch and concern the same and are intended to both benefit and burden the land subject thereto. Except as otherwise provided in the Agreement, the easements and right of ways herein declared shall continue perpetually without limitation, defeat, diminution, or discharge, by lapse of time, change of ownership of the parcels, change of use of any parcel, or increase in extent of use burden.

4. Unless otherwise stated in this Agreement, all notices or demands in this Agreement provided, to be given by either party hereto to the other, shall be deemed to have been fully given when made in writing and (1) personally delivered, or (2)



deposited in the United States Mail, registered or certified, and postage prepaid,  
and addressed as follows:

To PWC: PAN WESTERN CORPORATION  
Attn: Mitchell Truman  
4755 West University Avenue  
Las Vegas, Nevada 89103

To LVP: LAS VEGAS PAVING CORPORATION  
Attn: Robert Mendenhall  
4420 South Decatur Boulevard  
Las Vegas, Nevada 89103

The address to which any notice or demand may be given to any party, may be changed from time to time by written notice given by such party as above provided.

5. If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.

6. Time is of the essence of this Agreement, and of each and every covenant, term, condition, and provision hereof.

7. In the event any section, paragraph, sentence, or clause of this Agreement is held invalid or unenforceable for any reason, then such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement.

8. This Agreement may not be modified, amended, or changed, except by a writing specifying the modification, amendment, or change which is signed by all of the parties hereto.

9. This Agreement contains the entire understanding of the parties hereto, and there are no warranties, representations, or covenants other than those expressly set forth herein.

10. The parties hereto acknowledge ample opportunity and time to consult independent legal counsel in connection with the negotiation and execution of the Agreement.

11. This Agreement is governed by the laws of the State of Nevada.

12. The (a) waiver of any terms, covenant, or condition of this Agreement; or (b) waiver of any breach of any term, covenant, or condition contained therein; or (c) failure of either party to take action with respect to any breach of the other of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of such term, covenant, or condition, nor shall it be deemed a waiver of any subsequent default under the same or any other term, covenant, or condition, unless it is specified in writing and signed by the waiving party.

13. This Agreement shall, subject to the provisions as to assignment and transfer, bind and inure to the respective assigns, successors, heirs and personal representatives of the parties hereto, and to all those who may now and hereafter claim either through or under them.

14. This Agreement has been mutually prepared by the parties hereto, and may be executed in duplicate originals, the same of which shall be signed by all parties hereto, each of which shall be deemed an original, but all of which shall constitute one instrument.

15. This Agreement shall be recorded.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date and year set below their respective names.

PAN WESTERN CORPORATION

By 

RICHARD TRUMAN, PRESIDENT

Dated: Feb 10, 1997

LAS VEGAS PAVING CORP.

By 

ROBERT L. MENDENHALL,  
PRESIDENT

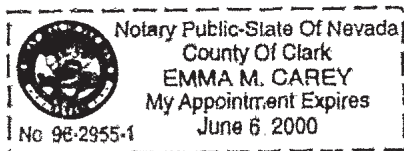
Dated: March 2, 1997

## ACKNOWLEDGMENT

STATE OF NEVADA        )  
                                       ) SS.  
 COUNTY OF CLARK        )

RICHARD

On the 10<sup>th</sup> day of February, 1997, personally appeared before me, the undersigned Notary Public, RICHARD L. TRUMAN, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing AGREEMENT TO CONVEY EASEMENT, who acknowledged to me that he executed the same in his capacity as President of PAN WESTERN CORPORATION.



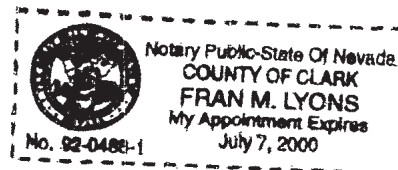
Emma M. Carey  
 Notary Public in and for Said County and State

## ACKNOWLEDGMENT

STATE OF NEVADA        )  
                                       ) SS.  
 COUNTY OF CLARK        )

On the 4<sup>th</sup> day of March, 1997, personally appeared before me, the undersigned Notary Public, ROBERT L. MENDENHALL, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing AGREEMENT TO CONVEY EASEMENT, who acknowledged to me that he executed the same in his capacity as President of LAS VEGAS PAVING CORPORATION.

Fran M. Lyons  
 Notary Public in and for Said County and State



## GRANT OF PERMANENT EASEMENT

PAN WESTERN CORPORATION, a Nevada Corporation, having its principal office at 4755 West University Avenue, Las Vegas, Nevada, hereinafter referred to as ("Grantor"), for and in consideration of the sum of Ten (\$10.00) Dollars, and other valuable consideration, receipt of which is acknowledged, does hereby grant to LAS VEGAS PAVING CORPORATION, a Nevada Corporation, having its principal office at 4420 South Decatur Boulevard, Las Vegas, Nevada, hereinafter referred to as ("Grantee"), a permanent easement to use as means of ingress and egress to and from Grantee's real property (legally described at Exhibit "A", attached hereto and made a part hereof and hereinafter referred to as ("Grantee's Property"), the same being APN: 520-530-016 and the Union Pacific Railroad main line, a certain portion of the railroad spur located on Grantor's real property (legally described at Exhibit "B", attached hereto and made a part hereof and hereinafter referred to as (Grantor's Property"), the same being APN: 520-520-002, the same being more particularly described as that portion of grantor's railroad spur designated as Points AC on Exhibit "C", attached hereto and made a part hereof.

This Grant of Permanent Easement is conditioned upon the following:

1. The term "means of ingress and egress" shall mean the ability of Grantee to transport railroad cars on and over that portion of grantor's railroad spur subject to this easement (the same being Points AC on Exhibit "C") to and from the main line of Union Pacific Railroad.

Unless otherwise provided herein, Grantee shall have no other right of ingress and egress over Grantor's Property, it being the clear intent and understanding of Grantor and Grantee hereto that in order for Grantee to effectively use the grant of easement, that Grantee will be required to connect to and continue from the end of Grantor's railroad spur (the same being Point C on Exhibit "C", which is the common boundary of the parties) their own spur on

Grantee's Property, in order to load and unload railroad cars. Grantee shall have no right to load or unload any railroad cars from Grantor's Property.

2. Grantee, or its assigns, shall in no way cause or allow, directly or indirectly, any third party to transport railroad cars over the easement created herein that have no direct relationship to the business affairs of Grantee, or its assigns.

3. The easement granted Grantee on the railroad spur as hereinabove described, shall not be an exclusive right to use the same. Grantee shall use said rights commonly with Grantor, and with due regard to the unencumbered rights of Grantor to use the same. Grantee shall not use the railroad spur in any way that will impair the rights of Grantor to use it, nor shall Grantor use the railroad spur in any way that will impair the rights of Grantee to use it, nor shall either obstruct, directly or indirectly, the other's passage thereon. Grantor shall maintain specific right to transport on or over the easement along Grantor's North property line.

4. Grantor and Grantee shall share one-half the costs and expenses of maintaining the above-described easement (including the switch at Point B on Exhibit "C" attached hereto) in good repair throughout the term of the easement. Grantor and Grantee, their successors and assigns, understand and agree that each shall be responsible to pay his proportionate share of any and all costs associated with the installation of a automated railroad crossing if and when requested to be installed by the Union Pacific Railroad.

5. Grantee shall in no way cause or allow the Easement to be used for any unlawful purpose, and shall comply with all city, county, state and/or federal laws, rules and/or regulations respecting its use and the materials to be transported on and over said railroad spur. Grantee shall not cause or allow directly or indirectly, any form of hazardous materials or waste to be transported on or over the easement, other than those which may be deemed necessary and essential to the general business enterprise of Grantee. Any form of spillage of any materials or waste whatsoever on, over or around the easement and/or Grantor's Property by Grantee (or its agents, employees, servants, visitors, invitees or otherwise), shall be the sole

responsibility of Grantee to clean up and to assume the same in total, holding grantor harmless therefrom, and to indemnify Grantor for any costs, expenses or loss accruing therefrom. Grantee shall have the right of ingress and egress over Grantor's Property, subject to Grantor's consent, to perform the promises, covenants and conditions set forth in the Paragraph 5.

6. Grantor shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Grantee or by any person whosoever that may, at any time, be using or occupying or visiting the easement and/or Grantor's Property, or be in or about the same, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of, any act, omission, or negligence of Grantee (its agents, employees, servants, visitors, invitees or otherwise), or of any occupant, subtenant, visitor, or user of any portion of the easement or Grantor's property, or shall result from or be caused by any other matter or thing, whether of the same kind or of a different kind, than the matters or things above set forth, and Grantee shall indemnify Grantor for and/or against all claims, liability, loss or damage whatsoever, on account of such loss, injury, death or damage. The preceding sentence shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of Grantor, its agents, employees or servants.

7. Grantee shall, at a minimum, and at all times maintain in effect throughout the term of the easement, personal injury liability insurance covering Grantor's property (its improvements and appurtenances thereto and thereon) within a distance of 50 feet each direction from the centerline of the easement, in the amount of One Million Dollars (\$1,000,000.00), for injury to, or the death of, any one person, and One Million Dollars (\$1,000,000.00), for injury to, or the death of, any number of persons in one occurrence, and property damage liability insurance in the amount of One Million Dollars (\$1,000,000.00). Such insurance shall specifically insure Grantee against all liability assumed by it hereunder, as well as liability imposed by law, and shall insure both Grantor and Grantee, but shall be so



endorsed as to create the same liability on the part of the insurer, as though separate policies had been written for Grantor and Grantee.

The policies of insurance referred to in this paragraph shall be written in a form satisfactory to Grantor and by insurance companies satisfactory to Grantor, such satisfaction not to be unreasonably withheld. Grantee shall pay all of the premiums therefor and deliver such policies, or certificates thereon, to Grantor, and in the event of failure of Grantee either to effect such insurance in the names herein called for, or to pay the premiums therefor or to deliver such policies, or certificates thereof, to Grantor, Grantor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable immediately to Grantor. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Grantor, that it will give to Grantor thirty (30) days written notice before the policy or policies in question shall be altered or canceled. Grantor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by Grantee.

In the event that either Grantor or Grantee shall at any time deem the limits of the personal injury or property damage, public liability insurance then carried to be either excessive or insufficient, the Grantor and Grantee shall endeavor to agree on the proper and reasonable limits for such insurance then to be carried and such insurance shall thereafter be carried with the limits thus agreed on.

8. Except as otherwise provided in this Grant of Permanent Easement, the easements and right of ways herein declared are easements and right of ways appurtenant and shall run with the land, touch and concern the same and are intended to both benefit and burden the land subject thereto.

9. Except as otherwise provided in this Grant of Permanent Easement, the easements and right of ways herein declared shall continue perpetually without limitation, defeat, diminution, or discharge, by lapse of time, change of ownership of the parcels, change of use of any parcel, or increase in extent of use burden.

10. Occurrence of any of the following events shall constitute a default hereunder:

- a. Delay in, nonperformance or failure of Grantee in keeping or performing any of the terms and conditions of this Grant of Permanent Easement;
- b. Failure in, or suspension of, business by Grantee for any reason; or
- c. Insolvency or bankruptcy of Grantee from any cause whatsoever.

11. A default on the part of Grantee as set forth in paragraph 10, for fifteen (15) days after notice from Grantor to Grantee, shall entitle Grantor, at Grantor's option, to declare, without further notice, this Grant of Permanent Easement, and all rights hereunder, terminated.

12. If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Grant of Permanent Easement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered.

13. All remedies hereinbefore and hereafter conferred on Grantor shall be deemed cumulative, and no one is exclusive of the other or of any other remedy conferred by law.

14. Unless otherwise stated herein, all notice or demands in this Grant of Permanent Easement provided, to be given by either Grantor or Grantee to the other, shall be deemed to have been fully given when made in writing and (1) personally delivered, or (2) deposited in the United States Mail, registered or certified, and postage prepaid, and addressed as follows:

To Grantor:      **PAN WESTERN CORPORATION**  
                          Attn: Richard Truman  
                          4755 West University Avenue  
                          Las Vegas, Nevada 89103

To Grantee:      **LAS VEGAS PAVING CORPORATION**  
                          Attn: Robert L. Mendenhall  
                          4420 S. Decatur Boulevard  
                          Las Vegas, Nevada 89103

The address to which any notice or demand may be given to any party, may be changed from time to time by written notice given by such party as above provided.

15. The (a) waiver of any terms, covenant, or condition contained herein; or (b) waiver of any breach of any term, covenant, or condition contained herein; or (c) failure of either party to take action with respect to any breach of the other of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of such term, covenant, or condition, nor shall it be deemed a waiver of any subsequent default under the same or any other term, covenant, or condition, unless it is specified in writing and signed by the waiving party.

16. This Grant of Permanent Easement shall, subject to the provisions as to assignment and transfer, bind and inure to the respective assigns, successors, heirs and personal representative of Grantor and Grantee, and to all those who may now and hereafter claim either through or under them.

17. The rights hereunder granted are subject to any reservations, restrictions and conditions if any, rights of way, easements or other encumbrances of record or in any way existing on Grantor's Property.

WITNESS my hand this 10<sup>th</sup> day of February, 1997

PAN WESTERN CORPORATION

By Richard Truman

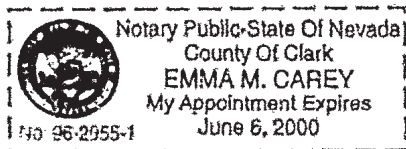
RICHARD TRUMAN, PRESIDENT

## ACKNOWLEDGMENT

STATE OF NEVADA )  
 ) SS.  
 COUNTY OF CLARK )

RICHARD

On the 10th day of February, 1997, personally appeared before me, the undersigned Notary Public, EMMA M. CAREY TRUMAN, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing GRANT OF PERMANENT EASEMENT, who acknowledged to me that he executed the same in his capacity as President of PAN WESTERN CORPORATION.



Emma M. Carey  
 Notary Public in and for said County and State

## WHEN RECORDED MAIL TO:

LAS VEGAS PAVING CORPORATION  
 4420 South Decatur Boulevard  
 Las Vegas, Nevada 89103

CLARK COUNTY, NEVADA  
 JUDITH A. VANDEVER, RECORDER  
 RECORDED AT REQUEST OF:

LAS VEGAS PAVING CORPORATION

03-06-97 15:21 CPD  
 OFFICIAL RECORDS

BOOK: 970306 INST: 01677

FEE: 19.00 RPTT: 766

13

.00



*Debbie Conway*  
**RECORDER**

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

**Instrument Number: 199703060001677**

# EXHIBIT 21

## **Licensing Agreement**

**THIS LICENSING AGREEMENT (the "Agreement") dated this 6th day of March, 2008**

**BETWEEN:**

Las Vegas Paving Corporaton of 4420 S Decatur Blvd, Las Vegas, NV 89103  
(the "Licensor")

**OF THE FIRST PART**

**- AND -**

Tonopah & Tidewater Railroad Company of 4755 Donovan Way, North Las Vegas,  
NV 89081 (the "Licensee")

**OF THE SECOND PART**

(individually the "Party" and collectively the "Parties")

**IN CONSIDERATION OF** the Licensee paying the License Fee to the Licensor, the receipt and sufficiency of which consideration is hereby acknowledged, the Licensor grants the License to the Licensee on the following terms:

### **Licensed Intellectual Property**

1. The Licensor owns and is granting to the Licensee the right to use the following licensed property (the " Property"): Railroad right of way across described property with a APN of 123-31-302-001.

### **Grant of License**

2. The Licensor grants to the Licensee an exclusive license to use the Property (the "License"), from March 6th , 2008 until one of the Parties provides to the other Party 60 days' written notice to terminate the Agreement (such period, the "Term").

### **Permitted Use**

3. The Licensee is permitted to use the Property in the following way: Operate a industrial railroad on the property.



4. The Licensee may not modify or change the Property in any way.

**License Fee**

5. The Licensee will pay the Licenser a license fee (the "License Fee") composed of:
  - a. California Portland Cement will pay Las Vegas, Paving \$50,000.00 (Fifty Thousand Dollars) every month for rent on behalf of Tonopah & Tidewater Railroad company..

**Payment Details**

6. The License Fee will be paid by check.

**Assignment**

7. The Licensee shall not allow others to use the Property and shall not use the Property in a way that allows others to use the Property except in accordance with this Agreement.
8. The Licensee may not assign or transfer the Agreement or any rights granted within without the prior written consent of the Licenser, and any attempted assignment or delegation without such consent will be void.

**Sublicensing**

9. The Licensee may not sublicense the Property or any rights granted in this Agreement without the prior written consent of the Licenser, and any attempted sublicense without such consent will be void.

**Warranties**

10. The Property is provided "as is" to the Licensee. The Licenser, and its officers, employees, agents and suppliers, do not provide any warranty, whether express or implied, as to the Property.

**Liability & Indemnity**

11. The Licenser will not be liable for any third party claims, losses, damages, liabilities, penalties, punitive damages, expenses, legal fees or costs of any kind or amount whatsoever resulting from the Licensee's use of the Property.
12. The Licensee agrees to defend, indemnify and hold harmless the Licenser and its officers, employees, agents and suppliers against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or

amount whatsoever resulting from or arising out of the use of the Property by the Licensee, or its officers, employees, agents or suppliers, or the Licensee's breach of this Agreement.

**Termination**

13. This Licensor shall have the option to terminate the Agreement immediately upon the failure of the Licensee to comply with the terms and conditions herein.
14. The Licensor reserves the right to cancel this Agreement immediately:
  - a. if the Licensee fails to make a payment when due; or
  - b. in the event of the Licensee's insolvency or bankruptcy.
15. The Licensor reserves the right to discontinue the License and terminate the Agreement immediately, as well as to commence legal proceedings, if any copyright infringement has taken place due to the Licensee's unauthorized use of the Property.
16. Upon expiry or termination of this Agreement, the Licensee shall immediately discontinue the use of the Property and, where applicable, shall return all Property, as per the instructions of the Licensor.

**Default**

17. Notwithstanding anything to the contrary in this Agreement, if the Licensee defaults in the performance of any obligation under this Agreement, then the Licensor may declare the entire amount owing under this Agreement calculated at the time of default to be immediately due and payable.

**Property Rights**

18. The Licensor retains ownership of the Property.
19. The Property shall not be copied, published, or used in any way except as provided for in this Agreement.
20. The Licensee shall not falsely represent that they are the original creator of the Property.

**Confidentiality**

21. Any Confidential Information exchanged between the Parties will not be shared or disclosed to any person except with prior, written consent of the other Party, or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.
22. Confidential information refers to any data or information relating to the Party, whether business or personal, which would reasonably be considered to be private or proprietary to the Party and that is not generally known and where the release of that confidential information could reasonably be expected to cause harm to the Party, and includes trade secrets, moral rights, goodwill, copyrights, patents, trademarks, know-how, research, drawings, plans, designs, standards, specifications, and methods ("Confidential Information").
23. Confidential Information does not include: information that is available to the public other than through the Licensee's actions or inactions; information that is rightfully received from a third party, legally in possession of it; and information that is independently developed by the Licensee without the use of the Confidential Information.

#### **General Provisions**

24. If there is a conflict between any provision of this Agreement and the applicable legislation of the United States (the "Act"), the Act will prevail and such provision of the Agreement will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement.
25. If any terms or provisions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected and each unaffected term and provision will remain in full force and effect.
26. This Agreement will be governed by and construed in accordance with the laws of the State of Nevada, without regard to the jurisdiction in which any action may be instituted. The Licensee agrees to submit to the jurisdiction of the courts of Nevada to bring any action or for the enforcement of this Agreement. Notwithstanding, the Licensor reserves the right to commence legal action to obtain injunctive relief in any court of competent jurisdiction.
27. The Agreement will inure to the benefit and be binding upon the Licensor and the Licensee and their respective successors and assigns.

28. This Agreement constitutes the entire agreement between the Licensor and the Licensee with respect to the subject matter hereof and there are no further items or provisions, either oral or otherwise.
29. The provisions contained in this Agreement cannot be changed except by the signed and delivered written consent of both Parties.
30. Headings are inserted for convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
31. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
32. All monetary amounts in this Agreement refer to the United States dollar (USD), and all payments required to be paid under this Agreement will be paid in USD unless the Parties agree otherwise in writing.
33. Time is of the essence in this Agreement.

**IN WITNESS WHEREOF** the Parties have executed this Licensing Agreement on this 6th day of March 2008.

Connie Smith  
(Witness)

Las Vegas Paving Corporation (Licensor)

By [Signature]

Connie Smith  
(Witness)

Tonopah & Tidewater Railroad Company  
(Licensee)

By Mr. [Signature]



# EXHIBIT 22

**Purchase Agreement**

**THIS PURCHASE AGREEMENT (the "Agreement") dated this 10th day of October, 2010**

**BETWEEN:**

Pan Western Corporation of 4910 Donovan Way, North Las Vegas, NV 89081, USA  
( the "Seller")

OF THE FIRST PART

- AND -

Tonopah & Tidewater of 4910 Donovan Way, North Las Vegas, NV 89081, USA  
( the "Buyer")

OF THE SECOND PART

**IN CONSIDERATION OF THE COVENANTS and agreements contained in this Purchase Agreement the parties to this Agreement agree as follows:**

**Sale of Goods**

1. The Seller will sell, transfer and deliver to the Buyer the following goods on or before October 15, 2010 (the "Goods"):
  - 28,090 feet of 135 pound rail, 2,340 #1 railroad ties, 4,680 tie plates, 18,726 spikes, 14 spring loaded switches, and 12 #2 frogs,

**Purchase Price**

2. The Buyer will accept the Goods and pay for the Goods with the sum of \$750,000.00 (USD) (the "Purchase Price"), paid by intercompany transfer as required in clause 5 of this Agreement.
3. The Seller and the Buyer both acknowledge the sufficiency of this consideration. In addition to the Purchase Price specified in this Agreement, the amount of any present or future use, excise, or similar tax applicable to the sale of the Goods will be paid by the Buyer, or alternatively, the Buyer will provide the Seller with a tax exemption certificate acceptable to the applicable taxing authorities.



4. The Purchase Price is inclusive of sales tax, and is payable by the Buyer unless the Buyer provides the Seller with a tax exemption certificate acceptable to the applicable taxing authorities, in which case the amount of sales tax will be subtracted from the Purchase Price payable by the Buyer.

**Payment**

5. The Buyer will make payment for the Goods at the time when, and at the place where, the Goods are received by the Buyer or, in the alternative, when any document of title or registrable bill of sale, bearing any necessary endorsement, is tendered to the Buyer.

**Delivery of Goods**

6. The Goods will be delivered to Items to be left on site. The Seller agrees to furnish the facilities and at its cost to load the Goods on trucks furnished by the Buyer. The method of shipment will be within the discretion of the Buyer. However, the Seller will only be responsible for the lesser of truck freight or rail freight to the Buyer.

**Risk of Loss**

7. Risk of loss will be on the Buyer from the time of delivery to the carrier. The Buyer will provide, at its expense, insurance on the Goods insuring the Seller's and the Buyer's interest as they appear, until payment in full to the Seller.

**Warranties**

8. THE GOODS ARE SOLD 'AS IS' AND THE SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Seller does not assume, or authorize any other person to assume on the behalf of the Seller, any liability in connection with the sale of the Goods. The Seller's above disclaimer of warranties does not, in any way, affect the terms of any applicable warranties from the manufacturer of the Goods.
9. The Buyer has been given the opportunity to inspect the Goods or to have it inspected and the Buyer has accepted the Goods in its existing condition. Further, the Seller disclaims any warranty as to the condition of the Goods.

**Title**

10. Title to the Goods will remain with the Seller until delivery and actual receipt of the Goods by the Buyer or, in the alternative, the Seller delivers a document of title or registrable bill of sale of the Goods, bearing any necessary endorsement, to the Buyer.

**Security Interest**

11. The Seller retains a security interest in the Goods until paid in full.

**Inspection**

12. Inspection will be made by the Buyer at the time and place of delivery.
13. Any refund will not include costs of delivery or installation/de-installation. Those costs will be borne by the Buyer.

**Claims**

14. The Buyer's failure to give notice of any claim within 10 days from the date of delivery will constitute an unqualified acceptance of the Goods and a waiver by the Buyer of all claims with respect to the Goods.

**Excuse for Delay or Failure to Perform**

15. The Seller will not be liable in any way for any delay, non-delivery or default in shipment due to labor disputes, transportation shortage, delays in receipt of material, priorities, fires, accidents and other causes beyond the control of the Seller or its suppliers. If the Seller, in its sole judgment, will be prevented directly or indirectly, on account of any cause beyond its control, from delivering the Goods at the time specified or within one month after the date of this Agreement, then the Seller will have the right to terminate this Agreement by notice in writing to the Buyer, which notice will be accompanied by full refund of all sums paid by the Buyer pursuant to this Agreement. In all other cases, if the Seller fails to deliver the Goods to the Buyer within the time and manner specified in this Agreement, the Buyer may provide written notice of the default to the Seller. If within seven (7) days of the notice being received, or within such other time period as agreed to by the parties, the default is not corrected, the Buyer may immediately terminate this Agreement.

**Remedies**

16. The Buyer's exclusive remedy and the Seller's limit of liability for any and all losses or damages resulting from defective goods or from any other cause will be for the Purchase Price of the particular delivery with respect to which losses or damages are claimed, plus any transportation charges actually paid by the Buyer.

**Cancellation**

17. The Seller reserves the right to cancel this Agreement:

- a. if the Buyer fails to pay for any shipment when due;
- b. in the event of the Buyer's insolvency or bankruptcy; or
- c. if the Seller deems that its prospect of payment is impaired.

**Notices**

18. Any notice to be given or document to be delivered to either the Seller or Buyer pursuant to this Agreement will be sufficient if delivered personally or sent by prepaid registered mail to the address specified below. Any written notice or delivery of documents will have been given, made and received on the day of delivery if delivered personally, or on the third (3rd) consecutive business day next following the date of mailing if sent by prepaid registered mail:

**SELLER:**

- Pan Western Corporation of 4910 Donovan Way, North Las Vegas, NV 89081, USA

**BUYER:**

- Tonopah & Tidewater of 4910 Donovan Way, North Las Vegas, NV 89081, USA

**General Provisions**

19. Headings are inserted for convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
20. All representations and warranties of the Seller contained in this Agreement will survive the closing of this Agreement.
21. Either party to this Agreement may assign its rights under this Agreement, but the assignment will not change the duty of either party, increase the burden or risk involved, or impair the chances of obtaining the performance of the Agreement. However, no obligation for performance imposed on either party by this Agreement may be delegated to any other person without the prior written consent of the other party. Each party has a substantial interest in having the other party perform or control the acts required by this Agreement.

22. This Agreement cannot be modified in any way except in writing signed by all the parties to this Agreement.
23. This Agreement will be governed by and construed in accordance with the laws of the State of Nevada, including the Nevada Uniform Commercial Code and the Seller and the Buyer hereby attorn to the jurisdiction of the Courts of the State of Nevada.
24. Except where otherwise stated in this Agreement, all terms employed in this Agreement will have the same definition as set forth in the Uniform Commercial Code in effect in the State of Nevada on the date of execution of this Agreement.
25. If any clause of this Agreement is held unconscionable by any court of competent jurisdiction, arbitration panel or other official finder of fact, the clause will be deleted from this Agreement and the balance of this Agreement will remain in full force and effect.
26. This Agreement will inure to the benefit of and be binding upon the Seller and the Buyer and their respective successors and assigns.
27. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
28. Time is of the essence in this Agreement.
29. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise. The Buyer acknowledges that it has not relied upon any representations of the Seller as to prospective performance of the Goods, but has relied upon its own inspection and investigation of the subject matter.

**IN WITNESS WHEREOF** the parties have executed this Purchase Agreement on this 10th day of October , 2010

Connie Smith  
(Witness)

K. Kuman  
Tonopah & Tidewater (Buyer)

Connie Smith  
(Witness)

M. J. Jensen  
Pan Western Corporation (Seller)

# EXHIBIT 23





m Rd

© 2023 Google

Vandenberg Dr

Donovan Way

Donovan Way

Donovan Way

Donovan Way

Great Basin Hwy

Las Vegas Fwy

Great Basin Hwy



# EXHIBIT 24

HAZARDOUS MATERIALS TRANSPORTATION

# SECURITY

## REQUIREMENTS



U.S. Department of Transportation  
Pipeline and Hazardous Materials  
Safety Administration

# Enhanced Security Requirements

The Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for the safe and secure transportation of hazardous materials (hazmat). Hazmat is essential to the economy of the United States and the well-being of its people. Hazmat fuels our cars and trucks and heats and cools our homes and offices.

Hazmat is used in farming and medical applications as well as manufacturing, mining, and other industries. Every day millions of tons of hazmat are safely transported by air, train, truck, or vessel in quantities ranging from several ounces to thousands of gallons. In the wrong hands, however, hazmat can pose a significant security threat, particularly those that can be used as weapons of mass destruction. Addressing this security threat is vital to the safety of our citizens and security of our economy.

PHMSA, in consultation with the Transportation Security Administration of the Department of Homeland Security, published final rule HM-232F, titled *Risk-Based Adjustment of Transportation Security Plan Requirements* on March 9, 2010. This final rule modified the security plan requirements applicable to the commercial transportation of hazmat. Based on an evaluation of the security threats associated with specific types and quantities of hazmat considered to be "high consequence" if stolen and used for pernicious reasons, this final rule, effective 1 October 2010, narrows the list of materials subject to security plan requirements, thus reducing associated regulatory costs and paperwork.

This final rule also clarifies certain requirements related to security planning, training, and documentation. This information will assist you in managing the potential security risks associated with the transportation of hazmat in commerce, as well as identifying and understanding the recent changes to security plan requirements.



## Security Plans

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You *must* develop and implement a security plan if you offer for transportation or transport the following types or quantities of hazmat. “Large bulk quantity” refers to a quantity greater than 3,000 kg., (6,614 lbs.), for solids or 3,000 liters (792 gal.), for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container:

- Any quantity of a Division 1.1, 1.2, or 1.3 material;
- A quantity of a Division 1.4, 1.5, or 1.6 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;
- A large bulk quantity of Division 2.1 material;
- A large bulk quantity of Division 2.2 material with a subsidiary hazard of 5.1;
- Any quantity of a material poisonous by inhalation as defined in §171.8 of this subchapter;
- A large bulk quantity of a Class 3 material meeting the criteria for Packing Group I or II;
- A quantity of a desensitized explosive meeting the definition of a Division 4.1 or Class 3 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;
- A large bulk quantity of a Division 4.2 material meeting the criteria for Packing Group I or II;
- A quantity of a Division 4.3 material requiring placarding in accordance with Subpart F of Part 172 of the HMR;



- A large bulk quantity of a Division 5.1 material in Packing Groups I and II: perchlorates; or ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions, suspensions, or gels;
- Any quantity of organic peroxide, Type B, liquid or solid, temperature controlled;
- A large bulk quantity of Division 6.1 material (for a material poisonous by inhalation see above);
- A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR Part 73 or the U.S. Department of Agriculture under 9 CFR Part 121;
- A quantity of uranium hexafluoride requiring placarding under §172.505(b);
- International Atomic Energy Agency (IAEA) Code of Conduct Category 1 and 2 materials including Highway Route Controlled quantities as defined in 49 CFR 173.403 or known as radionuclides in forms listed as RAM-QC by the Nuclear Regulatory Commission; and
- A large bulk quantity of Class 8 material meeting the criteria for Packing Group I.

At a minimum, your security plan *must* address *personnel security*, *unauthorized access*, and *en route security*, as well as include the following elements:

- An assessment of transportation security risks for shipments of hazmat listed in §172.800, including site- or location-specific risks associated with facilities where hazmat is prepared for transportation, stored, or unloaded; and measures to address the assessed risks;
- Name/job title of senior official responsible for developing/implementing the security plan;



- Specific security duties for each position/department responsible for implementing the plan, or a portion thereof, and the process of notifying employees when specific elements must be implemented;
- A plan for training hazmat employees in accordance with §172.704(a)(4) and (5);
- The security plan, including the transportation security risk assessment, must be in writing and retained as long as in effect;
- The security plan must be reviewed at least annually, and revised and/or updated as necessary;
- The security plan must be available to responsible employees—consistent with security clearance/background investigation/need-to-know;
- When updated/revised, the most current copies of the security plan must be maintained, and responsible employees must be notified; and
- Persons responsible for developing/implementing a security plan must maintain copies, including electronic, that are accessible at/through their place of business, or make available, upon request, to authorized officials of DOT or the Department of Homeland Security.

The following table provides a comparison listing of previous versus newly revised threshold levels of hazmat requiring a Security Plan, and specific ruling changes:

## Training

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Each hazmat employee of a person/company required to have a security plan, who handles, performs a regulated function related to, or implements the security plan, *must* receive in-depth training that provides an awareness of the security risks associated with hazmat transportation and methods to enhance transportation security. This training should cover the following topics:

Hazard Class	Previous Threshold for Hazmat	
1.1	Any quantity	
1.2	Any quantity	
1.3	Any quantity	
1.4	A quantity requiring placarding	
1.5	A quantity requiring placarding	
1.6	A quantity requiring placarding	
2.1	A quantity requiring placarding	
2.2	A quantity requiring placarding	
2.3	Any quantity	
3	A quantity requiring placarding	
4.1	A quantity requiring placarding	
4.2	A quantity requiring placarding	
4.3	Any quantity	
5.1	A quantity requiring placarding	
5.2	Any quantity of organic peroxide, Type B, liquid or solid, temperature controlled, otherwise a placarded quantity	
6.1	Any quantity of PIH material otherwise a quantity requiring placarding	
6.2	Select agents	
7	Shipments requiring Yellow III label; highway route-controlled quantity	
8	A quantity requiring placarding	
9	Capacity >3,500 gallons for liquid/gas; volumetric capacity > 468 cubic feet for solids	



	New Threshold for Hazmat	Ruling Change
	Any quantity	None
	Any quantity	None
	Any quantity	None
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	A large bulk quantity	Security plan not required for less than 3,000 L (792 gallons)
	A large bulk quantity of materials with an oxidizer subsidiary	Security plan not required for less than 3,000 L (792 gallons) of materials with oxidizer subsidiary
	Any quantity	None
	PG I and II in a large bulk quantity; placarded quantity desensitized explosives	Security plan not required for PG III; or less than 3,000 L (792 gallons) PG I or II - except for desensitized explosives
	A quantity of desensitized explosives requiring placarding in accordance with Subpart F of this Part	Security plan not required except for desensitized explosives in a placarded quantity
	PG I and II in a large bulk quantity	Security plan not required for PG III, or less than 3,000 kg (6,614 lbs.) PG I or II
	A quantity requiring placarding in accordance with Subpart F of this Part	None
	Large bulk quantity of Division 5.1 materials in PG I and II, and PG III perchlorates, ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions or suspensions or gels in a large bulk quantity	Security plan not required for most PG III materials and PG I and II materials in less than a large bulk quantity 3,000 L (792 gallons)
	Any quantity organic peroxide, Type B, liquid or solid, temperature controlled	Security plan only required for Type B, liquid or solid, temperature controlled, no longer required at placarded level for others
	Any quantity PIH or a large bulk quantity of a material that is not a PIH	Security plan not required for less than 3,000 L (792 gallons) of a non-PIH material
	Select agents	None
	IAEA Categories 1 & 2; HRCQ; known radionuclides in forms listed as RAM-QC by NRC; or a quantity of uranium hexafluoride requiring placarding under §172.505(b)	Security plan only required for Class 7 materials that pose transportation security risk
	PG I in a large bulk quantity	Security plan not required for PG II or III materials; and less than a large bulk quantity of a PG I
	Not subject	Security plan not required for Class 9 materials



- Company security objectives;
- Organizational security structure;
- Specific security procedures, duties, and responsibilities for each employee;
- Specifics on how to recognize and respond to possible security threats; and
- Specific actions to be taken by each employee in the event of a security breach.

For in-depth security training required under §172.704 (a)(5) and (c)(2), a hazmat employee must be trained at least once every three years or, if the security plan for which training is required is revised during the three-year recurrent training cycle, within 90 days of implementation of the revised plan.

The following guidance—while not required by the HMR—should assist you in developing a security plan appropriate to your industry and operations. You may want to review your current security program and make any necessary adjustments to improve it.

### **Begin with a Security Assessment**

To develop a security plan, you should begin with a security assessment. List the materials you handle, and identify those with the potential for use as a weapon or target of opportunity. Then, review your current activities and operations from a transportation security perspective. Ask yourself, “*What are we doing now? What could go wrong? What can we do differently?*” You can use a security-risk assessment model to identify risks and develop appropriate measures to reduce or eliminate them. The Risk Management Self-Evaluation Framework



Security Template found on PHMSA's hazmat safety homepage <http://phmsa.dot.gov/hazmat/risk/rmsef> utilizes the following steps:

- **Scoping** – determine the scope of operations that should be subject to security risk management. Identify the types of hazmat you handle and the modes of shipment used.
- **Knowledge of operations** – collect detailed information about your transportation operations: (1) quantities of material transported; (2) baseline security programs; (3) current security procedures; and (4) related safety programs and procedures.
- **Assessment** – analyze potential security threats and identify security risk control points. Risk control points are points in the transportation process where you can make an impact by improving procedures or operations.
- **Strategy** – rank or group security risks, prioritize opportunities for security risk reduction, and decide on preventative actions. Create a written document summarizing your decisions. This written document is your security plan.
- **Action** – implement your security plan.
- **Verification** – monitor implementation of your security plan.
- **Evaluation** – determine if goals are being met and compare your strategy and results with others in your field.



## Suggested Security Measures

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At a minimum, a security plan *must* include the following elements: *personnel security*, *unauthorized access*, and *en route security*. The following are suggestions on how to address these required elements—not detailed in the HMR—that you may want to consider for inclusion in your security plan.

### Personnel Security

Be aware of the possibility that someone you hire may pose a potential security risk. You may want to establish a process to confirm applicant information, and check with former and current employers and personal references. Such confirmation must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy. Conversely, your employees can be one of your most critical assets as you endeavor to improve the security of your shipping or transportation operations. Under the new PHMSA security requirements, you must ensure your employees are familiar with your security plan and are properly trained in its implementation. Training should include company security objectives, specific security procedures, employee responsibilities, and organizational security structure. In addition, consider taking one or more of the following actions:

- Encourage your employees to report suspicious incidents or events.
- Implement routine security inspections.
- Convene regular employee/management meetings on security measures and awareness.



- Communicate with your staff using an *internal communication system* to provide information on facts, trends, and other security issues.

### Unauthorized Access

Another security concern that must be addressed is access to hazmat in transportation and at your facility. You may consider using one or more of the following security measures to prevent unauthorized access:

- Establish partnerships with local law enforcement officials, emergency responders, and other public safety agencies with jurisdiction over your facility. Through such relationships, you can exchange information about threats, trends, and unsuccessful security programs.
- Request a review of your facility and security program by local law enforcement and fire safety officials, as applicable.
- Restrict the availability of information related to your facility and the materials you handle. Encourage authorities in possession of information regarding your facility to limit its disclosure on a need-to-know basis.
- Add security guards and increase off-hour patrols by private security personnel. Request that law enforcement personnel increase off-hour patrols.
- Check the adequacy of locks and other protective equipment. Consider equipping access gates with timed closure devices. Conduct frequent inspections.





- Install additional lights, alarm systems, or surveillance cameras.
- Restrict access to a single entry or gate.
- Secure hazmat in locked buildings or fenced areas. Institute a sign-out system for keys.
- Secure valves, manways, and other fixtures on transportation equipment when not in use. Lock all vehicle and delivery trailer doors when not in use. Secure all rail, truck, and intermodal containers when stored at your location.
- Use tamper-resistant or tamper-evident seals and locks on cargo compartment openings.
- Periodically inventory the quantity of hazmat you have on site in order to recognize if a theft has occurred.
- Keep records of security incidents. Review records to identify trends and potential vulnerabilities.
- Report any suspicious incidents or individuals to your local Federal Bureau of Investigation (FBI) office, and local law enforcement officials.

## En Route Security

Shippers and carriers should work together to assure the security of hazmat shipments en route from origin to destination. Shippers must assess the security of transportation modes or combinations of modes available for transporting specific materials and select the most appropriate method of transportation to ensure their efficient and secure movement.

Transportation security is a shared function. Security functions performed by shippers and carriers often overlap. Shippers and carriers are encouraged to consider implementing one or more of the following measures:



- Use carrier safety ratings, assessments, safety surveys, or audits, and ask the carrier to provide information on security measures it has implemented.
- Verify the carrier has an appropriate employee hiring/review process, including background checks, and an on-going security training program.
- Verify the identity of the carrier and/or driver prior to loading hazmat.
- Ask the driver for photo identification and a commercial driver's license for comparison with information provided by the carrier.
- Ask the driver to tell you the name of the consignee and the destination for the material and confirm with your records before releasing shipments.
- Identify preferred and alternative routing, including acceptable deviations.
- Strive to minimize product exposures to communities or populated areas, including downtown areas; avoid tunnels and bridges where possible; and expedite transportation of the shipment to its final destination.
- Minimize stops en route; if you must stop, select locations with adequate lighting on well-traveled roads, and check your vehicle after each stop to make sure nothing has been tampered with.
- Consider using two drivers or driver relays to minimize stops during the trip. Avoid layovers, particularly for high-hazard materials.
- Shippers and rail carriers should cooperate to assure the security of rail cars stored temporarily on leased tracks.





- If materials must be stored during transportation, make sure they are stored in secure facilities.
- Train drivers on how to avoid hijacking or stolen cargo; keep vehicles locked when parked and avoid casual conversations with strangers about cargo and routes.
- Consider whether a guard or escort for a specific shipment of hazmat is appropriate.
- Consider using advanced technology to track or protect shipments en route to their destinations. For example, you may wish to install tractor and trailer anti-theft devices or use satellite tracking or surveillance systems.
- Install tamper-proof seals on all valves, package, or container openings.
- Establish a communication system with transport vehicles and operators, including a crisis communication system with primary and back-up means of communication among the shipper, carrier, law enforcement, and emergency response officials.
- Implement a system for a customer to alert the shipper if a hazmat shipment is not received when expected.
- When products are delivered, check the carrier's identity with shipping documents provided by the shipper.
- Get to know your customers and their hazmat programs. If you suspect you have shipped or delivered hazmat to someone who may intend to use it for a criminal purpose, notify local law enforcement officials or your local FBI office.



- Report any suspicious incidents or individuals to local law enforcement officials or your local FBI office.

### Additional Information

Up-to-date information is a key element of any security plan. You should consider methods to:

- Gather as much data as you can about your own operations and those of other businesses with similar product lines and transportation patterns;
- Develop a communications network to share best practices and lessons learned;
- Share information on security incidents to determine if there is a pattern of activities that, when considered in isolation are not significant, but when taken as a whole generate concern; and
- Revise your security plans as necessary to take into account changing circumstances and new information.

Any other person who has knowledge of the theft or loss of any explosive materials shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-800-3855 (nationwide toll-free number) and in writing to the nearest ATF office. Theft or loss shall be reported to appropriate local authorities.

## Federal Agencies

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### Pipeline and Hazardous Materials Safety Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Hazardous Materials Info-Line: 800-467-4922

#### Publications and Reports

Fax: 202-366-7342;  
Telephone: 202-366-4900  
E-Mail: [training@dot.gov](mailto:training@dot.gov)  
<http://hazmat.dot.gov>

### Federal Aviation Administration

U.S. Department of Transportation  
800 Independence Avenue, SW., Washington, DC 20591  
Telephone: 1-866-TELL-FAA (1-866-835-5322)  
<http://www.faa.gov>

### Federal Motor Carrier Safety Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Telephone: 800-832-5660  
<http://www.fmcsa.dot.gov>

### Federal Railroad Administration

U.S. Department of Transportation  
1200 New Jersey Ave, SE., Washington, DC 20590  
Telephone: 202-493-6024  
<http://www.fra.dot.gov>

### Bureau of Alcohol, Tobacco, Firearms and Explosives

Explosives Industry Programs Branch  
99 New York Avenue, NE, Room 6N-672  
Washington, DC 20226  
202-648-7120  
E-Mail: [EIPB@atf.gov](mailto:EIPB@atf.gov)  
<http://www.atf.gov/>

### Bureau of Alcohol, Tobacco, Firearms and Explosives

U.S. Bomb Data Center  
99 New York Avenue, NE, Room 8S-295  
Washington, DC 20226  
800-461-8841  
E-Mail: [USBDC@atf.gov](mailto:USBDC@atf.gov)  
<http://www.atf.gov/>



## **Transportation Security Administration**

601 South 12th Street  
Arlington, VA 20598  
Telephone: 866-289-9673  
<http://www.tsa.gov>

## **United States Coast Guard**

2100 Second Street, SW., STOP 7000  
Washington, DC 20593  
Telephone: 202-493-1713  
<http://www.uscg.mil>

## **Industry Associations/Organizations**

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### **American Chemistry Council**

700 Second Street, NE.  
Washington, DC 20002  
Telephone: 202-249-7000  
<http://www.americanchemistry.com>

### **American Petroleum Institute**

1220 L Street, NW.  
Washington, DC 20005  
Telephone: 202-682-8000  
<http://www.api.org>

### **American Society for Industrial Security**

1625 Prince Street  
Alexandria, VA, 22314  
Telephone: 703-519-6200  
<http://www.asisonline.org>

### **American Trucking Association**

950 North Glebe Road, Suite 210  
Arlington, VA 22203  
Telephone: 703-838-1700  
<http://www.truckline.com>

## **Association of American Railroads**

425 Third Street, SW.  
Washington, DC 20024  
Telephone: 202-639-2100  
<http://www.aar.org>

## **Center for Chemical Process Safety American Institute of Chemical Engineers**

3 Park Avenue  
New York, N.Y. 10016-5991  
Telephone: 212-591-7319  
<http://www.aiche.org/ccp>

## **Chlorine Institute**

1300 Wilson Blvd, Suite 525  
Arlington, VA 22209  
Telephone: 703-894-4140  
<http://www.chlorineinstitute.org>

## **Compressed Gas Association**

4221 Walney Road, 5th Floor  
Chantilly, VA 20151  
Telephone: 703-788-2700  
<http://www.cganet.com>

## **The Fertilizer Institute**

425 Third Street SW, Suite 950  
Washington, DC 20024  
Telephone: 202-962-0490  
<http://www.tfi.org>

## **Institute of Makers of Explosives**

1120 19th Street, Suite 310, NW.  
Washington, DC 20036  
Telephone: 202-429-9280  
<http://www.ime.org>

## **National Association of Chemical Distributors**

1555 Wilson Blvd, Suite 700  
Arlington, VA 22209  
Telephone: 703-527-6223  
<http://www.nacd.com>

## **National Propane Gas Association**

1899 L Street NW, Suite 350,  
Washington, DC 20036  
Teléfono: 202-466-7200  
<http://www.npga.org>

## **National Tank Truck Carriers**

950 North Glebe Road, Suite #520  
Arlington, Virginia 22203-4183  
Telephone: 703-838-1960  
<http://www.tanktransport.com>

## **Security Industry Association**

635 Slaters Lane  
Alexandria, Virginia 22314  
Telephone: 866-817-8888  
<http://www.siaonline.org>

## **Synthetic Organic Chemical Manufacturers Association**

1850 M Street, NW, Suite 700  
Washington, DC 20036  
Telephone: 202-721-4100  
<http://www.socma.com>

## **Additional Security Requirement Resources**

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### **TSA Security Requirements**

[http://www.tsa.gov/travelers/airtravel/acceptable\\_documents.shtm](http://www.tsa.gov/travelers/airtravel/acceptable_documents.shtm)  
[http://www.tsa.gov/assets/pdf/cargo\\_final\\_rule\\_5-26-06.pdf](http://www.tsa.gov/assets/pdf/cargo_final_rule_5-26-06.pdf)

### **NRC Security Requirements:**

<http://www.nrc.gov/security/byproduct/orders.html>

### **NNSA Security:**

<http://nnsa.energy.gov/>

### **PHMSA Security:**

<http://www.phmsa.dot.gov/hazmat/security>

### **USCG Facility Requirements:**

<http://www.uscg.mil/hq/cg5/cg522/cg5222/>

U.S. Department  
of Transportation  
Pipeline and  
Hazardous Materials  
Safety Administration



1200 New Jersey Avenue, SE, PHH-50  
Washington, DC 20590-0001



# EXHIBIT 25

# Tonopah & Tidewater Railroad

## SECURITY PLAN

### **PURPOSE:**

The purpose of this security plan is to ensure the safe and secure transfer of hazardous materials from the point of origin to the final destination.

### **SCOPE:**

The requirements of this rule requires all shippers and carriers subject to the Hazardous Materials Registration requirements found in 49 CFR Part 107 provide for:

- security vulnerability assessment (SVA)
- countermeasures with appropriate actions to address identified vulnerabilities
- security awareness training
- in-depth security training
- measures to confirm information on job applicants
- measures to address the risks of unauthorized access
- measures to address the risks of en route security

### **STATEMENT OF COMPANY POLICY:**

It is the policy of this company to comply with the requirements of 49 CFR 172 (HM-232) as it specifically pertains to the security requirements for shippers and carriers of hazardous materials. Our company is committed to ensuring the safety of all employees, the public and to prevent all security-related opportunities for theft or misuse of hazardous materials.

### **SECURITY ASSESSMENT**

Our company utilized the Asmark Security Vulnerability Assessment (ASVA) tool may be utilized to assess potential facility and transportation security risks for shipments of hazardous materials.

### **SECURITY TRAINING**

Security awareness training will be provided primarily through .....

In-depth security training will be conducted for all HazMat employees by providing each person with access to our written security plan. Training will be conducted by company management (or their appointed representative) and consist of the following:

- a review of the written plan,

- presentation of the security objectives of the company,
- presentation of the security procedures of the company,
- employee responsibilities,
- emergency actions and organizational structure

The Emergency Response Plan for this facility is updated at least annually and may be used to satisfy and document many of the requirements associated with the in-depth training.

## **RESPONSIBILITIES:**

The management of this company will ensure that all employees are provided with thorough security training. All employees will be trained and are expected to be familiar with the company's security plans and procedures.

List of general employee security responsibilities:

- Employees are responsible for adhering and conforming to all security-related work activities, processes, and procedures. In addition, employees are encouraged to provide feedback and suggestions on ways to improve the organization's security program.
- All employees are expected to understand and adhere to the following corporate suspicious activity reporting procedures. They are intended for all employees to follow in the event any unusual or suspicious activity that poses a threat to the safety of our employees and the security of our equipment, facilities, or hazardous materials cargo, is observed.
- The company will provide a work environment that is reasonably free of hazards and threats of violence which may cause damage to property or harm to people. It is also the company's policy to establish an effective and continuous safety and security program that incorporates educational and monitoring procedures. All supervisors and managers are responsible for ensuring that their employees are trained in appropriate security and suspicious activity reporting procedures.
- All employees have a responsibility to themselves and to the company to observe and report any suspicious or unusual activity that threatens safety or security.
- Employees are expected to use common sense and good judgment when assessing the threat potential of any suspicious activity. Depending on the given situation, employees will be expected to report any observed suspicious activity to their immediate supervisor, next level manager, the corporate safety director, or the local law enforcement official or fire department.

Suspicious activity is defined to include (but not limited to) any of the following situations:

- Unidentified person(s) attempting to gain access to property, equipment, or facilities.
- Unidentified person(s) in any area of the company, office, yard or parking lot.
- An employee, unescorted vendor, or supplier visiting a part of the company for no known reason.
- Fake ID Look for ID on Badge
- Any unescorted or unaccompanied visitor anywhere in the building or wondering around the yard or parking lot.

- Any person (employee or otherwise) who appears to be hiding something or is acting nervous, anxious, or secretive.
- Any employee or visitor making unusual or repeated requests for sensitive or important company documents or information.
- Any person asking an employee to make unauthorized movement (pick-up and delivery) for cash (motor carrier specific).
- Any person or group loitering outside a company facility or premises.
- Any person claiming to be a representative of a utility (gas, water, electric) but cannot produce valid company identification.
- Any person carrying a weapon such as a gun or a knife.
- After hours, any vehicle driving by a company facility with the lights off.
- Any occupied vehicle parked outside a company facility especially if the vehicle has been sitting for a long period or after normal work hours.
- An unfamiliar vehicle that appears to be abandoned near a company building or parking lot.

The above list is not all inclusive, but rather is meant to provide possible examples of suspicious activities. Once, and if, a suspicious activity is identified, the next step is to act. Employees not only need to be able to identify suspicious activity, they also need to know what to do about it.

#### **MEASURES TO CONFIRM INFORMATION ON JOB APPLICANTS:**

All applicants applying for any position involving access to, handling, storing, preparing for transport, and/or transport of hazardous materials for the company shall submit an accurate, complete, signed and dated application for employment. The hiring and screening process requires the information provided by the applicant on the application be verified as true and accurate.

An inquiry into the previous employment history shall be made for every hazmat employee applicant. Hazmat employee applicants shall provide accurate and complete previous and current employer information upon request, including but not limited to:

- Names and addresses of previous employers;
- Names and titles of previous supervisors;
- Phone numbers or other contact information for both of the above.

All hazmat employee applicants applying for positions with our company shall be given an personal interview by the appropriate responsible company personnel. Personal interviews will be used to determine fit for both the applicant and the company. In addition, the personal interview should be used to verify any gap(s) in employment, reason(s) for job or career changes, or any other important or unexplained behavior or history.

All applicants applying for any position involving the handling, storing, preparing for transport, and/or transport of hazardous materials for the company shall be required to provide either proof of U.S. citizenship or proof of their legal right to work in the United States.

The company's driver qualification and hiring procedures shall be in compliance with applicable state and federal regulations, and meet the security standards as established for this facility.

Applicants shall not be considered for employment as drivers by our company unless they meet the following requirements. Persons applying for the position of driver must:

- Meet the company's minimum age and experience requirements.
- Have a driving record that is in line with the company's safety standards.
- Be able to read and speak English sufficiently as required by subsection 391.11(b)(2).
- Be physically qualified to drive a company vehicle.
- Possess a current and valid commercial driver's license of the correct type and with the proper endorsements.
- Not be disqualified to drive a commercial motor vehicle under the rules set forth in subsection 391.15.

An inquiry into the driving record during the preceding 3 years (10 years for positions requiring a CDL) shall be made for every driver applicant. The inquiry shall be made to the appropriate agency of the state in which the applicant holds a motor vehicle operator's license or permit.

An investigation into the employment record during the preceding 3 years (10 years for positions requiring a CDL) shall be made for every driver applicant. Driver applicants shall provide accurate and complete previous and current employer information upon request, including but not limited to:

- Names and addresses of previous employers;
- Names and titles of previous supervisors and dispatchers;
- Phone numbers or other contact information for both of the above.

An investigation into the drug and alcohol history with regard to previous employers shall be made for every driver applicant per subsection 40.25. The driver qualification and hiring process shall not be finalized until drug and alcohol information from previous employees for the preceding 2 years has been obtained and verified.

All applicants applying for the position of CDL driver with the company shall submit to a pre-employment drug screen as required by subsection 382.301, and no driver applicant shall perform any work or activity for our company until a verified negative test result has been obtained for the applicant.

All applicants applying for the position of driver must be medically examined and certified as physically qualified (or present a current Medical Examiner's Certificate) to operate a commercial motor vehicle by a licensed medical examiner.

### **MEASURES TO ADDRESS THE RISKS OF UNAUTHORIZED ACCESS:**

The company will continue to establish a working relationship with local law enforcement officials, emergency responders, and other public safety and security agencies. These partnerships will include the sharing of the operation, work processes, and hazardous materials stored on site or transported. Information regarding its hazmat operation, locations, and potential threats will be shared as appropriate with these agencies.

Local law enforcement officials, emergency responders, and other public safety and security agencies will be periodically invited on-site to discuss and evaluate potential security risks, vulnerabilities, and to assist in the development or enhancement of security program.

All suspicious activities or apparent criminal acts affecting the safety or security will be reported immediately to the proper law enforcement agencies and appropriate company officials. In addition, documentation should be recorded of any security-related incident.

A complete listing of emergency telephone numbers (found in the emergency plan) shall be provided to all dispatchers, supervisors, and managers. This list shall include the numbers for local police and fire departments, regional state police offices, the FBI, and all company managers and executives.

The company may also elect to request an increase in off-hours law enforcement patrols to coincide with increases in national security threat/risk levels.

All information (electronic and hard copy) relating to the storage and/or transporting of hazardous material shall be restricted to employees on a need-to-know basis. All hazmat-related paperwork and other documentation shall be maintained and retained in a secure area with limited and controlled access.

All work/load assignment sheets involving the transportation of hazardous materials shall be maintained in a secure location. Access to hazardous materials load information shall be limited to operations personnel only, including dispatchers, the operation manager, and other designated employees. Dispatch personnel are responsible for the security and proper issuance of all hazardous materials load-related work assignment documents. When providing load information to drivers, dispatchers must review the load information to ensure that it is complete and accurate. For security purposes, it is extremely important that:

- Loadout paperwork (invoices, shipping tickets, etc.) are checked and verified;
- Spreader or trailer numbers on all load assignments are verified; and
- Load assignment numbers are clearly communicated.

Drivers failing to abide by any of the procedures in this plan are subject to disciplinary action.

#### **MEASURES TO ADDRESS THE RISKS OF EN ROUTE SECURITY:**

The following guidelines and procedures apply to all shipments of hazardous materials. All company personnel will be expected to be knowledgeable of, and adhere to, these guidelines and procedures when performing any hazardous material-related activity.

Before using any motor carrier for the purposes of transporting hazardous materials, each carrier should satisfy themselves the motor carrier has a satisfactory rating and uses safe and qualified drivers and equipment.

Before loading any hazardous material onto a commercial carrier, the identity of the driver and motor carrier shall be verified. Drivers may be asked to produce photo identification and current operator's or commercial driver's license (CDL), and the carrier shall be contacted to verify the:

- Driver's name and license number; and
- Tractor/trailer number.

After loading any hazardous materials cargo onto a commercial carrier has been completed, the company should ensure the trailer is sealed with a company-issued barrier-type seal. All seal numbers, along with the date and time, shall be recorded in the presence of the driver on all shipping documents.

When all loading activity has been completed, drivers are responsible for making sure the cargo is secure and to check the bill of lading or the delivery manifest to ensure cargo count is accurate. Once drivers are satisfied that the cargo matches the shipping papers, they should:

1. Close the trailer doors and witness the shipper sealing of the trailer;
2. Record the seal number(s) on the shipping papers; and
3. Have the shipping papers signed by the responsible shipping personnel before leaving.
4. Contact their supervisor/dispatch to verify all pertinent load-related information and the loading process has been completed.

If a discrepancy is found between the cargo and bill of lading or shipping manifest, drivers shall contact their supervisor immediately for instructions.

In the event the shipper fails to supply a seal, drivers are required to use a company-issued seal. Seals can be obtained from any reputable source.

Before leaving any shipper, drivers must make a thorough visual observation of their immediate surroundings and report any unusual or suspicious activity to their supervisor immediately. Drivers, together with their supervisor/dispatcher, shall prepare and execute trip plans for all hazardous materials movements that list:

1. Routing schedules that avoid highly populated areas, bridges and tunnels when possible;
2. Fueling and break locations;
3. Dates and times of daily/routine check calls; and
4. Estimated times of arrival to stop offs and final destination.

These trip plans shall also include potential alternate routes and acceptable deviations.

For all hazardous materials movements, drivers shall minimize stops en route. Proper execution of thorough trip plans will help reduce the need for unnecessary or unplanned stops.

In the event a load containing hazardous materials need to be staged at a company terminal or facility while en route, it shall be stored in a secured location with limited and controlled access.

When deemed necessary for high hazard materials, the company will consider either the use of a team driver operation, escort service or an additional person to ensure security.

While in transit, drivers are prohibited from discussing information related to their load, route, or delivery schedule with any person(s) other than authorized company officials. Drivers are to report any suspicious activity such as load-related inquiries from strangers, to their supervisors immediately.

Drivers are expected to take all reasonable and responsible precautions to prevent damage to company vehicles and theft of hazardous material(s) cargo while in transit.

For personal protection and safety, and the security of the cargo, drivers are expected to park in safe, well lit parking locations only. In all cases, drivers are required to inspect their vehicle and trailer for evidence of tampering after each stop.

Drivers should lock their vehicles and have all windows in the closed position at all times while in transit] especially during all time spent in urban areas, and parked at truck stops and rest areas.

When possible, dispatch shall contact receivers for the purpose of arranging secure overnight or after hours parking for drivers who can safely and legally arrive at their destinations ahead of schedule.



Drivers are prohibited from taking their equipment (loaded or empty) to or through home, or parking in any unsecured area.

Drivers are expected to maintain regular communications with the company while in transit. Any incident of drivers failing to check in when required shall be assumed by the company to be suspicious and highly irregular. Immediate action shall be taken in such situations. Drivers are expected to fully understand this procedure and make every effort to maintain regular contact and communication with dispatch.

In the event of an attempted vehicle hijacking or cargo theft situation while the vehicle is in motion, the company has adopted a NO STOP policy. Drivers who believe a vehicle hijacking is, or may be, in progress, are instructed to keep the vehicle moving as safely and responsibly as possible until the attempt has ceased and/or the authorities have been notified. However, in any hijack situation, drivers should use their own judgment (whether to stop or keep moving) based on the degree to which they feel their personal safety is at risk. Nothing our drivers do is worth getting hurt over.

Drivers who do fall victim to vehicle hijackers or cargo thieves are instructed to notify police as soon as possible. Once the proper authorities have been notified, drivers are required to contact an appropriate company official and follow all subsequent instructions.

Drivers are prohibited from picking up and transporting any unauthorized person.

Drivers failing to abide by any of the procedures in this plan are subject to disciplinary action.

STEVEN B. WOLFSON  
District Attorney  
CIVIL DIVISION  
State Bar No. 001565  
By: **CATHERINE JORGENSEN**  
Deputy District Attorney  
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500 South Grand Central Pkwy.  
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Attorneys for Clark County Department of  
Environment and Sustainability, Division of Air Quality

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**BEFORE THE AIR POLLUTION CONTROL HEARING OFFICER**

<p>In the Matter of:</p> <p>ETON TRANSPORTATION CORP. ENVIRONMENTAL;</p> <p>TRANSPORTATION OF NEVADA, LLC, d/b/a ETON;</p> <p>MOE F. TRUMAN, Individually,</p> <p style="text-align: center;">Respondents.</p>	<p>NOV #9994 AND #10078</p> <p>Hearing Officer: Holly Fic</p> <p><b>REPLY TO RESPONDENTS' RESPONSE TO NOTICES OF VIOLATION #9994 AND #10078</b></p> <p>Date of Hearing: October 29, 2024</p> <p>Time of Hearing: 8:00 A.M.</p>
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Clark County Department of Environment and Sustainability, Division of Air Quality (DAQ) by and through their attorneys, Steven B. Wolfson, District Attorney, through Catherine Jorgenson, Deputy District Attorney, hereby replies to Respondents' Response to Notices of Violation #9994 and #10078.

I. STATEMENT OF FACTS

ETON (which may be ETON Transportation Corp. and/or Environmental Transportation of Nevada, LLC d/b/a ETON) applied for and obtained a Dust Control

Operating Permit (DCOP) for the project identified as STRATFORD-1 (57148) located at 2596 Stratford Avenue in Clark County, Permit No. 57148 – Version No. 0, with an effective date of August 30, 2023 and expiration date of August 29, 2024. *See* DCOP #57148, Version No. 0, attached hereto as Exhibit A. Mr. Moe F. Truman<sup>1</sup> applied for the DCOP on behalf of ETON and named himself as the Designated Onsite Representative and the Responsible Official. Initially, the DCOP permitted 3.19 acres for the purpose of grubbing and demolition. Mr. Truman, on behalf of ETON, applied for and obtained a revision to the DCOP, Permit No. 57148 – Version No. 1 on February 8, 2024. *See* DCOP #57148, Version No. 1 attached hereto as Exhibit B. The DCOP permit area increased to 4.99 acres for the purpose of, among other things, paving. In both versions of the DCOP, Mr. Truman, as the Responsible Official, acknowledged that ETON consented “to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.” DCOP at 3, Exhibits A and B.

Based on various alleged violations of the Clark County Air Quality Regulations (AQR), DAQ issued two Notices of Violations (NOV) Nos. 9994 and 10078.

Respondents contest both NOVs and submitted a Response on September 5, 2024. A hearing has been scheduled before the Air Pollution Control Hearing Officer on October 29, 2024, at which time both DAQ and Respondents may present testimony and evidence

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<sup>1</sup> Mr. Truman applied for the DCOP using the name Moe F. Truman. Upon information and belief, “Moe” is Mr. Mitchell Truman’s nickname.

in support of their respective positions. To provide additional context and information to the Hearing Officer, DAQ submits the following reply to the Response.

## II. ARGUMENT

The overarching theme of the Response is that the subject property owner, Tonopah & Tidewater Railroad Co. (TTRR), is a Class III rail carrier subject to the jurisdiction of the Surface Transportation Board (STB). The argument goes that TTRR, as a rail carrier, and ETON, as a company that supports TTRR in its capacity as a rail carrier, is not subject to the AQRs for various reasons. In support of this position, Respondents provided Exhibits 3 and 4, two Federal Register notices issued by STB. Contrary to Respondents' position, these exhibits, in addition to a decision by STB related to Exhibit 4, show that TTRR is not a rail carrier. Therefore, the arguments presented by Respondents based on TTRR's alleged status as a rail carrier are inapplicable.

Exhibit 3 of the Response is a STB notice published in the Federal Register on September 30, 2004 under STB Finance Docket No. 34547 in which STB identifies TTRR<sup>2</sup> as a "noncarrier" that "has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail owned by Pan Western . . . in Clark County, NV." The notice further states that "Pan Western intends to lease the railroad line to

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<sup>2</sup> Response at 4, para. 10 states, without any documentation, that TTRR is the "owner of rails." In fact, this assertion is contradicted by Respondents' Exhibits 3 and 4 which state that TTRR, as a "noncarrier" was eligible to become a Class III rail carrier by leasing a private rail line from Pan Western which it never did. There is nothing in the record that supports the assertion that TTRR owns any rail lines or is anything but a "noncarrier."

TTRR so that TTRR may initiate and provide common carrier rail operations on or over the line. TTRR will become a Class III rail Carrier.” 69 FR 58594, a copy of which is attached to the Response as Exhibit 3. Subsequently, STB published a second notice, STB Finance Docket No. 34958, on December 14, 2006. 71 FR 75293, a copy of which is attached to the Response as Exhibit 4. Footnote 2 states: “This line [owned by Pan Western] was the subject of a notice of exemption that, according to the current verified notice, was never consummated.” *Id.*; *see also* STB Decision, STB Finance Docket No. 34958, Service Date: March 15, 2007, footnote 1 and page 3 (“the Tonopah & Tidewater Railroad Co. did not move forward and the transaction between [TTRR and Pan Western<sup>3</sup>] never occurred.”), attached hereto as Exhibit D. Based on the foregoing, Respondents cannot rely on any of their arguments that they are somehow exempted from complying with the AQRs based on the unsupported and inaccurate claim that TTRR is a rail carrier.

Next, Respondents implicitly argue that because ETON’s lease of the subject property from TTRR expired on December 31, 2023, Respondents cannot be held liable for AQR violations. This argument is invalid. Whatever arrangements ETON had with TTRR is between those two companies. Mr. Truman, ETON’s Responsible Official, certified that he, on behalf of ETON, could commit to all the terms and conditions of the DCOP, and he acknowledged that obtaining the DCOP was “not a substitute for obtaining the property owner’s permission to use land associated with the project.” DCOP at 3,

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<sup>3</sup> Pan Western’s status as a Nevada business entity has since been permanently revoked. See Screenshot from the Nevada Secretary of State’s website regarding Pan Western Corporation, attached hereto as Exhibit C.

Exhibits A and B. Mr. Truman, on behalf of ETON, revised the DCOP in February 2024, weeks after the date ETON's lease with TTRR allegedly expired. In addition, as alleged in the NOVs, Mr. Truman continued to interact with DAQ staff who inspected or attempted to inspect the project site until the DCOP expired in August 2024. This attempt to deflect responsibility is not supported by the facts. Regardless, ETON as the permittee, and Mr. Truman, as the actively involved Responsible Official, accepted and are accountable for all the responsibilities that come with holding a DCOP.

Respondents also argue that DAQ staff did not have the authority to come on site. This is patently incorrect. By the terms of the DCOP, ETON and Mr. Truman consented "to inspection of the site during normal hours of operation by [DAQ] staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs." DCOP at 3, Exhibits A and B. To obtain a DCOP, a permittee must consent to this permit condition, and the Responsible Official must acknowledge the permittee's consent. *See* NRS 445B.580; DCOP at 3 Exhibits A and B. In this case ETON and Mr. Truman both consented and acknowledged this permit condition in ETON's DCOP. *Id.* In addition to AQR Section 4, Respondents violated the explicit permit condition as well as NRS 445B.580.

Finally, Respondents make arguments related to what should be classified as best available control measures, equal protection and due process. They seem to be based on a fundamental misunderstanding of the Clean Air Act, its regulations, Nevada's State Implementation Plan, the NRS, the NAC, and the AQRs. To the extent that the hearing will provide more context regarding ETON's reliance on the aerial photographs, DAQ

will be able to respond at that time. As for the due process claim, DAQ relies on NRS 445B.500, NRS 445B.640, AQR Section 9.1, and an internal penalty procedure to calculate a **recommended** penalty. The Hearing Officer decides what penalty, if any, to assess. Respondents have had and will have ample opportunity to present their position to the Hearing Officer. Respondents are confusing DAQ's role as the regulator with the Hearing Officer's role as the trier of fact and decision maker.

DATED this 14<sup>th</sup> day of October, 2024.

STEVEN B. WOLFSON  
DISTRICT ATTORNEY

By: /s/ Catherine Jorgenson  
CATHERINE JORGENSEN  
Deputy District Attorney  
State Bar No. 006700  
500 South Grand Central Pkwy. 5<sup>th</sup> Flr.  
Las Vegas, Nevada 89155-2215  
Attorney for Clark County Department of  
Environment and Sustainability, Division of  
Air Quality



# **Exhibit A**

Dust Control Operating Permit New



## Dust Control Operating Permit (DCOP) For Construction Activities

This permit does not exempt the permittee from compliance with the Endangered Species Act

**Permit No: 57148**

**Version No: 0**

**Permittee: ETON**

**Project: STRATFORD-1 (57148)**

**Physical Location: 2596 STRATFORD AVE**

**Cross Streets: Stratford Ave/Glen Ave, S**

**Effective Date: Aug 30, 2023**

**Expiration Date: Aug 29, 2024**

**Revision Date: N/A**

**Revision Type: N/A**

**Project Acreage: 3.19**

**Region: SSE - South/Southeast**

### Notes/Additional Permit Conditions

Not NESHAP Demolition  
WF - 8/30/2023

#### Designated Onsite Representative

Name: Moe Truman  
Company: ETON  
Mobile Number: 702-348-6370  
Email: moe@eton.me  
Dust Card No.: SCHEDULED Expires: Oct 10, 2023

#### Responsible Official

Name: Moe Truman  
Company: ETON  
Office Number: 702-851-1746  
Mobile Number: 702-348-6370  
Email: moe@eton.me

**Dust control measures must occur 24 hours a day, 7 days a week.**

**This permit is not valid until all fees are paid in full and a complete copy of the permit with conditions and the dust mitigation plan is posted on the project site.**

*It is a condition of the issuance of any operating permit required by the commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by authorized officer of the department at any time during the holder's hours of operation without prior notice. This condition must be stated on each application form and operating permit. NRS 445B.580.*

The issuance of this PERMIT does not relieve the PERMITTEE from compliance with all other applicable federal, state, county and local ordinances and regulations. Issuance of this PERMIT shall not be a defense to violations of any applicable ordinances or regulations.

## Permittee Information

**Permittee Name:** ETON

**Mailing Address:** 3426 Losee Road

**City/State/Zip Code:** North Las Vegas, NV 89030

**Office Number:** 702-851-1746

**Fax Number:** 702-851-1583

## Additional Project Information

**Project Description:** GRUB SITE. Site needs to be cleared to let the survey crew in to start gathering data points to work on a grading plane.

**Project Attributes:** Miscellaneous, Other Demolition

**Portable Crushing and/or Powered Screening:** *Portable crushing and/or powered screening equipment supporting any onsite single construction activity and remaining onsite for less than 12 months is exempt from the stationary source permitting requirements of AQR Section 12.1 and will instead be subject to the conditions of the Dust Control Operating Permit issued pursuant to AQR Section 94. This exemption does not apply to equipment listed as emission units in a current minor source permit unless the permit states otherwise.*

- Will portable crushing or powered screening occur onsite: No
- If yes, what is the anticipated date that equipment will be brought onsite: N/A
- What is the duration equipment will remain onsite: N/A

## Dust Control Monitor Information

**Name:** N/A

**Company:** N/A

**Mobile Number:** N/A

**Email:** N/A

**Dust Monitor Card No.:** Expires:

## Blasting Supplemental Information

**Blasting Company:** N/A

**Contact Name:** N/A

**Mailing Address:** N/A

**Office Number:** N/A

**Mobile Number:** N/A

**Blasting Date:** N/A **Blasting Time:** N/A

**Blasting Frequency:** N/A

**Material to be Blasted:** N/A

**Acreage to be Blasted:** N/A

**Blasting Depth:** N/A Feet

**Distance to Nearest Residence:** N/A Feet

**Distance to Nearest Business:** N/A Feet

**Have Nearby Residents Been Informed:** N/A

**Have Nearby Businesses Been Informed:** N/A

## **Responsible Official Certification/Acknowledgement Statement**

By submitting this permit application electronically, the user (Responsible Official) certifies the following:

- a. As the Responsible Official (applicant), I am authorized on behalf of the Owner Builder/Company/Organization (permittee) to apply for this DCOP and to commit to all of the terms and conditions therein.
- b. If applying on behalf of the permittee listed, the permittee shall be responsible for complying with requirements of this DCOP and the Air Quality Regulations (AQRs). Otherwise, the applicant listed shall be the responsible party.
- c. I accept responsibility for assuring that all contractors, subcontractors, and other persons on the construction site defined by this permit comply with the terms and conditions of the DCOP, the associated Dust Mitigation Plan and the AQRs.

By submitting this permit application electronically, the user (Responsible Official) acknowledges the following:

- a. The permit issued in response to this application is not a substitute for obtaining the property owner's permission to use land associated with the project. Issuance of the DCOP is intended only for controlling the emission of air pollutants and assuring compliance with the AQRs. Clark County cannot be held liable for any unauthorized use of the land.
- b. In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.

## **Additional Instructions/Advisories**

- a. Before disturbing soils on a parcel, enacting a grade change, constructing a structure and/or appurtenances, or installing, constructing, or modifying equipment that emits an air pollutant, you must contact and obtain all required permits from Clark County's Department of Comprehensive Planning, Building Department, DAQ (Title 30 Notice) and the municipality with jurisdiction.
- b. If the project has 50 or more acres of disturbed soil at any given time, the permittee shall identify the on-site Dust Control Monitor for the project(s). In addition, this requirement applies when the permittee has common control of multiple adjacent projects that individually have less than 50 acres of disturbed soil at any given time, but the combined project has 50 or more acres of disturbed soil at any given time.  
If a Dust Control Monitor had not been identified at the time of this permit issuance, the permittee shall notify DAQ by revising the permit in the DAQ Permitting Portal, before disturbing 50 or more acres of soil at any given time. The Dust Control Monitor must be on-site at all times when construction activities occur and shall manage dust prevention and control on-site.
- c. DCOP acreage fee is based on total project acreage of disturbed surface area, which is rounded up to the next whole acre. If the project is less than 1 acre, a minimum of 1 acre shall apply to the project for fee purposes.
- d. Stormwater Advisory: Be advised that all land disturbances that exceed 1 acre or are adjacent to a waterway must submit a "Notice of Intent" to the Nevada Division of Environmental Protection that certifies a Storm Water Pollution Prevention Plan has been developed and is maintained for the site. Contact NDEP at (775) 687-9429 for an application, information, and instructions.

## Dust Mitigation Plan

**Parcel Number:** 161-07-103-015

**Soil PEP:** High

**Water Source:** Hydrant with Jones Valve

If other, describe:

**Water Application Method:** Water Trucks/Pulls

If other, describe:

### Best Management Practices (BMPs) – Control Measures

The permittee shall comply with all requirements of Section 94 of the AQRs and all provisions of the DCOP issued from this application.

For each project activity listed in this Dust Mitigation Plan, the permittee shall comply with the requirements for the associated Best Management Practices (BMPs). Where options are listed for a BMP requirement, the permittee shall apply one or more of the Control Measures to comply with the requirement. The permittee will apply corresponding Control Measures for the PEP for the project soil type(s).

Table 1 provides the required Control Measures to be implemented for each soil type based on PEP. Some Control Measures apply to Construction Activities regardless of soil type. The Control Measures implemented must address the PEP for the area in which the Construction project is permitted.

**Table 1: Soil Types**

Particulate Emission Potential (PEP)	Control Measure
Low	Apply water and mix moist soil with dry soil until optimum moisture content is reached.
Moderate Low	Apply and mix water into soil and/or material until optimum moisture content is reached.
Moderate High	Apply and mix water and tackifier solution into soil and/or material until optimum moisture content is reached.
High	Apply and mix water and surfactant solution into soil and/or material until optimum moisture content is reached.

The permittee shall comply with all applicable requirements for activities performed pursuant to this DCOP. If a requirement has Control Measures listed, permittee shall comply with one or more of the Control Measures. If Control Measures for the requirement are contingent on the project PEP/Soil Type, permittee shall comply with one or more of the Control Measure for the designated PEP/Soil Type.

SL- 08/30/2023



## **BMP 01 BACKFILLING (Filling area previously excavated or Trenched)**

### **01 Requirements**

- (a) Maintain optimum moisture content in backfill material and operate equipment in a manner that limits Fugitive Dust to comply with the AQRs before, during, and after handling of material and during storage until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Dedicate an adequate water source to backfilling equipment and apply water as needed to minimize Dust.
  - (3) Empty loader bucket slowly and minimize drop height from loader bucket.
  - (4) Ensure backfill material is moist or crusted at all times.
  - (5) Apply water, surfactant, or tackifier to maintain disturbed soils in a stable condition to limit Fugitive Dust.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 02 BLASTING – Abrasive (Sandblasting, abrasive blasting, and/or hydro-blasting)**

### **02 Requirements**

- (a) Ensure soil moisture is maintained to limit Fugitive Dust where support equipment and vehicles will operate until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Limit visible Emissions to no more than an average of 40% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
- (c) Hydro-blasting (using water as the propellant) must be conducted in a manner that maintains visible Emissions within Opacity standards.
- (d) Stabilize Particulate Matter in the surrounding area following blasting.
  - (1) Clean Particulate Matter from the surrounding area and water disturbed soils after blasting.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on the surrounding area following blasting.

**Note:** Whenever possible, abrasive blasting should be conducted within an enclosed structure to limit the release of visible Emissions to the atmosphere.



## **BMP 03      BLASTING – Soil and Rock (Explosive blasting of soil and rock)**

### **03      Requirements**

- (a) Maintain optimum moisture content in soil where drills, support equipment, and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where drills, support equipment, and vehicles will operate, and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) A Blasting Supplemental form must be filled out, submitted, and approved by DAQ prior to any blasting.
- (c) No blasting may be conducted within 1,500 feet of a residential area, occupied building, or major roadway when the wind direction is toward these structures.
- (d) Blasting shall take place between the hours of 8:00 a.m. and 4:30 p.m., excluding Saturdays, Sundays, and holidays, unless prior permission is obtained from the Control Officer.
- (e) No blasting is allowed when the National Weather Service forecasts wind gusts above 25 miles per hour (mph).
- (f) Before setting explosive charges in holes, document current and predicted weather conditions according to the National Weather Service. If the forecast is for wind gusts of 25 mph or more, do not load explosives or blast holes. If wind conditions are forecasted to be 25 mph or more during a future scheduled blast, do not load explosives or blast holes.
- (g) If DAQ issues a Construction Notice or Dust Advisory when a blast has been scheduled, do not load explosives or blast holes during the time period listed on the notice/advisory. If holes were loaded before the notices were issued, call a DAQ Compliance Supervisor or Manager for permission to blast.
- (h) Maintain the optimum moisture content in soil before, during, and after blasting activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit the blast area to what can be stabilized immediately following the blast.
  - (2) Limit disturbed areas by maintaining natural rock and vegetation.
  - (3) Presoak surface soils to the depth of caliche or bedrock with water, surfactant, or tackifier to limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following blasting activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 04      CLEARING AND GRUBBING (Definition: Clearing and grubbing for site preparation and vacant land cleanup)**

**04      Requirements**

- (a) Maintain optimum moisture content in soil before, during, and after clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Apply water, surfactant, or tackifier during clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (3) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following clearing and grubbing activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 05      CLEARING FORMS, FOUNDATIONS AND SLABS (Clearing and cleaning of forms, foundations and slabs)**

**05      Requirements**

- (a) Limit visible Emissions before, during, and after the clearing of forms, foundations, and slabs to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
  - (1) Avoid the use of high pressure air to blow soil and/or debris from forms, foundations, and slabs.
- (b) At least one of the following must be used to clear forms, foundations, and slabs:
  - (1) Water spray.
  - (2) Sweeping and water spray.
  - (3) Industrial vacuum.

**BMP 06      CRUSHING (Crushing of Construction and demolition debris, rock, and soil)**

**06      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after crushing activities to limit Emissions.
  - (1) Pre-water material before loading it into the crusher.
  - (2) Apply water to material during crushing to ensure compliance with Opacity standards and Permit conditions.

- (3) Monitor Emissions Opacity. Make adjustments to ensure compliance with Opacity standards and Permit conditions.
- (4) Apply water to crushed material immediately following crushing.

**Note:** If required, obtain the appropriate Operating Permit for powered crushers prior to engaging in crushing activity and comply with Permit conditions.

## **BMP 07 CUT AND FILL (Cut and/or fill soils for site grade preparation)**

### **07 Requirement**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils.
- (b) Maintain optimum moisture content in soils before, during, and after cut and fill activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water to cut depth and maintain surface soils in a stabilized condition.
  - (2) Rip soil and add water and/or surfactant as needed to reach moisture throughout the cut depth.
  - (3) During cut and fill activities, apply water, surfactant, or tackifier to ensure moisture content is maintained to cut depth.
  - (4) Immediately following cut and fill activities, apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 08 DEMOLITION – Implosion (Implosive blasting demolition of structure)**

### **08 Requirements**

- (a) A Demolition Supplemental Form and a Supplement to the Dust Mitigation Plan must be filled out, submitted to, and approved by the Control Officer prior to implosion.
- (b) An asbestos survey must be conducted on any facility before demolition can commence.
- (c) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (d) All friable and non-friable asbestos-containing material must be removed from the facility prior to implosion.
- (e) Blasting must be confined to times when the wind direction is away from the closest residential areas, occupied buildings, and major roadways.
- (f) Implosion time must be preapproved by the Control Officer.
- (g) Current weather conditions and weather predictions from the National Weather Service must be monitored and documented.
  - (1) Prior to setting explosive charges, obtain and document current and predicted weather conditions from the National Weather Service.

- (2) If a wind advisory (over 20 mph gusts or average wind speed of 10 mph) is current or forecasted for the blast period, do not set charges and do not blast.
  - (3) Maintain a calibrated anemometer and log ambient air velocity and direction within 1,000 feet of the implosion site, beginning at least 1 (one) hour prior to and 15 minutes after the implosion.
- (h) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Restrict support equipment and vehicles to existing Paved and/or stable areas.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (i) Maintain optimum moisture content in demolition debris before, during, and after implosion activities to limit Emissions.
  - (1) Apply water to debris immediately following blast and safety clearance, and maintain optimum moisture content in debris throughout cleanup and exporting activities.
  - (2) If water is not effective, apply and maintain a surfactant to debris immediately following blast and safety clearance.
  - (3) Clean and stabilize surrounding areas immediately following blast and safety clearance by applying water to all disturbed soil surfaces to establish a crust.
  - (4) Thoroughly clean blast debris from Paved and other surfaces following blast and safety clearance.

**BMP 09      DEMOLITION - Mechanical/Manual (Mechanical and manual demolition of walls, stucco, concrete, free-standing structures, buildings, and load-bearing walls)**

**09      Requirements**

- (a) An asbestos survey must be conducted on any facility or structure subject to NESHAP requirements before demolition can Commence.
- (b) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (c) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (d) Maintain optimum moisture content in demolition debris before, during, and after demolition activities to limit Emissions.
  - (1) Apply water to demolition debris during handling.
  - (2) Apply water to stabilize demolition debris immediately following demolition.

- (3) If water is not effective, apply and maintain a Dust Palliative to demolition debris immediately following demolition.
- (e) Stabilize surrounding area immediately following demolition by applying water and/or Dust Palliative to all disturbed soil surfaces.

**BMP 10 DISTURBED SOIL (Disturbed soil throughout project, including between structures)**

**10 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all Construction Activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit vehicle traffic and disturbance of soils to areas not being immediately developed using fencing, barriers, and/or barricades.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) Apply water, surfactant, or tackifier during Construction Activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust immediately following Construction Activities until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) If interior block walls are planned, install walls as early as possible in the Construction project.

**BMP 11 LONG-TERM STABILIZATION (Applies to disturbed land that is not built out, landscaped, or Paved at Permit closure)**

**11 Requirements**

- (a) Stabilize all disturbed land within 10 days of the completion of a project, or when active operations on all or part of the Construction site will cease for 30 days or more. Restrict access to these areas to prevent soil disturbance and maintain long-term stabilization. The Control Officer must approve the control method selected by the Permittee before its implementation. The Permittee shall select one or more of the following control methods:
  - (1) Pave.
  - (2) Apply Clean Gravel.
  - (3) Install permanent metal or wood fencing and/or a post and cable at least 3 feet high, or other similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
  - (4) Install a dirt berm at least 4 feet high, or a similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
- (b) Installation of signs, as described below, is required if a dirt berm or similar barrier is used or if Clean Gravel is applied.

- (1) Install orange “No Parking/Trespassing” signs with black lettering, at least 24 inches wide by 18 inches high, every 50 feet or as approved by the Control Officer (Table 2).
  - (2) Construct the sign(s) from materials capable of withstanding Clark County’s harsh environment (e.g., wood, metal, plastic).
  - (3) Attach the sign(s) to a sturdy post, such as metal or wood, placed securely in the ground, or attach the sign(s) to a fence, barricade, or other stable object that is clearly visible.
  - (4) Post on or near the property boundary, the property corners, and at all access points; post no further than 50 feet apart.
- (c) New Construction or modification of Paved roads must be stabilized consistent with Section 93 before the Dust Control Operating Permit (DCOP) is closed.
- (1) Roads with vehicular traffic equal to 3,000 vehicles or fewer per day shall have a 4 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (2) Roads with vehicular traffic greater than 3,000 vehicles per day shall have an 8 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (3) All disturbed areas outside the road shoulder boundaries must be treated for long-term stabilization.

## **BMP 12      DUST PALLIATIVE – Selection and Use (Selection and use of chemical and organic dust suppressing agents and other Dust Palliatives)**

### **12      Requirement**

The selection and use of chemical and organic Dust Suppressing agents and other Dust Palliatives shall adhere to all local, State, and federal regulations as well as all manufacturer specifications.

## **BMP 13      IMPORTING/EXPORTING OF BULK MATERIAL (Importing or exporting of soil, aggregate, decorative rock, debris, Type II, and other bulk material)**

### **13      Requirement**

- (a) Maintain optimum moisture content in surface soils and bulk material before, during, and after all importing/exporting activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where importing/exporting activities occur, including haul routes, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative, or Clean Gravel, on surface soils where importing/exporting activities occur, including haul routes.
  - (3) Limit vehicle speeds to 15 mph on the work site.
  - (4) Maintain 3–6 inches of freeboard to prevent spillage.
  - (5) Apply tarps or other suitable enclosures that completely cover the load on haul trucks before they exit the project onto Public Roads, and maintain throughout transport. Tarps must be well-maintained and serviceable at all times.
- (b) Clean the wheels and undercarriage of haul trucks before they leave the Construction site.
- (c) Check belly/end dump truck seals regularly, and remove trapped rocks to prevent spillage.

**BMP 14      LANDSCAPING (Installation of sod, decorative rock, desert or other landscape material)**

**14      Requirements**

- (a) Maintain optimum moisture content in soils and landscaping material before, during, and after landscaping activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) Apply water, surfactant, or tackifier to maintain disturbed soils and landscaping material in a stable condition until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 15      SUBGRADE PREPARATION FOR PAVING (Subgrade preparation for paving streets, parking lots, etc.)**

**15      Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all paving/subgrade preparation activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water subgrade surfaces until optimum moisture content is reached.
  - (2) Maintain optimum moisture content in material while aggregate is being applied.
  - (3) Place tack coat on aggregate base.

**BMP 16      SAWING/CUTTING MATERIALS (Sawing or cutting materials such as concrete, asphalt, block or pipe)**

**16      Requirements**

- (a) Limit visible Emissions to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs. One of the following two control methods must be used when sawing/cutting materials:
  - (1) Use water to control Dust.
  - (2) Use a vacuum to collect Dust.

**BMP 17      SCREENING (Screening of rock, soil, or Construction debris)**

**17      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after screening activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Apply sufficient water or a Dust Suppressant prior to screening.
  - (2) Drop material through the screen slowly; minimize drop height.



- (3) Dedicate an adequate water source to the screening operation, and apply water as needed to minimize Dust.
- (4) Monitor visible Emissions; make adjustments to Control Measures to ensure compliance with Opacity standards and Permit conditions.
- (5) Apply water, surfactant, or Dust Palliative to screened material and surrounding areas following screening activities until long-term stabilization is achieved.

**Note:** If required, obtain the appropriate Operating Permit for powered screens before engaging in screening activity and comply with Permit conditions.

## **BMP 18 STAGING AREAS (Staging areas and equipment/material storage areas)**

### **18 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all staging area activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
  - (3) Limit vehicle speed to 15 mph in staging area(s) and on all unpaved access routes.
  - (4) Apply water, Clean Gravel, recycled asphalt, or Dust Palliative to staging area soils for the duration of the project.

## **BMP 19 STOCKPILING (Stockpiling of materials, such as Type II, rock or debris, for future use or export)**

### **19 Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after stockpiling activities to limit Fugitive Dust until long-term stabilization is achieved.
  - (1) Stockpiles located within 100 yards of occupied buildings shall not be constructed over 8 feet in height unless otherwise approved by the Control Officer.
  - (2) Stockpiles located farther than 100 yards from any occupied building and constructed over 8 feet in height must have a road bladed to the top to allow water truck access, or shall demonstrate another means to provide effective Dust control.
  - (3) Apply water, surfactant, or tackifier during stockpiling activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to material and surface soils to form a crust immediately following stockpiling activities until the long-term stabilization requirements listed in BMP 11 are achieved.

- (c) All stockpiles must be removed or leveled prior to project completion unless otherwise approved by the Control Officer. Stockpiles approved to be left in place must be in compliance with the long-term stabilization requirements listed in BMP 11.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 20 TRACKOUT PREVENTION AND CLEANUP (Prevention and cleanup of mud, silt, and soil tracked out onto Paved surfaces)**

### **20 Requirements**

- (a) Install and maintain a Trackout control device in an effective condition at all access points where Paved and unpaved access or travel routes intersect.
  - (1) Install gravel pad(s) consisting of a minimum of 2 inches in rough diameter of Clean Gravel or crushed rock on a well-graded surface (Type II material is not acceptable). Minimum dimensions must be 30 feet wide by 6 inches deep by 50 feet in length or the length of the longest haul truck, whichever is greater. Re-screen, wash, or apply additional rock to gravel pads to maintain effectiveness.
    - (A) Install wheel shakers if gravel pads are not effective in preventing Trackout. Clean wheel shakers regularly to maintain their effectiveness.
    - (B) Install wheel washers if wheel shakers are not effective in preventing Trackout. Maintain wheel washers regularly to maintain effectiveness.
    - (C) Alternative Trackout control devices may be used if approved by the Control Officer.
  - (2) All exiting traffic must be routed over selected Trackout control device(s) by clearly establishing and enforcing traffic patterns on-site.
- (b) Maintain Dust control and clean all Trackout from Paved surfaces.
  - (1) Maintain Dust control during working hours and clean all Trackout from Paved surfaces, including sidewalks and gutters, at the end of each work shift.
  - (2) Immediately clean up Trackout that extends 50 feet or more, or more than ¼ inch in depth, from Paved surfaces, including sidewalks and gutters, or any amount of Trackout that causes one or more of the following:
    - (A) A Dust plume that extends more than 100 feet horizontally or vertically.
    - (B) An average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, pursuant to the AQRs.
    - (C) 50% instantaneous Opacity, pursuant to the AQRs.
  - (3) Use street sweeper(s) in addition to Trackout control devices to ensure the cleanup of Trackout is maintained. If one street sweeper is not effective in controlling Trackout to Air Quality Standards, bring in additional street sweepers.
  - (4) The use of blower devices to remove deposited mud/dirt Trackout from a Paved road is prohibited.
  - (5) The use of rotary brushes without water is prohibited.
  - (6) The use of soil to create a ramp for vehicle access over a curb is prohibited.

**BMP 21      TRAFFIC—Unpaved Routes and Parking Areas (Construction-related traffic on unpaved roads and parking areas)**

**21      Requirements**

- (a) Limit visible Dust Emissions from vehicle operations and stabilize all unpaved routes, including unpaved parking areas.
  - (1) Limit vehicle speeds to 15 mph on all unpaved routes and parking areas.
  - (2) Apply water to unpaved haul routes and off-road traffic areas, including parking areas, and maintain in a stabilized condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on unpaved routes, off-road traffic areas, and parking areas.
  - (4) If water, surfactant, and/or Dust Palliative is not effective, apply and maintain Clean Gravel (or other suitable material approved by the Control Officer) on unpaved routes, off-road traffic areas, and parking areas.
  - (5) If a preexisting unpaved road or haul route is being used but is not permitted, it must be maintained in a stabilized condition. These unpaved roads or haul routes must not be changed in any way unless permitted or as approved by the Control Officer.

**BMP 22      TRENCHING (Trenching with track- or wheel-mounted excavator, shovel, backhoe, or trencher)**

**22      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in soils before, during, and after Trenching activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils before Trenching.
  - (2) Apply water, surfactant, or tackifier during Trenching activities to prevent unstable soil conditions, and limit Fugitive Dust by dedicating a water truck or large hose.
  - (3) Apply water, surfactant, and/or Dust Palliative to excavated soils to form a crust immediately following Trenching activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 23      TRUCK LOADING (Loading trucks with materials including Construction and demolition debris, rock, and soil)**

### **23      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after truck loading activities to limit Fugitive Dust.
  - (1) Mix material with water, surfactant, or tackifier prior to truck loading activities to limit Fugitive Dust.
  - (2) Empty loader bucket slowly and minimize the drop height while dumping.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## Sheenaleigh Lucas

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**From:** Moe Truman <moe@eton.me>  
**Sent:** Wednesday, August 30, 2023 2:43 PM  
**To:** Sheenaleigh Lucas  
**Subject:** RE: DCOP App No. 20032- ETON- STRATFORD

YES

---

**From:** Sheenaleigh Lucas <Sheenaleigh.Lucas@ClarkCountyNV.gov>  
**Sent:** Wednesday, August 30, 2023 2:39 PM  
**To:** Moe Truman <moe@eton.me>  
**Subject:** RE: DCOP App No. 20032- ETON- STRATFORD

Is this parcel going to be developed in the future?

Regards,

Sheenaleigh Lucas  
Air Quality Specialist II  
Clark County Department of Environment and Sustainability  
Division of Air Quality  
4701 W. Russell Rd., Suite 200  
Las Vegas, NV 89118  
Phone: (702) 455-1684 Fax: (702) 383-9994

*My work hours are Tuesday- Friday, 7:00 am- 5:30pm*

**For any dust permit information or forms, please click on the link below.**

**[Dust Control Permitting Portal, Forms & Requirements](#)**

---

**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Sent:** Tuesday, August 29, 2023 2:47 PM  
**To:** Sheenaleigh Lucas <[Sheenaleigh.Lucas@ClarkCountyNV.gov](mailto:Sheenaleigh.Lucas@ClarkCountyNV.gov)>  
**Subject:** RE: DCOP App No. 20032- ETON- STRATFORD

There are some trees to be taken down, and some old foundation from a water tank trash from the homeless in the area.

Site needs to be cleared to let the survey crew in to start gathering data points to work on a grading plane.

---

**From:** Sheenaleigh Lucas <[Sheenaleigh.Lucas@ClarkCountyNV.gov](mailto:Sheenaleigh.Lucas@ClarkCountyNV.gov)>  
**Sent:** Tuesday, August 29, 2023 2:37 PM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Subject:** DCOP App No. 20032- ETON- STRATFORD

Greetings,

Please **reply to this email only** as soon as possible so not to delay the approval process. I have reviewed your Dust Control Operating Permit application and have questions and/or need additional information. Applications cannot be

updated with verbal authorization so **please reply to this email.** *You cannot correct the application on the portal, only the reviewer can.* If you have questions, feel free to email me those inquiries. If you wish to come in to discuss the application with me, please make an appointment.

The mailing address listed in the application, 4680 N Cimmaron Las Vegas, NV 89129, belongs to a residential home. Please provide the business mailing address of ETON.

The project description is listed as "Grub Site." What is this site being grubbed for?

Other Demolition was selected as a Project Attribute. What is being demolished on the site?

Regards,

Sheenaleigh Lucas  
Air Quality Specialist II  
Clark County Department of Environment and Sustainability  
Division of Air Quality  
4701 W. Russell Rd., Suite 200  
Las Vegas, NV 89118  
Phone: (702) 455-1684 Fax: (702) 383-9994

*My work hours are Tuesday- Friday, 7:00 am- 5:30pm*

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# **Exhibit B**

Dust Control Operating Permit Revised





## Dust Control Operating Permit (DCOP) For Construction Activities

This permit does not exempt the permittee from compliance with the Endangered Species Act

**Permit No: 57148**

**Version No: 1**

**Permittee: ETON**

**Project: STRATFORD-1 (57148)**

**Physical Location: 2596 STRATFORD AVE**

**Cross Streets: Stratford Ave/Glen Ave, S**

**Effective Date: Aug 30, 2023**

**Expiration Date: Aug 29, 2024**

**Revision Date: Feb 8, 2024**

**Revision Type: Add Acreage**

**Project Acreage: 4.99**

**Region: SSE - South/Southeast**

### Notes/Additional Permit Conditions

M1 = +1.8 acres  
Conditional renewal as per Section 92 regulations.

Not NESHAP Demolition  
WF - 8/30/2023

#### Designated Onsite Representative

Name: Moe Truman  
Company: ETON  
Mobile Number: 702-348-6370  
Email: moe@eton.me  
Dust Card No.: SCHEDULED Expires: Feb 27, 2024

#### Responsible Official

Name: Moe Truman  
Company: ETON  
Office Number: 702-851-1746  
Mobile Number: 702-348-6370  
Email: moe@eton.me

**Dust control measures must occur 24 hours a day, 7 days a week.**

**This permit is not valid until all fees are paid in full and a complete copy of the permit with conditions and the dust mitigation plan is posted on the project site.**

*It is a condition of the issuance of any operating permit required by the commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by authorized officer of the department at any time during the holder's hours of operation without prior notice. This condition must be stated on each application form and operating permit. NRS 445B.580.*

The issuance of this PERMIT does not relieve the PERMITTEE from compliance with all other applicable federal, state, county and local ordinances and regulations. Issuance of this PERMIT shall not be a defense to violations of any applicable ordinances or regulations.

## Permittee Information

**Permittee Name:** ETON

**Mailing Address:** 2596 Stratford Ave

**City/State/Zip Code:** Las Vegas, NV 89121

**Office Number:** 702-851-1746

**Fax Number:** 702-851-1583

## Additional Project Information

**Project Description:** M1 = +1.8--GRUB SITE. Bring in fill, survey, get drainage study, get zoning approved bring in chat on top of base roll and compact and shoot with AC 30 then pave with parking lot mix

**Project Attributes:** Commercial Construction, Miscellaneous, Other Demolition, Staging/Stockpiling

**Portable Crushing and/or Powered Screening:** *Portable crushing and/or powered screening equipment supporting any onsite single construction activity and remaining onsite for less than 12 months is exempt from the stationary source permitting requirements of AQR Section 12.1 and will instead be subject to the conditions of the Dust Control Operating Permit issued pursuant to AQR Section 94. This exemption does not apply to equipment listed as emission units in a current minor source permit unless the permit states otherwise.*

- Will portable crushing or powered screening occur onsite: No
- If yes, what is the anticipated date that equipment will be brought onsite: N/A
- What is the duration equipment will remain onsite: N/A

## Dust Control Monitor Information

**Name:** N/A

**Company:** N/A

**Mobile Number:** N/A

**Email:** N/A

**Dust Monitor Card No.:** Expires:

## Blasting Supplemental Information

**Blasting Company:** N/A

**Contact Name:** N/A

**Mailing Address:** N/A

**Office Number:** N/A

**Mobile Number:** N/A

**Blasting Date:** N/A **Blasting Time:** N/A

**Blasting Frequency:** N/A

**Material to be Blasted:** N/A

**Acreage to be Blasted:** N/A

**Blasting Depth:** N/A Feet

**Distance to Nearest Residence:** N/A Feet

**Distance to Nearest Business:** N/A Feet

**Have Nearby Residents Been Informed:** N/A

**Have Nearby Businesses Been Informed:** N/A

## Responsible Official Certification/Acknowledgement Statement

By submitting this permit application electronically, the user (Responsible Official) certifies the following:

- a. As the Responsible Official (applicant), I am authorized on behalf of the Owner Builder/Company/Organization (permittee) to apply for this DCOP and to commit to all of the terms and conditions therein.
- b. If applying on behalf of the permittee listed, the permittee shall be responsible for complying with requirements of this DCOP and the Air Quality Regulations (AQRs). Otherwise, the applicant listed shall be the responsible party.
- c. I accept responsibility for assuring that all contractors, subcontractors, and other persons on the construction site defined by this permit comply with the terms and conditions of the DCOP, the associated Dust Mitigation Plan and the AQRs.

By submitting this permit application electronically, the user (Responsible Official) acknowledges the following:

- a. The permit issued in response to this application is not a substitute for obtaining the property owner's permission to use land associated with the project. Issuance of the DCOP is intended only for controlling the emission of air pollutants and assuring compliance with the AQRs. Clark County cannot be held liable for any unauthorized use of the land.
- b. In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.

## Additional Instructions/Advisories

- a. Before disturbing soils on a parcel, enacting a grade change, constructing a structure and/or appurtenances, or installing, constructing, or modifying equipment that emits an air pollutant, you must contact and obtain all required permits from Clark County's Department of Comprehensive Planning, Building Department, DAQ (Title 30 Notice) and the municipality with jurisdiction.
- b. If the project has 50 or more acres of disturbed soil at any given time, the permittee shall identify the on-site Dust Control Monitor for the project(s). In addition, this requirement applies when the permittee has common control of multiple adjacent projects that individually have less than 50 acres of disturbed soil at any given time, but the combined project has 50 or more acres of disturbed soil at any given time.  
If a Dust Control Monitor had not been identified at the time of this permit issuance, the permittee shall notify DAQ by revising the permit in the DAQ Permitting Portal, before disturbing 50 or more acres of soil at any given time. The Dust Control Monitor must be on-site at all times when construction activities occur and shall manage dust prevention and control on-site.
- c. DCOP acreage fee is based on total project acreage of disturbed surface area, which is rounded up to the next whole acre. If the project is less than 1 acre, a minimum of 1 acre shall apply to the project for fee purposes.
- d. Stormwater Advisory: Be advised that all land disturbances that exceed 1 acre or are adjacent to a waterway must submit a "Notice of Intent" to the Nevada Division of Environmental Protection that certifies a Storm Water Pollution Prevention Plan has been developed and is maintained for the site. Contact NDEP at (775) 687-9429 for an application, information, and instructions.

## Dust Mitigation Plan

**Parcel Number:** 161-07-103-015

**Soil PEP:** High

**Water Source:** Hydrant with Jones Valve

If other, describe:

**Water Application Method:** Water Trucks/Pulls

If other, describe:

### Best Management Practices (BMPs) – Control Measures

The permittee shall comply with all requirements of Section 94 of the AQRs and all provisions of the DCOP issued from this application.

For each project activity listed in this Dust Mitigation Plan, the permittee shall comply with the requirements for the associated Best Management Practices (BMPs). Where options are listed for a BMP requirement, the permittee shall apply one or more of the Control Measures to comply with the requirement. The permittee will apply corresponding Control Measures for the PEP for the project soil type(s).

Table 1 provides the required Control Measures to be implemented for each soil type based on PEP. Some Control Measures apply to Construction Activities regardless of soil type. The Control Measures implemented must address the PEP for the area in which the Construction project is permitted.

**Table 1: Soil Types**

Particulate Emission Potential (PEP)	Control Measure
Low	Apply water and mix moist soil with dry soil until optimum moisture content is reached.
Moderate Low	Apply and mix water into soil and/or material until optimum moisture content is reached.
Moderate High	Apply and mix water and tackifier solution into soil and/or material until optimum moisture content is reached.
High	Apply and mix water and surfactant solution into soil and/or material until optimum moisture content is reached.

The permittee shall comply with all applicable requirements for activities performed pursuant to this DCOP. If a requirement has Control Measures listed, permittee shall comply with one or more of the Control Measures. If Control Measures for the requirement are contingent on the project PEP/Soil Type, permittee shall comply with one or more of the Control Measure for the designated PEP/Soil Type.



57418-01 = +1.8 (4.99 acres)  
M0= 3.19  
HRM 1/30/24  
161 07 103 015

16107110027

16107110026

16107110025

16107110024

16107110023

16107150002

16107199012

Stratford Ave

M0= 3.19

Stratford Ave

Mod 0

1.8 acres  
outside permit  
boundary M1

1.8 acres

1.581 acres

## **BMP 01 BACKFILLING (Filling area previously excavated or Trenched)**

### **01 Requirements**

- (a) Maintain optimum moisture content in backfill material and operate equipment in a manner that limits Fugitive Dust to comply with the AQRs before, during, and after handling of material and during storage until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Dedicate an adequate water source to backfilling equipment and apply water as needed to minimize Dust.
  - (3) Empty loader bucket slowly and minimize drop height from loader bucket.
  - (4) Ensure backfill material is moist or crusted at all times.
  - (5) Apply water, surfactant, or tackifier to maintain disturbed soils in a stable condition to limit Fugitive Dust.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 02 BLASTING – Abrasive (Sandblasting, abrasive blasting, and/or hydro-blasting)**

### **02 Requirements**

- (a) Ensure soil moisture is maintained to limit Fugitive Dust where support equipment and vehicles will operate until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Limit visible Emissions to no more than an average of 40% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
- (c) Hydro-blasting (using water as the propellant) must be conducted in a manner that maintains visible Emissions within Opacity standards.
- (d) Stabilize Particulate Matter in the surrounding area following blasting.
  - (1) Clean Particulate Matter from the surrounding area and water disturbed soils after blasting.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on the surrounding area following blasting.

**Note:** Whenever possible, abrasive blasting should be conducted within an enclosed structure to limit the release of visible Emissions to the atmosphere.

## **BMP 03      BLASTING – Soil and Rock (Explosive blasting of soil and rock)**

### **03      Requirements**

- (a) Maintain optimum moisture content in soil where drills, support equipment, and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where drills, support equipment, and vehicles will operate, and maintain in a stabilized condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) A Blasting Supplemental form must be filled out, submitted, and approved by DAQ prior to any blasting.
- (c) No blasting may be conducted within 1,500 feet of a residential area, occupied building, or major roadway when the wind direction is toward these structures.
- (d) Blasting shall take place between the hours of 8:00 a.m. and 4:30 p.m., excluding Saturdays, Sundays, and holidays, unless prior permission is obtained from the Control Officer.
- (e) No blasting is allowed when the National Weather Service forecasts wind gusts above 25 miles per hour (mph).
- (f) Before setting explosive charges in holes, document current and predicted weather conditions according to the National Weather Service. If the forecast is for wind gusts of 25 mph or more, do not load explosives or blast holes. If wind conditions are forecasted to be 25 mph or more during a future scheduled blast, do not load explosives or blast holes.
- (g) If DAQ issues a Construction Notice or Dust Advisory when a blast has been scheduled, do not load explosives or blast holes during the time period listed on the notice/advisory. If holes were loaded before the notices were issued, call a DAQ Compliance Supervisor or Manager for permission to blast.
- (h) Maintain the optimum moisture content in soil before, during, and after blasting activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit the blast area to what can be stabilized immediately following the blast.
  - (2) Limit disturbed areas by maintaining natural rock and vegetation.
  - (3) Presoak surface soils to the depth of caliche or bedrock with water, surfactant, or tackifier to limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following blasting activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.



**BMP 04      CLEARING AND GRUBBING (Definition: Clearing and grubbing for site preparation and vacant land cleanup)**

**04      Requirements**

- (a) Maintain optimum moisture content in soil before, during, and after clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a stabilized condition.
  - (2) Apply water, surfactant, or tackifier during clearing and grubbing activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (3) Apply water, surfactant, and/or Dust Palliative on disturbed soils to form a crust immediately following clearing and grubbing activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 05      CLEARING FORMS, FOUNDATIONS AND SLABS (Clearing and cleaning of forms, foundations and slabs)**

**05      Requirements**

- (a) Limit visible Emissions before, during, and after the clearing of forms, foundations, and slabs to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs.
  - (1) Avoid the use of high pressure air to blow soil and/or debris from forms, foundations, and slabs.
- (b) At least one of the following must be used to clear forms, foundations, and slabs:
  - (1) Water spray.
  - (2) Sweeping and water spray.
  - (3) Industrial vacuum.

**BMP 06      CRUSHING (Crushing of Construction and demolition debris, rock, and soil)**

**06      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after crushing activities to limit Emissions.
  - (1) Pre-water material before loading it into the crusher.
  - (2) Apply water to material during crushing to ensure compliance with Opacity standards and Permit conditions.

- (3) Monitor Emissions Opacity. Make adjustments to ensure compliance with Opacity standards and Permit conditions.
- (4) Apply water to crushed material immediately following crushing.

**Note:** If required, obtain the appropriate Operating Permit for powered crushers prior to engaging in crushing activity and comply with Permit conditions.

## **BMP 07 CUT AND FILL (Cut and/or fill soils for site grade preparation)**

### **07 Requirement**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils.
- (b) Maintain optimum moisture content in soils before, during, and after cut and fill activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water to cut depth and maintain surface soils in a stabilized condition.
  - (2) Rip soil and add water and/or surfactant as needed to reach moisture throughout the cut depth.
  - (3) During cut and fill activities, apply water, surfactant, or tackifier to ensure moisture content is maintained to cut depth.
  - (4) Immediately following cut and fill activities, apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 08 DEMOLITION – Implosion (Implosive blasting demolition of structure)**

### **08 Requirements**

- (a) A Demolition Supplemental Form and a Supplement to the Dust Mitigation Plan must be filled out, submitted to, and approved by the Control Officer prior to implosion.
- (b) An asbestos survey must be conducted on any facility before demolition can commence.
- (c) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (d) All friable and non-friable asbestos-containing material must be removed from the facility prior to implosion.
- (e) Blasting must be confined to times when the wind direction is away from the closest residential areas, occupied buildings, and major roadways.
- (f) Implosion time must be preapproved by the Control Officer.
- (g) Current weather conditions and weather predictions from the National Weather Service must be monitored and documented.
  - (1) Prior to setting explosive charges, obtain and document current and predicted weather conditions from the National Weather Service.

- (2) If a wind advisory (over 20 mph gusts or average wind speed of 10 mph) is current or forecasted for the blast period, do not set charges and do not blast.
  - (3) Maintain a calibrated anemometer and log ambient air velocity and direction within 1,000 feet of the implosion site, beginning at least 1 (one) hour prior to and 15 minutes after the implosion.
- (h) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Restrict support equipment and vehicles to existing Paved and/or stable areas.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (i) Maintain optimum moisture content in demolition debris before, during, and after implosion activities to limit Emissions.
  - (1) Apply water to debris immediately following blast and safety clearance, and maintain optimum moisture content in debris throughout cleanup and exporting activities.
  - (2) If water is not effective, apply and maintain a surfactant to debris immediately following blast and safety clearance.
  - (3) Clean and stabilize surrounding areas immediately following blast and safety clearance by applying water to all disturbed soil surfaces to establish a crust.
  - (4) Thoroughly clean blast debris from Paved and other surfaces following blast and safety clearance.

## **BMP 09      DEMOLITION - Mechanical/Manual (Mechanical and manual demolition of walls, stucco, concrete, free-standing structures, buildings, and load-bearing walls)**

### **09      Requirements**

- (a) An asbestos survey must be conducted on any facility or structure subject to NESHAP requirements before demolition can Commence.
- (b) A separate, complete Clark County NESHAP Demolition Notification Form must be submitted to DAQ for each structure at least 10 working days prior to demolition. The asbestos survey must be attached to this notification.
- (c) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (d) Maintain optimum moisture content in demolition debris before, during, and after demolition activities to limit Emissions.
  - (1) Apply water to demolition debris during handling.
  - (2) Apply water to stabilize demolition debris immediately following demolition.

- (3) If water is not effective, apply and maintain a Dust Palliative to demolition debris immediately following demolition.
- (e) Stabilize surrounding area immediately following demolition by applying water and/or Dust Palliative to all disturbed soil surfaces.

**BMP 10 DISTURBED SOIL (Disturbed soil throughout project, including between structures)**

**10 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all Construction Activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Limit vehicle traffic and disturbance of soils to areas not being immediately developed using fencing, barriers, and/or barricades.
  - (2) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (3) Apply water, surfactant, or tackifier during Construction Activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to disturbed soils to form a crust immediately following Construction Activities until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) If interior block walls are planned, install walls as early as possible in the Construction project.

**BMP 11 LONG-TERM STABILIZATION (Applies to disturbed land that is not built out, landscaped, or Paved at Permit closure)**

**11 Requirements**

- (a) Stabilize all disturbed land within 10 days of the completion of a project, or when active operations on all or part of the Construction site will cease for 30 days or more. Restrict access to these areas to prevent soil disturbance and maintain long-term stabilization. The Control Officer must approve the control method selected by the Permittee before its implementation. The Permittee shall select one or more of the following control methods:
  - (1) Pave.
  - (2) Apply Clean Gravel.
  - (3) Install permanent metal or wood fencing and/or a post and cable at least 3 feet high, or other similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
  - (4) Install a dirt berm at least 4 feet high, or a similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust:
    - (A) Water, or
    - (B) Dust Palliative.
- (b) Installation of signs, as described below, is required if a dirt berm or similar barrier is used or if Clean Gravel is applied.

- (1) Install orange "No Parking/Trespassing" signs with black lettering, at least 24 inches wide by 18 inches high, every 50 feet or as approved by the Control Officer (Table 2).
  - (2) Construct the sign(s) from materials capable of withstanding Clark County's harsh environment (e.g., wood, metal, plastic).
  - (3) Attach the sign(s) to a sturdy post, such as metal or wood, placed securely in the ground, or attach the sign(s) to a fence, barricade, or other stable object that is clearly visible.
  - (4) Post on or near the property boundary, the property corners, and at all access points; post no further than 50 feet apart.
- (c) New Construction or modification of Paved roads must be stabilized consistent with Section 93 before the Dust Control Operating Permit (DCOP) is closed.
- (1) Roads with vehicular traffic equal to 3,000 vehicles or fewer per day shall have a 4 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (2) Roads with vehicular traffic greater than 3,000 vehicles per day shall have an 8 foot Paved road shoulder or be stabilized with Clean Gravel, recycled asphalt, or traffic-rated Dust Palliative.
  - (3) All disturbed areas outside the road shoulder boundaries must be treated for long-term stabilization.

## **BMP 12      DUST PALLIATIVE – Selection and Use (Selection and use of chemical and organic dust suppressing agents and other Dust Palliatives)**

### **12      Requirement**

The selection and use of chemical and organic Dust Suppressing agents and other Dust Palliatives shall adhere to all local, State, and federal regulations as well as all manufacturer specifications.

## **BMP 13      IMPORTING/EXPORTING OF BULK MATERIAL (Importing or exporting of soil, aggregate, decorative rock, debris, Type II, and other bulk material)**

### **13      Requirement**

- (a) Maintain optimum moisture content in surface soils and bulk material before, during, and after all importing/exporting activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where importing/exporting activities occur, including haul routes, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative, or Clean Gravel, on surface soils where importing/exporting activities occur, including haul routes.
  - (3) Limit vehicle speeds to 15 mph on the work site.
  - (4) Maintain 3–6 inches of freeboard to prevent spillage.
  - (5) Apply tarps or other suitable enclosures that completely cover the load on haul trucks before they exit the project onto Public Roads, and maintain throughout transport. Tarps must be well-maintained and serviceable at all times.
- (b) Clean the wheels and undercarriage of haul trucks before they leave the Construction site.
- (c) Check belly/end dump truck seals regularly, and remove trapped rocks to prevent spillage.

**BMP 14 LANDSCAPING (Installation of sod, decorative rock, desert or other landscape material)**

**14 Requirements**

- (a) Maintain optimum moisture content in soils and landscaping material before, during, and after landscaping activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
- (b) Apply water, surfactant, or tackifier to maintain disturbed soils and landscaping material in a stable condition until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**BMP 15 SUBGRADE PREPARATION FOR PAVING (Subgrade preparation for paving streets, parking lots, etc.)**

**15 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all paving/subgrade preparation activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water subgrade surfaces until optimum moisture content is reached.
  - (2) Maintain optimum moisture content in material while aggregate is being applied.
  - (3) Place tack coat on aggregate base.

**BMP 16 SAWING/CUTTING MATERIALS (Sawing or cutting materials such as concrete, asphalt, block or pipe)**

**16 Requirements**

- (a) Limit visible Emissions to no more than an average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, or to no more than 50% instantaneous Opacity, pursuant to the AQRs. One of the following two control methods must be used when sawing/cutting materials:
  - (1) Use water to control Dust.
  - (2) Use a vacuum to collect Dust.

**BMP 17 SCREENING (Screening of rock, soil, or Construction debris)**

**17 Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after screening activities to limit Emissions until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Apply sufficient water or a Dust Suppressant prior to screening.
  - (2) Drop material through the screen slowly; minimize drop height.

- (3) Dedicate an adequate water source to the screening operation, and apply water as needed to minimize Dust.
- (4) Monitor visible Emissions; make adjustments to Control Measures to ensure compliance with Opacity standards and Permit conditions.
- (5) Apply water, surfactant, or Dust Palliative to screened material and surrounding areas following screening activities until long-term stabilization is achieved.

**Note:** If required, obtain the appropriate Operating Permit for powered screens before engaging in screening activity and comply with Permit conditions.

## **BMP 18 STAGING AREAS (Staging areas and equipment/material storage areas)**

### **18 Requirements**

- (a) Maintain optimum moisture content in soils before, during, and after all staging area activities to prevent unstable soils and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
  - (3) Limit vehicle speed to 15 mph in staging area(s) and on all unpaved access routes.
  - (4) Apply water, Clean Gravel, recycled asphalt, or Dust Palliative to staging area soils for the duration of the project.

## **BMP 19 STOCKPILING (Stockpiling of materials, such as Type II, rock or debris, for future use or export)**

### **19 Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after stockpiling activities to limit Fugitive Dust until long-term stabilization is achieved.
  - (1) Stockpiles located within 100 yards of occupied buildings shall not be constructed over 8 feet in height unless otherwise approved by the Control Officer.
  - (2) Stockpiles located farther than 100 yards from any occupied building and constructed over 8 feet in height must have a road bladed to the top to allow water truck access, or shall demonstrate another means to provide effective Dust control.
  - (3) Apply water, surfactant, or tackifier during stockpiling activities to prevent unstable soil conditions and limit Fugitive Dust.
  - (4) Apply water, surfactant, and/or Dust Palliative to material and surface soils to form a crust immediately following stockpiling activities until the long-term stabilization requirements listed in BMP 11 are achieved.



- (c) All stockpiles must be removed or leveled prior to project completion unless otherwise approved by the Control Officer. Stockpiles approved to be left in place must be in compliance with the long-term stabilization requirements listed in BMP 11.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 20 TRACKOUT PREVENTION AND CLEANUP (Prevention and cleanup of mud, silt, and soil tracked out onto Paved surfaces)**

### **20 Requirements**

- (a) Install and maintain a Trackout control device in an effective condition at all access points where Paved and unpaved access or travel routes intersect.
  - (1) Install gravel pad(s) consisting of a minimum of 2 inches in rough diameter of Clean Gravel or crushed rock on a well-graded surface (Type II material is not acceptable). Minimum dimensions must be 30 feet wide by 6 inches deep by 50 feet in length or the length of the longest haul truck, whichever is greater. Re-screen, wash, or apply additional rock to gravel pads to maintain effectiveness.
    - (A) Install wheel shakers if gravel pads are not effective in preventing Trackout. Clean wheel shakers regularly to maintain their effectiveness.
    - (B) Install wheel washers if wheel shakers are not effective in preventing Trackout. Maintain wheel washers regularly to maintain effectiveness.
    - (C) Alternative Trackout control devices may be used if approved by the Control Officer.
  - (2) All exiting traffic must be routed over selected Trackout control device(s) by clearly establishing and enforcing traffic patterns on-site.
- (b) Maintain Dust control and clean all Trackout from Paved surfaces.
  - (1) Maintain Dust control during working hours and clean all Trackout from Paved surfaces, including sidewalks and gutters, at the end of each work shift.
  - (2) Immediately clean up Trackout that extends 50 feet or more, or more than ¼ inch in depth, from Paved surfaces, including sidewalks and gutters, or any amount of Trackout that causes one or more of the following:
    - (A) A Dust plume that extends more than 100 feet horizontally or vertically.
    - (B) An average of 20% Opacity for any period totaling 3 minutes in any 60-minute period, pursuant to the AQRs.
    - (C) 50% instantaneous Opacity, pursuant to the AQRs.
  - (3) Use street sweeper(s) in addition to Trackout control devices to ensure the cleanup of Trackout is maintained. If one street sweeper is not effective in controlling Trackout to Air Quality Standards, bring in additional street sweepers.
  - (4) The use of blower devices to remove deposited mud/dirt Trackout from a Paved road is prohibited.
  - (5) The use of rotary brushes without water is prohibited.
  - (6) The use of soil to create a ramp for vehicle access over a curb is prohibited.

## **BMP 21      TRAFFIC—Unpaved Routes and Parking Areas (Construction-related traffic on unpaved roads and parking areas)**

### **21      Requirements**

- (a) Limit visible Dust Emissions from vehicle operations and stabilize all unpaved routes, including unpaved parking areas.
  - (1) Limit vehicle speeds to 15 mph on all unpaved routes and parking areas.
  - (2) Apply water to unpaved haul routes and off-road traffic areas, including parking areas, and maintain in a stabilized condition.
  - (3) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on unpaved routes, off-road traffic areas, and parking areas.
  - (4) If water, surfactant, and/or Dust Palliative is not effective, apply and maintain Clean Gravel (or other suitable material approved by the Control Officer) on unpaved routes, off-road traffic areas, and parking areas.
  - (5) If a preexisting unpaved road or haul route is being used but is not permitted, it must be maintained in a stabilized condition. These unpaved roads or haul routes must not be changed in any way unless permitted or as approved by the Control Officer.

## **BMP 22      TRENCHING (Trenching with track- or wheel-mounted excavator, shovel, backhoe, or trencher)**

### **22      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in soils before, during, and after Trenching activities to limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils before Trenching.
  - (2) Apply water, surfactant, or tackifier during Trenching activities to prevent unstable soil conditions, and limit Fugitive Dust by dedicating a water truck or large hose.
  - (3) Apply water, surfactant, and/or Dust Palliative to excavated soils to form a crust immediately following Trenching activities until the long-term stabilization requirements listed in BMP 11 are achieved.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

## **BMP 23      TRUCK LOADING (Loading trucks with materials including Construction and demolition debris, rock, and soil)**

### **23      Requirements**

- (a) Maintain optimum moisture content in soil where support equipment and vehicles will operate to prevent unstable soil conditions and limit Fugitive Dust until the long-term stabilization requirements listed in BMP 11 are achieved.
  - (1) Pre-water surface soils where support equipment and vehicles will operate, and maintain in a moist condition.
  - (2) If water is not effective, apply and maintain a surfactant and/or Dust Palliative on surface soils as needed.
- (b) Maintain optimum moisture content in material before, during, and after truck loading activities to limit Fugitive Dust.
  - (1) Mix material with water, surfactant, or tackifier prior to truck loading activities to limit Fugitive Dust.
  - (2) Empty loader bucket slowly and minimize the drop height while dumping.

**Note:** The appropriate Control Measure for the project soil type must be selected from Table 1.

**From:** [Anna Sutowska](#)  
**To:** [Anna Sutowska](#)  
**Subject:** FW: 57148-ETON-STRATFORD 1  
**Date:** Thursday, February 8, 2024 1:13:22 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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**From:** Moe Truman <moe@eton.me>  
**Sent:** Thursday, February 8, 2024 12:52 PM  
**To:** Anna Sutowska <Anna.Sutowska@ClarkCountyNV.gov>  
**Subject:** RE: 57148-ETON-STRATFORD 1

Correct 3 inches of hot mix

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**From:** Anna Sutowska <[Anna.Sutowska@ClarkCountyNV.gov](mailto:Anna.Sutowska@ClarkCountyNV.gov)>  
**Sent:** Thursday, February 8, 2024 12:51 PM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Cc:** Anna Sutowska <[Anna.Sutowska@ClarkCountyNV.gov](mailto:Anna.Sutowska@ClarkCountyNV.gov)>  
**Subject:** FW: 57148-ETON-STRATFORD 1

Good afternoon Mr. Truman,  
Can you please confirm that you will be paving this site with permanent asphalt pavement and not an alternative such as recycled asphalt?

Regards,

**Anna Sutowska**  
**Air Quality Supervisor**  
**Clark County Department of Environment and Sustainability,**  
**Division of Air Quality**  
**4701 W. Russell Rd., Suite 200**  
**Las Vegas, NV 89118**  
**Office: 702-455-0666/Cell: 702-378-9780/Fax: 702-383-9994**

**For any dust permit information or forms, please go to the link posted below.**  
[Dust Control Permitting Portal, Forms & Requirements](#)

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**From:** Heather Mackinnon  
**Sent:** Tuesday, January 30, 2024 11:14 AM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Subject:** RE: 57148-ETON-STRATFORD 1

Thank you Mr. Truman.

Regards,

***Heather Mackinnon***

Air Quality Specialist II  
Department of Environment and Sustainability  
Air Quality Division – Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118

Phone: (702) 455-1524 Fax: (702) 383-9994



**For Dust Control Applications, Forms, classes and mapping guidance, click on this link:**

[Dust Control Permitting Portal, Forms & Requirements.](#)

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**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Sent:** Tuesday, January 30, 2024 11:12 AM  
**To:** Heather Mackinnon <[MackInno@ClarkCountyNV.gov](mailto:MackInno@ClarkCountyNV.gov)>  
**Subject:** RE: 57148-ETON-STRATFORD 1

noted

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**From:** Heather Mackinnon <[MackInno@ClarkCountyNV.gov](mailto:MackInno@ClarkCountyNV.gov)>  
**Sent:** Tuesday, January 30, 2024 10:54 AM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Cc:** Katrinka Byers <[Katrinka.Byers@ClarkCountyNV.gov](mailto:Katrinka.Byers@ClarkCountyNV.gov)>; Canduella Rowsell <[Canduella.Rowsell@ClarkCountyNV.gov](mailto:Canduella.Rowsell@ClarkCountyNV.gov)>  
**Subject:** RE: 57148-ETON-STRATFORD 1  
**Importance:** High

Mr. Truman,  
Just to verify, you were scheduled on 10/2023 and 1/23/24 both no shows. You also have two other employees that were scheduled for the 1/23/24 class that were also no shows.

You are now registered for the class on 2/27/24. **Please make sure you attend this class so you will not continue to be out of compliance.**

Regards,

***Heather Mackinnon***

Air Quality Specialist II  
Department of Environment and Sustainability  
Air Quality Division – Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118  
Phone: (702) 455-1524 Fax: (702) 383-9994



**For Dust Control Applications, Forms, classes and mapping guidance, click on this link:**

[Dust Control Permitting Portal, Forms & Requirements.](#)

**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>

**Sent:** Tuesday, January 30, 2024 10:38 AM

**To:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>

**Cc:** Katrinka Byers <[Katrinka.Byers@ClarkCountyNV.gov](mailto:Katrinka.Byers@ClarkCountyNV.gov)>; Canduella Rowsell <[Canduella.Rowsell@ClarkCountyNV.gov](mailto:Canduella.Rowsell@ClarkCountyNV.gov)>

**Subject:** RE: 57148-ETON-STRATFORD 1

As requested

The screenshot displays the 'Dust Classes' section of a web portal. At the top, there are navigation tabs: 'Permits', 'Your Applications', 'Apply for a New Permit', and 'Dust Classes'. Below the tabs, a light blue box titled 'Who is required to complete a Dust Control Class?' lists requirements: 'The construction site superintendent or other designated on-site representative of the project developer and all construction site supervisors and foremen.' and 'Water truck and water pull drivers for each construction project.' It also provides instructions on enrolling, receiving an invoice, and the consequences of non-payment. Below this, a section titled 'Dust Class Registration' features a button 'REGISTER OTHERS' and a note about the \$54.00 registration fee. The 'Your Dust Classes' section includes a note about rescheduling and a table listing a class on Feb 27, 2024, at 2:30 PM, marked as 'PAID' with 'RESCHEDULE' and 'VIEW' buttons. The 'Others' Classes' section provides information on single and multiple person registration, credits, and a table listing a class on Jan 23, 2024, at 2:30 PM, also marked as 'PAID' with a 'VIEW' button.

**From:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>

**Sent:** Tuesday, January 30, 2024 10:29 AM

**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>

**Cc:** Katrinka Byers <[Katrinka.Byers@ClarkCountyNV.gov](mailto:Katrinka.Byers@ClarkCountyNV.gov)>; Canduella Rowsell <[Canduella.Rowsell@ClarkCountyNV.gov](mailto:Canduella.Rowsell@ClarkCountyNV.gov)>

**Subject:** RE: 57148-ETON-STRATFORD 1

**Importance:** High

Mr. Truman,

DAQ shows that you were scheduled to attend the dust class on 10/10/23 and you were a no show. You are allowed one more opportunity for free to attend the next available dust class. Please schedule ASAP via the front desk (702-455-5942) and email me back letting me know which class you have been registered for.

OR supply me with a valid card holder.

Regards,

## Heather Mackinnon

Air Quality Specialist II  
Department of Environment and Sustainability  
Air Quality Division – Enforcement Section  
4701 W. Russell Road #200  
Las Vegas NV 89118  
Phone: (702) 455-1524 Fax: (702) 383-9994



**For Dust Control Applications, Forms, classes and mapping guidance, click on this link:** [Dust Control Permitting Portal, Forms & Requirements.](#)

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**From:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Sent:** Tuesday, January 30, 2024 10:23 AM  
**To:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>  
**Subject:** RE: 57148-ETON-STRATFORD 1

Error on my part on the removal

---

**From:** Heather Mackinnon <[MacKinno@ClarkCountyNV.gov](mailto:MacKinno@ClarkCountyNV.gov)>  
**Sent:** Tuesday, January 30, 2024 10:21 AM  
**To:** Moe Truman <[moe@eton.me](mailto:moe@eton.me)>  
**Subject:** 57148-ETON-STRATFORD 1  
**Importance:** High

Greetings,

Please **reply to this email only** as soon as possible. ***You cannot edit the application after submittal in the portal, only the reviewer can.*** I have reviewed your Dust Control Operating Permit (DCOP) application and have questions and/or need additional information. Applications cannot be updated with verbal authorization so please reply to this email.

The Notice of Noncompliance was to add additional areas that were not previously permitted. On the application you have stated that you are removing .5 acres, yet on the map there is no reference to a removal. Please clarify.



<b>Nonlinear Area Disturbed</b>	
3.34	
<b>Linear Area Disturbed</b>	
Linear Length (Feet)	Linear Width (Feet)
<b>Acreage Added</b>	
1.76	
<b>Acreage Removed</b>	
5	
<b>Nonlinear Area Acreage Subtotal</b>	<b>Existing Nonlinear Area Acreage Subtotal</b>
3.34 Acres	3.19 Acres
<b>Linear Area Acreage Subtotal</b>	<b>Existing Linear Area Acreage Subtotal</b>
0 Acres	0 Acres
<b>Total Project Area Disturbed</b>	<b>Existing Total Project Area Disturbed</b>
3.34 Acres	3.19 Acres

Your new acreage should read as +1.8 (rounding up) to 3.19 = 4.99. Do you agree with this?

Project Disturbed Surface Area

**Nonlinear Area Disturbed**

4.99

**Linear Area Disturbed**

Linear Length (Feet)	Linear Area (Acres)

Add Segment

**Acreage Added**

1.8

**Acreage Removed**

0.0

**Nonlinear Area Acreage Subtotal**

4.99 Acres

**Linear Area Acreage Subtotal**

0 Acres

**Total Project Area Disturbed**

4.99 Acres

Regards,

***Heather Mackinnon***

Air Quality Specialist II  
 Department of Environment and Sustainability  
 Air Quality Division – Enforcement Section  
 4701 W. Russell Road #200  
 Las Vegas NV 89118  
 Phone: (702) 455-1524 Fax: (702) 383-9994



For Dust Control Applications, Forms, classes and mapping guidance, click on this link: [Dust Control Permitting Portal, Forms & Requirements.](#)

# Exhibit C

ESOS Screenshot

## Entity Information

**Entity Name:** PAN WESTERN  
CORPORATION

**Entity Number:** C3114-1970

**Entity Type:** Domestic Corporation (78)

**Entity Status:** Permanently Revoked

**Formation Date:** 12/21/1970

**NV Business ID:** NV19701003623

**Termination Date:**

**Annual Report Due Date:** 12/31/2013

**Compliance Hold:**

## Registered AGENT INFORMATION

**Name of Individual  
or Legal Entity:** Resigned

**Status:** Active

**CRA Agent Entity  
Type:**

**Registered Agent Type:** Non-Commercial Registered  
Agent

**NV Business ID:** NV20091402243

**Office or Position:**

**Jurisdiction:**

**Street Address:**

**Mailing Address:**

## OFFICER INFORMATION

[View Historical Data](#)

Title	Name	Address	Last Updated	Status
President	MITCHELL W TRUMAN	4682 NORTH CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active
Secretary	MITCHELL W TRUMAN	4680 N CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active
Treasurer	MITCHELL W TRUMAN	4680 N CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active
Director	MITCHELL W TRUMAN	4680 N CIMARRON, LAS VEGAS, NV, 89129, USA	12/28/2012	Active

Page 1 of 1, records 1 to 4 of 4

## CURRENT SHARES

Class/Series	Type	Share Number	Value
--------------	------	--------------	-------

No records to view.

**Number of No Par Value Shares:** 2500

**Total Authorized Capital:** 2,500

[Filing History](#)

[Name History](#)

[Mergers/Conversions](#)

[Return to Search](#)

[Return to Results](#)

# **Exhibit D**

Surface Transportation Board Decision  
37751

37751  
EB

SERVICE DATE – MARCH 15, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34958

NEVADA PACIFIC RAILROAD CORPORATION–LEASE AND OPERATION  
EXEMPTION–RAIL LINES OF PAN WESTERN CORPORATION

Decided: March 13, 2007

On November 14, 2006, Nevada Pacific Railroad Corporation (NPRC), a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to lease from Pan Western Corporation (Pan Western) and operate approximately 2.66 miles of private rail track owned by Pan Western, extending between milepost 0.0 and milepost 2.66, in Clark County, NV.<sup>1</sup> Notice of NPRC's exemption authority was served and published in the Federal Register (71 FR 75293) on December 14, 2006.<sup>2</sup>

The verified notice of exemption was originally filed under the name UP Nevada Railroad LLC (UPNR). However, the Union Pacific Railroad Company (UP) objected to this name as a violation of its trademarks. Accordingly, by letters filed November 20, 2006, and November 22, 2006, counsel addressed issues relating to the identity and name of the entity seeking authority (the Applicant) in this proceeding and, in the latter letter, requested that Nevada Pacific Railroad Corporation be substituted as the Applicant.

On December 15, 2006, Nevada Central Railroad (NCR) filed a petition to dismiss the notice or revoke the exemption.<sup>3</sup> NPRC filed a reply to NCR's petition.

For the reasons discussed below, we find that there is no basis to reject or revoke NPRC's notice of exemption.

---

<sup>1</sup> This track was the subject of a previous notice of exemption that, according to the current verified notice, was never consummated. See Tonopah & Tidewater Railroad Co.–Lease and Operation Exemption–Pan Western Corporation, STB Finance Docket No. 34547 (STB served Sept. 30, 2004) (Tonopah & Tidewater).

<sup>2</sup> Under the Board's rules that were in place at the time, the exemption automatically became effective on November 21, 2006, 7 days after the notice was filed.

<sup>3</sup> We will treat the petition to dismiss as a petition to revoke the exemption.

## DISCUSSION AND CONCLUSIONS

Notices of exemption that contain false and/or misleading information are void ab initio under 49 CFR 1150.32(c) and are subject to being rejected. NCR asserts that NPRC submitted materially false, misleading, and therefore fraudulent information in its notice. Specifically, NCR asserts that the notice was defective because at the time it was filed, the original applicant, UPNR, did not exist. NCR argues that NPRC, a separate entity, could not therefore replace UPNR.

Applicant acknowledged that, due to a miscommunication with its counsel, its actual name, UP Nevada Corporation, was incorrectly stated as UPNR in the Notice. As stated above, in the November 20th letter, UP Nevada Corporation, based on objections to its name, disclosed the mistake in the original notice. In a letter dated November 22, 2006, in response to UP's objections, UP Nevada Corporation asked the Board to substitute NPRC as the Applicant.

The Applicant amended the Notice of Exemption prior to its Federal Register publication and the exemption was published under NPRC's name and correct address. Accordingly, the exemption was not granted under false or misleading circumstances. Furthermore, no party was prejudiced because the information contained in the Federal Register Notice was correct.

NCR also claims that it has provided new evidence showing that UP Nevada Corporation and NPRC are two distinct entities and that UP Nevada Corporation and its counsel cannot apply for operating authority on behalf of a third party.<sup>4</sup> According to NCR, this information and the information discussed above requires reopening this proceeding and revoking the exemption.

Under 49 U.S.C. 10502(d), we may revoke an exemption if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP). To obtain a revocation, the petitioner must demonstrate that greater regulatory scrutiny is necessary to carry out the RTP. When taken together, the information provided by NCR to reject the Notice does not show that the transaction is contrary to the RTP. NCR has not demonstrated that greater regulatory scrutiny is necessary and that revocation is warranted because NPC's presentation does not provide a basis for finding that NPRC should not have authority to lease and operate the Pan Western trackage or that NPRC has abused the Board's processes in pursuing that authority.

Finally, NCR requests that the Board publicly confirm that the lease and operation exemption in Tonopah & Tidewater is null and void. A Board grant of authority is merely permissive. Once a Board exemption has become effective, it is up to the parties to determine whether to move forward with the underlying transaction. According to the

---

<sup>4</sup> NCR itself, however, states that both companies have the same President and that individuals from NCR have spoken to the President of UP Nevada Corporation and NPRC regarding this proceeding.



notice filed by the Applicant, the Tonopah & Tidewater Railroad Co. did not move forward and the transaction never occurred.<sup>5</sup> There is no need, however, to formally withdraw the authority that was never used.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NCR's petition to dismiss or revoke is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary

---

<sup>5</sup> NCR asserts that Mr. Mitchell Truman, who signed the verified statement, was the President of both the Applicant and the Tonopah & Tidewater Railroad Corporation at the time the notice was filed with the Board.



4701 W. Russell Road 2<sup>nd</sup> Floor  
Las Vegas, NV 89118-2231  
Phone: (702) 455-5942 • Fax: (702) 383-9994  
Marci Henson, Director

## Notice of Violation Response Form

Issued to: ETON Transportation Corp.

NOV #: 9994

Return form by: 7/3/2024 *Matter Continued*

Items below are to be completed by the Respondent

Responsible  
Official:

Russell Gubler (10889)

Title:

Legal Representative

Phone Number:

702-471-0065

Email Address:

Mailing Address:

Please check applicable boxes below

☐

**We do not contest the Notice of Violation (Attendance is not required)**

We accept responsibility for this violation. Instructions for payment of the recommended penalty will be provided after the Hearing Officer meeting.

☒

**We are contesting the Notice of Violation and request to appear before the Hearing Officer (Attendance by the Responsible Official or a representative of the company is strongly recommended to contest the violation)**

Please attach a written explanation, including supporting documentation, of why you are contesting the NOV. This information will be provided to the Hearing Officer prior to the Hearing.

**We will be contesting the:**

☐

Facts

☐

Penalty

☒

Both

Russell Gubler

Signature of Authorized Person

Date:

9/5/2024

Completed forms can be submitted to Pam Thompson via mail at Clark County Department of Environment and Sustainability, Division of Air Quality, 4701 West Russell Road, Suite 200, Las Vegas, NV 89118-2231, fax at (702) 383-9994, or via email at [aqenforcement@clarkcountynv.gov](mailto:aqenforcement@clarkcountynv.gov).



Received via email on Thu 9/5/2024 2:35 PM  
From: Russell G. Gubler  
pt

4701 W. Russell Road 2<sup>nd</sup> Floor  
Las Vegas, NV 89118-2231  
Phone: (702) 455-5942 • Fax: (702) 383-9994  
Marci Henson, Director

## Notice of Violation Response Form

Issued to: ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON1, and Moe Truman, Individually

NOV #: 10078

Return form by: 9/5/2024

Items below are to be completed by the Respondent

Responsible  
Official:

Russell Gubler (10889)

Title:

Legal Representative

Phone Number:

702-471-0065

Email Address:

Mailing Address:

Please check applicable boxes below

☐

**We do not contest the Notice of Violation (Attendance is not required)**

We accept responsibility for this violation. Instructions for payment of the recommended penalty will be provided after the Hearing Officer meeting.

☒

**We are contesting the Notice of Violation and request to appear before the Hearing Officer (Attendance by the Responsible Official or a representative of the company is strongly recommended to contest the violation)**

Please attach a written explanation, including supporting documentation, of why you are contesting the NOV. This information will be provided to the Hearing Officer prior to the Hearing.

**We will be contesting the:**

☐

Facts

☐

Penalty

☒

Both

Russell Gubler

Signature of Authorized Person

Date:

9/5/2024

Completed forms can be submitted to Pam Thompson via mail at Clark County Department of Environment and Sustainability, Division of Air Quality, 4701 West Russell Road, Suite 200, Las Vegas, NV 89118-2231, fax at (702) 383-9994, or via email at [aqenforcement@clarkcountynv.gov](mailto:aqenforcement@clarkcountynv.gov).

**See Bates Pages 740 - 812  
for Attorney's Response Contesting  
NOVs #9994 and #10078**



4701 W. Russell Road 2<sup>nd</sup> Floor  
Las Vegas, NV 89118-2231  
Phone: (702) 455-5942 • Fax: (702) 383-9994  
Marci Henson, Director

May 15, 2024

*FEDERAL EXPRESS TRK #7764 0284 0460*

Moe F. Truman, Project Manager and Responsible Official

E-mail: [moe@eton.me](mailto:moe@eton.me)

Katherine K. Truman, President

ETON Transportation Corp.

3426 Losee Road

North Las Vegas, NV 89030

## NOTICE OF VIOLATION #9994

Clark County Department of Environment and Sustainability, Division of Air Quality (**Air Quality**) provides this notice to ETON Transportation Corp. (**ETON**), for the violation of the Clark County Air Quality Regulations (**AQRs**) as alleged below and recommends a civil penalty of Four Thousand Six Hundred Eighty-Seven and 50/100 Dollars (\$4,687.50) be assessed as shown in the penalty calculation table attached hereto as **Exhibit A** and incorporated herein.

### I. FACTS

- A. On August 30, 2023, Air Quality issued Dust Control Operating Permit (**DCOP**) #57148 to ETON, for the 3.19-acre construction project named STRATFORD-1. A Dust Mitigation Plan was submitted with the initial DCOP application and was incorporated into DCOP #57148 whereby ETON agreed to comply with the control requirements for the selected Best Management Practices (**BMPs**).
- B. Air Quality Specialist Canduella Rowsell (**Rowsell**), Senior Air Quality Specialists Katrinka Byers (**Byers**) and Andrew Kirk (**Kirk**), and Air Quality Supervisor David Dean (**Dean**) discovered the alleged violations while performing a routine inspection on January 8, 2024, and follow-up inspections on January 9, and 17, 2024 at the STRATFORD-1 construction project, located on 2596 Stratford Avenue, in Clark County, Nevada.
- C. On Monday, January 8, 2024, at approximately 12:15 p.m., Rowsell arrived at the STRATFORD-1 construction site to conduct a routine inspection. The inspection report is attached hereto as **Exhibit B** and incorporated herein. During the inspection, Rowsell observed approximately 1.58 acres of dry, loose, and powdery site soils within the project, as shown in Photographs 1 and 2, and Map 1, attached hereto as **Exhibits C** and **D**,



respectively, and incorporated herein. Rowsell also observed no trackout control device at the exit points. While onsite, Rowsell spoke in person with Moe Truman (**Truman**), Project Manager and Responsible Official for ETON, concerning her observations of noncompliance and a verbal directive to comply. Rowsell also determined the noncompliance issues occurred within 1,000 feet of the outer boundary of a residential area (**Exh. D, Map 1**). Rowsell concluded her inspection at approximately 12:30 p.m.

- D. On Tuesday, January 9, 2024, at approximately 10:45 a.m., Byers, Dean, and Kirk (**Staff**) arrived at the STRATFORD-1 construction site to conduct a follow-up inspection. The inspection report is attached hereto as **Exhibit E** and incorporated herein. During the inspection, Staff observed approximately 1.58 acres of dry, loose, and powdery site soils within the project, as shown in Photographs 3 through 8 (**Exh. C**), and Map 2, attached hereto as **Exhibit F** and incorporated herein. Staff also observed no trackout control device at the exit points, and unpaved material storage occurring on 1.76 acres of disturbed soils outside of the permitted boundary. While onsite, Staff spoke in person with Truman concerning their observations of continued noncompliance and the issuance of a Notice of Noncompliance (**NON**). The NON was emailed to Truman on January 10, 2024, and is attached hereto as **Exhibit G** and incorporated herein. Staff also determined the noncompliance issues occurred within 1,000 feet of the outer boundary of a residential area (**Exh. F, Map 2**). Staff concluded their inspection at approximately 11:30 a.m.
- E. On Wednesday, January 17, 2024, at approximately 1:45 p.m., Rowsell arrived at the STRATFORD-1 construction site to conduct a follow-up inspection. The inspection report is attached hereto as **Exhibit H** and incorporated herein. During the inspection, Rowsell observed approximately 0.26 acres of dry, loose, and powdery site soils within the project, as shown in Photographs 9 through 13 (**Exh. C**), and Map 3 attached hereto as **Exhibit I** and incorporated herein. Rowsell also observed no trackout control device at the exit points. Rowsell also determined the noncompliance issues occurred within 1,000 feet of the outer boundary of a residential area (**Exh. I, Map 3**). Rowsell concluded her inspection at approximately 2:20 p.m. At approximately 5:24 p.m., Rowsell sent an email to Truman concerning her observations of continued noncompliance. The email correspondence is attached hereto as **Exhibit J** and incorporated herein.
- F. On Thursday, January 25, 2024, at approximately 3:49 p.m., ETON submitted a DCOP application to Air Quality adding the unpermitted areas to existing DCOP #57148.
- G. On Thursday, February 1, 2024, at approximately 9:35 a.m., Rowsell arrived at the STRATFORD-1 construction site to conduct a follow-up inspection. The inspection report is attached hereto as **Exhibit K** and incorporated herein. During the inspection, Rowsell observed the site was in compliance with AQRs. Rowsell concluded her inspection at approximately 10:05 a.m.
- H. On Thursday, February 8, 2024, at approximately 1:21 p.m., the review of the application was completed by Air Quality and an invoice was issued to ETON for the fees associated with the application. ETON submitted payment for the DCOP the same day, at which time the revised DCOP was issued.

## II. VIOLATION(S)

### **Violation 1:**

By failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, ETON violated AQR Sections 94.13(a) and (b).

AQR Sections 94.13(a) and (b) state:

- “(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).
- (b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with Section 94.5(n)(2).”

## III. RECOMMENDED CIVIL PENALTY

Pursuant to AQR Section 9.1, any person who violates any provision of the AQRs, including any permit condition; is guilty of a civil offense and shall pay a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate offense.

Air Quality considered the following in calculating the recommended penalty:

- Violations on January 8 and 9, 2024 for unstable soil onsite  $> 1$  acre and  $\leq 5$  acres.
- Violations occurred within 1,000 feet of the outer boundary of a residential area as described in Paragraphs I.C, I.D, and I.E (**Exh. D, F, and I**).
- Consecutive days of violation as described above in Paragraphs I.C and I.D for January 8 and 9, 2024.

Air Quality recommends a civil penalty in the amount of \$4,687.50 (**Exh. A**).



#### IV. HEARING

Air Quality has scheduled a hearing for **Thursday, July 18, 2024, at 9:00 a.m.** before the Air Pollution Control Hearing Officer to adjudicate the alleged violation(s) and, if appropriate, to levy the recommended penalty. Please complete the enclosed **“Notice of Violation Response Form”** and return it to Air Quality by July 3, 2024. At the hearing, the Hearing Officer will hear evidence on the alleged violation(s) and render a decision. The hearing will be held at the Clark County Building Services Presentation Room, located at 4701 West Russell Road, Las Vegas, Nevada.

If you intend to present any documentary evidence at the hearing, please provide copies of your evidence to Air Quality with the completed Notice of Violation Response Form. If you fail to provide copies of your evidence prior to the hearing, please be advised that Air Quality may request a continuance to have time to review any evidence you bring to the hearing, which will result in the hearing being postponed and rescheduled to a later date.

If the Hearing Officer finds you in violation and levies a penalty, Air Quality staff will mail the Hearing Officer’s order to you along with instructions on remittance of the penalty.

  
Shibi Paul (May 15, 2024 13:37 PDT)

---

Shibi Paul  
Compliance and Enforcement Manager

Exhibits:

- A. Penalty Calculation Table, NOV #9994
- B. Air Quality Construction Site Inspection Form #137022, dated January 8, 2024
- C. Digital Photographs 1 through 13
- D. Map 1: Showing approximate size and location of unstable soils within 1,000 feet of a residential area on January 8, 2024
- E. Air Quality Construction Site Inspection Form #137058, dated January 9, 2024
- F. Map 2: Showing approximate size and location of unstable soils within 1,000 feet of a residential area on January 9, 2024
- G. Air Quality Notice of Noncompliance for January 9, 2024
- H. Air Quality Construction Site Inspection Form #137254, dated January 17, 2024
- I. Map 3: Showing approximate location of unstable soils within 1,000 feet of a residential area on January 17, 2024
- J. Email Correspondence, dated January 17, 2024
- K. Air Quality Construction Site Inspection Form #137568, dated February 1, 2024

sjg

## Exhibit A

**NOV # 9994**  
**Penalty Calculation Table**  
**ETON Transportation Corp.**



4701 W. Russell Road 2<sup>nd</sup> Floor  
 Las Vegas, NV 89118-2231  
 Phone: (702) 455-5942 • Fax: (702) 383-9994  
 Marci Henson, Director

Viol.	Date(s)	Violation Description	AQR Section	Exhibit / Evidence	Base Penalty	Days	Aggravating Description	Agg. Factor	Agg. Amount	Penalty
1	1/8/2024	Failed to fully implement Best Available Control Measures and comply with soil stabilization standards at their site 24/7.	94.13(a) and (b)	Exh. C, Photos 1 and 2 Exh. D, Map 1	\$ 1,250 <sup>1</sup>	3	Occurred within 1,000 feet of a residential area (+25% per day)	25%	\$ 312.50	\$ 1,562.50
	1/9/2024			Exh. C, Photos 3 thru 8 Exh. F, Map 2			1) Occurred within 1,000 feet of a residential area (+25% per day) 2) Second consecutive day of violation <sup>2</sup> (+25% per day)	50%	\$ 625.00	\$ 1,875.00
	1/17/2024			Exh. C, Photos 9 thru 13 Exh. I, Map 3	\$ 1,000		Occurred within 1,000 feet of a residential area (+25% per day)	25%	\$ 250.00	\$ 1,250.00

**Total Penalty: \$ 4,687.50**

<sup>1</sup> Unstable soil onsite >1 acre and ≤ 5 acres = \$1,250.00

<sup>2</sup> Consecutive Day aggravation begins with the 2nd day of noncompliance

Regulatory maximum: \$10,000 per day, per violation

[AQR Section 9.1 & NRS 445B.640]



## Exhibit B

### CONSTRUCTION SITE INSPECTION REPORT

Inspection No. 137022

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Canduella Rowsell	Jan 8, 2024	12:15 PM	12:30 PM	Routine		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Clear	No	48 degrees	15-19 mph	20 mph	NW	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:	Comm. Method:		
No	Yes	Moe Truman	Responsible Official	In Person		
		Spoke With:	Title:	Comm. Method:		
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:	Issued Verbal Directive With Possible NOV		Violation in 1000 feet of:	Residential		
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:			Plume Length:			
Opacity:			Opacity Test Method:			
<b>BMP Compliance:</b>						<b>Yes</b>
Project Soils:	Unstable		Size of Instability:	1.58 acres		
Trackout Device:	No - Needed		Has Trackout:	No		
Mitigation Equipment:	Inadequate		Soil Crust Determination:	Fail		
<b>Admin Compliance:</b>						<b>Yes</b>
Acreage Permitted:	3.19 acres	Observed Acreage:	3.19 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.		Equipment Onsite:		
<b>Inspector Notes:</b>			Approved By:		Katrinka Byers	
<p>I conducted a routine inspection and observed approximately 1.58 acres of dry, loose, powdery site soils along with multiple semi-trailers parked throughout the project along with multiple semi tractors and semi's entering and exiting the project. While I was filling out my inspection onsite, a man tried to yank open my driver side door that I keep locked for safety purposes. When I asked him who he was, he stated his name was Mithcell Truman or Moe Truman. I spoke with Moe Truman, Responsible Official, onsite, and he asked me who gave me permission to access the project. I stated to Mr. Truman that since there was a Dust Control Permit on this site, that I had authority to access the site. Mr. Truman stated that I had to get permission to be onsite as there were hazardous materials onsite and that he was sure I wouldn't know about that. I informed Mr. Truman that I did understand about hazardous materials, and I understood his concern for his property. I informed Mr. Truman he did not have a sign posted at the entrance warning about hazardous materials onsite or any sign posted to check in. Mr. Truman stated that the Federal Government doesn't require a sign and that the Feds trump the state or county or whomever I work for. I informed Mr. Truman that all of my other sites that require check in have a sign posted at the entrance. Mr. Truman stated that he would have the sign up by tomorrow. Mr. Truman asked me if I was done, and I stated that I needed to complete my inspection. Mr. Truman walked away, and I left the site</p>						



**DES**  
**DEPARTMENT OF ENVIRONMENT  
AND SUSTAINABILITY**



air quality



desert conservation  
PROGRAM



sustainability

Division of Air Quality  
4701 W. Russell Rd. Suite 200 2<sup>nd</sup> Floor  
Las Vegas, NV 89118  
Main Number: (702)455-5942  
Fax Number: (702)383-9994

immediately. I informed my Senior about the inspection and that I needed a follow up. My Senior stated that he would go with David Dean and complete the follow up inspection tomorrow.

**Exhibit C**  
**Digital Photographs**

Dust Control Permit #: **57148** Permittee: **ETON**

Project Name: **STRATFORD-1**

Photos taken by: **See photo description**



**Photograph # 1**

**Alleged Violation # 1**

View looking northwest at dry, loose, powdery site soils caused by vehicular travel observed on the southern portion of ETON's Stratford-1 project. Photo taken by Air Quality Specialist II, Canduella Rowsell.



**Photograph # 2**

**Alleged Violation # 1**

View of dry, loose, powdery site soils caused by vehicular travel observed on the southern portion of the project. Photo taken by Air Quality Specialist II, Canduella Rowsell.





**Photograph # 3**

**Alleged Violation # 1**

View looking north at dry, loose, powdery site soils observed in the central portion of the project. Photo taken by Senior Air Quality Specialist, Katrinka Byers.



**Photograph # 4**

**Alleged Violation # 1**

View of dry, loose, powdery site soils observed on the central portion of the project. Photo taken by Senior Air Quality Specialist, Katrinka Byers.





**Photograph # 5**

**Alleged Violation # 1**

View looking west at dry, loose, powdery site soils observed in the central portion of the project. Photo taken by Senior Air Quality Specialist, Katrinka Byers.



**Photograph # 6**

**Alleged Violation # 1**

View of dry, loose, powdery site soils observed on the central portion of the project. Photo taken by Senior Air Quality Specialist, Katrinka Byers.





**Photograph # 7**

**Alleged Violation # 1**

View of dry, loose, powdery site soils located on the western edge of the project. Photo taken by Senior Air Quality Specialist, Katrinka Byers.



**Photograph # 8**

**Alleged Violation # 1**

View looking south at dry, loose, powdery site soils located on the western edge of the project. Photo taken by Senior Air Quality Specialist, Katrinka Byers.



**Photograph # 9**

**Alleged Violation # 1**

View of dry, loose, powdery site soils observed on the northeastern portion of the project.  
Photo taken by Air Quality Specialist II, Canduella Rowsell.



**Photograph # 10**

**Alleged Violation # 1**

View of dry, loose, powdery site soils observed on the northern portion of the project.  
Photo taken by Air Quality Specialist II, Canduella Rowsell.





**Photograph # 11**

**Alleged Violation # 1**

View of dry, loose, powdery site soils observed in the central portion of the project. Photo taken by Air Quality Specialist II, Canduella Rowsell.



**Photograph # 12**

**Alleged Violation # 1**

View of dry, loose, powdery site soils observed in the central portion of the project. Photo taken by Air Quality Specialist II, Canduella Rowsell.



**Photograph # 13**

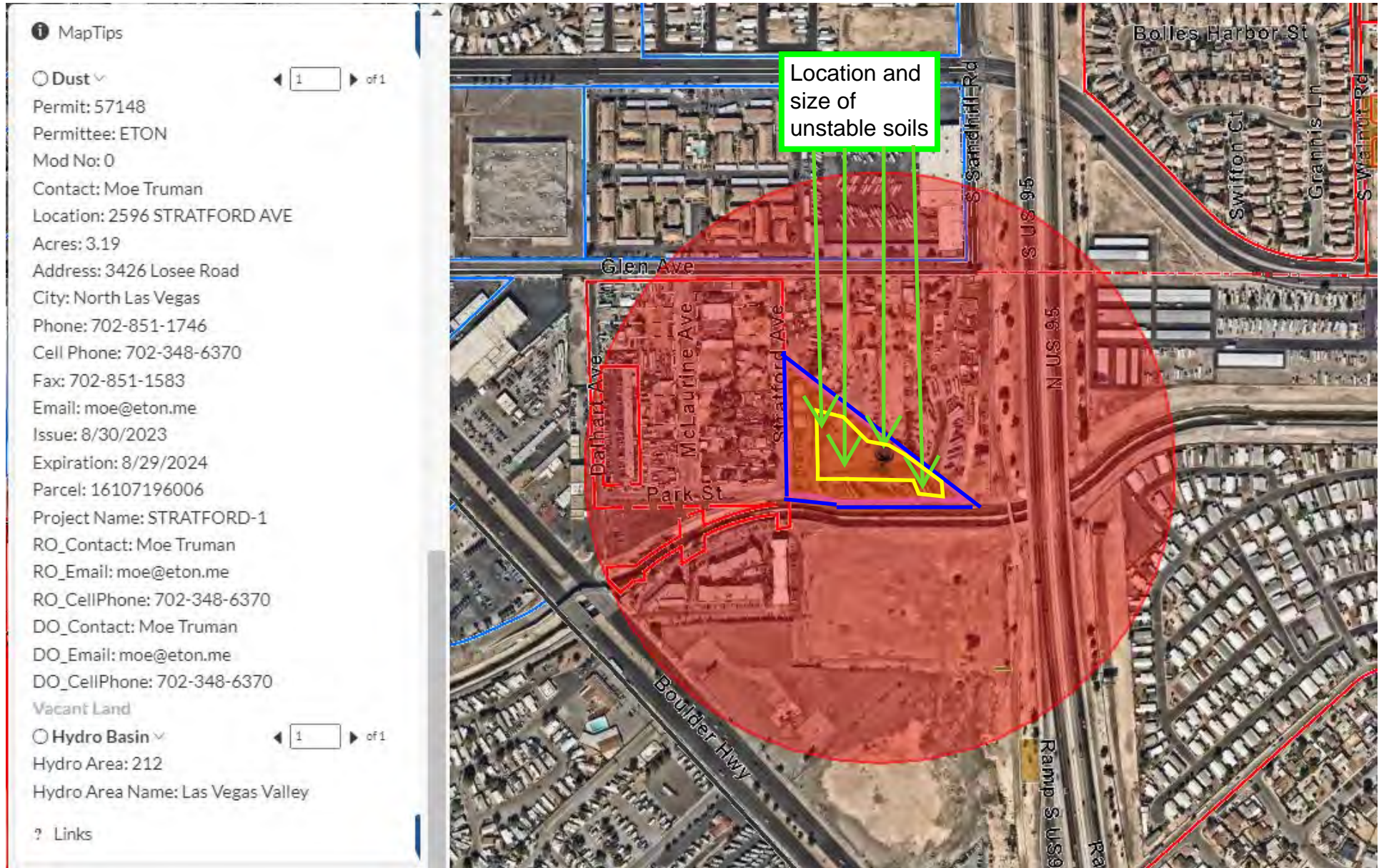
**Alleged Violation # 1**

View of dry, loose, powdery site soils observed on the western edge of the project. Photo taken by Air Quality Specialist II, Canduella Rowsell.



January 8, 2024

Exhibit D



Map 1-Showing location and size of unstable soils located within 1000 feet of a residential area.



## Exhibit E

### CONSTRUCTION SITE INSPECTION REPORT

Inspection No. 137058

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Katrinka Byers	Jan 9, 2024	10:45 AM	11:30 AM	Follow-up		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Clear	No	35 degrees	00-04 mph	5 mph	Variable	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:	Comm. Method:		
No	Yes	Moe Truman	Responsible Official	In Person		
		Spoke With:	Title:	Comm. Method:		
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:	Issued NON With Possible NOV		Violation in 1000 feet of:	Residential		
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:			Plume Length:			
Opacity:			Opacity Test Method:			
<b>BMP Compliance:</b>						<b>No</b>
Project Soils:	Unstable		Size of Instability:	1.58 acres		
Trackout Device:	No - Needed		Has Trackout:	No		
Mitigation Equipment:	Inadequate		Soil Crust Determination:	Fail		
<b>Admin Compliance:</b>						<b>No</b>
Acreage Permitted:	3.19 acres	Observed Acreage:	4.95 acres	Project Size:	Greater than permitted	
Staging/Parking Area:	Off-Site (Not included in acreage)	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.		Equipment Onsite:		
<b>Inspector Notes:</b>			Approved By:		Katrinka Byers	
<p>My supervisor, David Dean, Senior Air Quality Specialists, Andrew Kirk &amp; I conducted a follow-up inspection and observed dry, loose and powdery site soils with no available BACM, no trackout control device at the exit point, approximately 1.76 acres of disturbed soil outside the permit boundary with trucks, cars and equipment stored on the lots, and both the Responsible Official (Mr. Moe Truman) and the water truck operator not to hold a valid dust card. We spoke with Mr. Truman onsite regarding the prior inspection conducted by AQS II, Canduella Rowsell regarding possible hazardous waste material stored without proper notification to the public. Mr. Truman was very argumentative and said Ms. Rowsell should have checked in prior to conducting an inspection due to the hazardous wastes onsite. Mr. Dean pointed out that the site did not have any signs indicating "Dangerous" or "Hazardous Waste On-Site" nor did the site have any signs requiring a mandatory check-in prior to conducting an inspection. We explained the dust permit project description was issued for grubbing the site to for survey crews to start gathering data points; however, we observed 3 large maintenance tents for repairing equipment, approximately 10-15 semi-haul trucks and various equipment stored over the 5.66 acres of disturbed soil. Mr. Truman was very argumentative regarding the status of the permit and when instructed to comply with BMP-11 and remove all the equipment onsite or pave the lot to close out the permit, he said he would be notifying his attorney to handle all</p>						



**DES**  
**DEPARTMENT OF ENVIRONMENT  
AND SUSTAINABILITY**



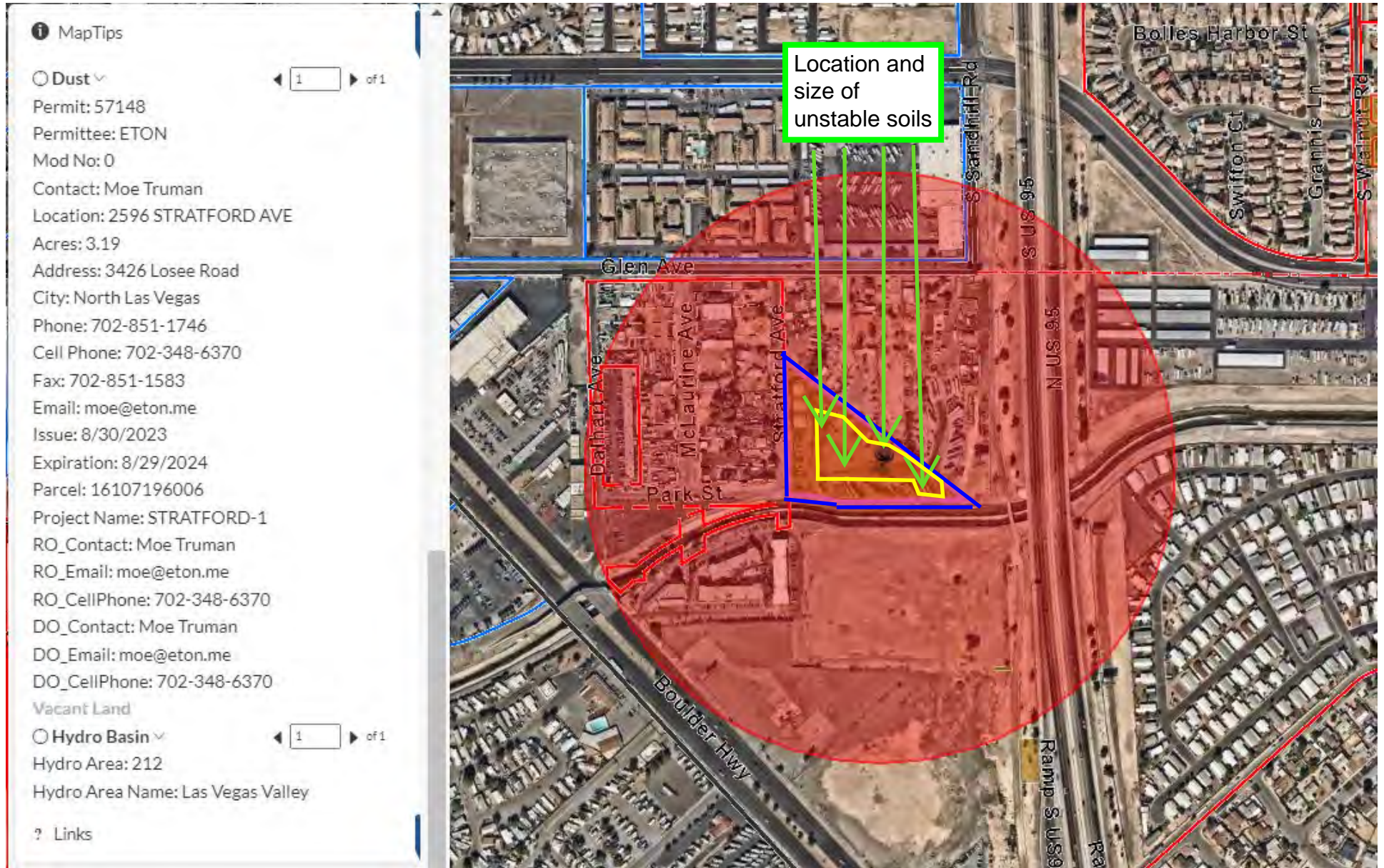
Division of Air Quality  
4701 W. Russell Rd. Suite 200 2<sup>nd</sup> Floor  
Las Vegas, NV 89118  
Main Number: (702)455-5942  
Fax Number: (702)383-9994

matters. Mr. Dean, Andy & I took photos of the site and documented our findings. A Notice of Non-Compliance with a possible NOV to be issued to Mr. Truman via email to stabilize all site soils immediately, Install a trackout control device ( 2"-3" rock, minimum 6" deep as long as the longest haul truck) at the exit point onto Stafford Avenue by the close of business Friday, 01/10/2024, and register both himself and the water truck operator for the next available dust class by the close of business Thursday, 01/11/2024. The over-acreage with stored material outside the permit boundary will be addressed with a separate Notice of Non-Compliance under Section 92.



January 9, 2024

Exhibit F



Map 2-Showing location and size of unstable soils located within 1000 feet of a residential area.



Division of Air Quality  
4701 W. Russell Rd. Suite 200 2<sup>nd</sup> Floor  
Las Vegas, NV 89118  
Main Number: (702)455-5942  
Fax Number: (702)383-9994

## Exhibit G

### NOTICE OF NONCOMPLIANCE

Issued To: ETON

Project Name: STRATFORD-1

Location: 2596 STRATFORD AVE

Dust Control Permit No: 57148

Date: Jan 9, 2024

Time: 11:30 AM

**This notice is to advise you that an inspection of your site has found it in noncompliance of the conditions specified in your Dust Control Permit and/or Clark County Air Quality Regulations (AQRs).**

**Unstable Soil Conditions** – Provide and maintain adequate measures to prevent fugitive dust by maintaining all project soils in a visibly damp, crusted, or otherwise stabilized condition per AQR Section 94.12. This applies 24 hours a day 7 days a week.

#### Trackout

Install a trackout control device by the close of business Friday, 1/12/2024..

#### Additional Instructions / Other Noncompliance Items

\*Stabilize all site soils immediately and maintain in a moist or crusted condition 24/7.

\*Install a track-out control device at all exit points (2"-3" rock, 6" deep and as long as the longest haul truck) by COB, 1/12/2024.

\* The 1.76 acres of unpaved stored material outside the dust permit boundary will be addressed and sent to you in a separate Notice of Non-Compliance under Section 92.

**\*Hazardous Waste Materials** imported/transported must be reported to the proper authorities and have the proper permits & signage onsite prior to operating in Clark County. Nevada Department of Environmental Protection (NDEP) & Clark County Comp Planning are cc'd on this email for further follow-up.

NOTE: Your site is currently being used as an unpaved parking lot/truck freight yard/hazardous waste storage and transport facility. Your dust permit was not issued for this use. You are required to meet BMP-11 long-term stabilization requirements to close out your dust permit by the close of business Thursday, August 29, 2024, to avoid additional violations and civil penalties.

### A Notice of Violation with civil penalties may be issued for the non-compliance issues listed above

**Pursuant to AQR Section 4.3, the noncompliance status detailed above may result in the issuance of a Notice of Violation, which includes the imposition of civil penalties.**

- **Failure to comply with this notice may result in additional enforcement action that includes a Notice of Violation.**
- **Please contact DAQ representative below regarding questions related to this notice.**

Person Notified:

Moe Truman

Responsible Official

ETON

(Printed Name)

(Title)

(Company)

moe@eton.me

(Email Address)

Person Notified:

Moe Truman

Designated Onsite Representative

ETON

(Printed Name)

(Title)

(Company)

moe@eton.me

(Email Address)

DAQ Representative:

Katrinka Byers

702-249-6093

(Printed Name)

(Phone Number)

KLB

**From:** Katrinka Byers <[Katrinka.Byers@ClarkCountyNV.gov](mailto:Katrinka.Byers@ClarkCountyNV.gov)>

**Sent:** Wednesday, January 10, 2024 10:10 AM

**To:** [moe@eton.me](mailto:moe@eton.me)

**Cc:** Robert Zinkevich <[rzinkevich@ndep.nv.gov](mailto:rzinkevich@ndep.nv.gov)>; Sami Real <[Sami.Real@ClarkCountyNV.gov](mailto:Sami.Real@ClarkCountyNV.gov)>; Jennifer Ammerman <[jad@ClarkCountyNV.gov](mailto:jad@ClarkCountyNV.gov)>; Andrew Kirk <[Andrew.Kirk@ClarkCountyNV.gov](mailto:Andrew.Kirk@ClarkCountyNV.gov)>; Canduella Rowsell <[Canduella.Rowsell@ClarkCountyNV.gov](mailto:Canduella.Rowsell@ClarkCountyNV.gov)>; David Dean <[Dean@ClarkCountyNV.gov](mailto:Dean@ClarkCountyNV.gov)>

**Subject:** Notice of Non-Compliance for DCOP#57148

**Importance:** High

Good morning Mr. Truman,

Please review the attached Notice of Noncompliance (NON) with Air Quality Regulations (AQRs) for the Stratford-1 project, DCOP# 57148, and comply with the requirements by the specified dates.

**NOTE:**

**\*Hazardous Waste Materials** imported/transported must be reported to the proper authorities and signs posted to notify the public. Nevada Department of Environmental Protection (NDEP) & Clark County Comp Planning are cc'd on this email for further follow-up.

\*Your site is currently being used as an unpaved parking lot/truck freight yard/hazardous waste storage and transport facility. Your dust permit was not issued for this use. You are required to meet BMP-11 long-term stabilization requirements to close out your dust permit by the close of business Thursday, August 29, 2024, to avoid additional violations and civil penalties. This will require the entire site to be paved or all stored equipment/material/vehicles removed and the entire site long-term stabilized (with clean gravel).

\*The 1.76 acres of unpaved storage/parking yard located outside the dust permit boundary will be addressed and sent to you in a separate Notice of Non-Compliance under Air Quality Regulation Section 92 by AQS II, Canduella Rowsell. This notice will require you to pave the lots or remove all the stored equipment/material/vehicles and long-term stabilize (with clean gravel) and install No Trespass/No Parking signs within 30 days of receipt of the NON.

Please let me know you received this email and understand what is required to comply with the applicable Air Quality Regulations. This NON may result in a Notice of Violation (NOV) that may result in civil penalties. If you have any questions regarding this message, feel free to contact me.

Sincerely,

*Katrinka Byers*



**Clark County Senior Air Quality Specialist  
REHS**

**4701 W. Russell Rd, #200**

**Las Vegas NV 89118**

**Office 702-455-1642**

**Fax 702-383-9994**

***Tuesday – Friday, 6:00 a.m. – 4:30 p.m.***

**For Dust Control Applications and Forms, click on this link: [DUST FORMS](#)**



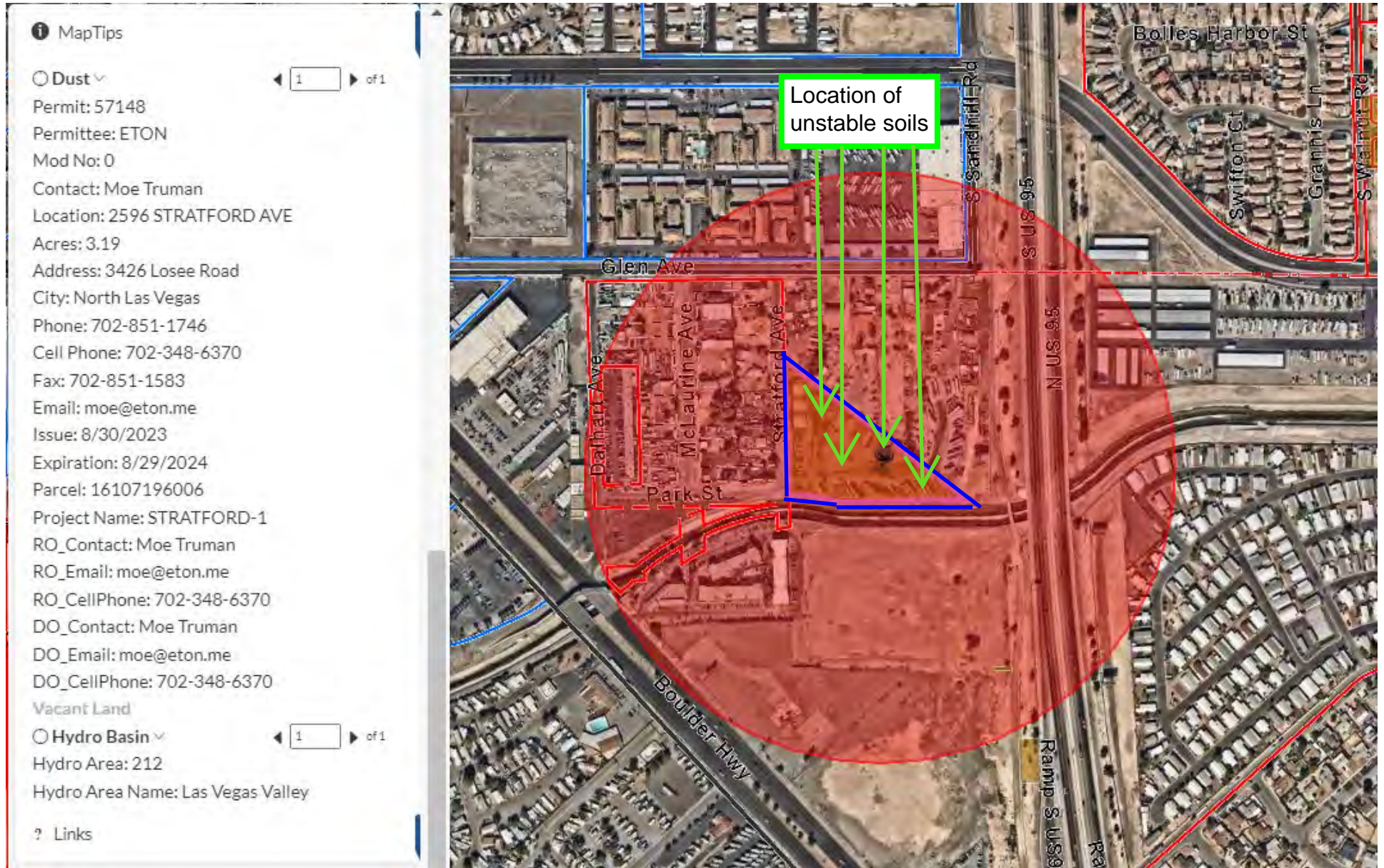
## Exhibit H

### CONSTRUCTION SITE INSPECTION REPORT

Inspection No. 137254

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Canduela Rowsell	Jan 17, 2024	1:45 PM	2:20 PM	Follow-up		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Partly Cloudy	No	58 degrees	00-04 mph	5 mph	NE	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:	Comm. Method:		
No	Yes	Moe Truman	Responsible Official	Email		
		Spoke With:	Title:	Comm. Method:		
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:	Possible NOV		Violation in 1000 feet of:	Residential		
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:			Plume Length:			
Opacity:			Opacity Test Method:			
<b>BMP Compliance:</b>						<b>No</b>
Project Soils:	Unstable		Size of Instability:	0.26 acres		
Trackout Device:	No - Needed		Has Trackout:	No		
Mitigation Equipment:	Inadequate		Soil Crust Determination:	Fail		
<b>Admin Compliance:</b>						<b>Yes</b>
Acreage Permitted:	3.19 acres	Observed Acreage:	3.19 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.		Equipment Onsite:		
<b>Inspector Notes:</b>						Approved By: Katrinka Byers
<p>I conducted a follow up inspection and observed approximately 0.26 acres of dry, loose, powdery site soils throughout the project. I emailed Moe Truman, Responsible Official, informing him that this is yet another day of Noncompliance (NON) with a possible Notice of Violation (NOV) for failure to maintain soil stability and installing a trackout control device at all exit points. I informed Mr. Truman to immediately stabilize all site soils and maintain in a moist or crusted condition 24/7 and install a trackout control device as required on the NON sent by Katrinka Byers on January 10, 2024.</p>						

January 17, 2024  
Exhibit I



Map 3-Showing location of unstable soils located within 1000 feet of a residential area.

## Exhibit J

From: [Canduella Rowsell](#)  
To: [moe@eton.me](mailto:moe@eton.me)  
Subject: another day of noncompliance for DCOP 57148  
Date: Wednesday, January 17, 2024 5:24:00 PM  
Attachments: [image001.png](#)  
[image002.png](#)

---

Good afternoon Mr. Truman,

I conducted a follow-up inspection this afternoon and observed approximately 0.26 acres of dry, loose powdery site soils throughout the project. Please immediately stabilize all site soils and maintain in a moist or crusted condition 24/7 per your DCOP permit. Also you have not installed the trackout control device as directed in the Notice of Noncompliance (NON) with a possible Notice of Violation (NOV) that was sent to you by Katrinka Byers on January 10, 2024. This is yet another day of Noncompliance (NON) with a possible Notice of Violation (NOV). If you have any questions, feel free to contact me.

*Have a great day,  
Canduella Rowsell*

**Canduella Rowsell | Air Quality Specialist II**

**Clark County Department of Environment & Sustainability  
Division of Air Quality**

4701 W Russell Road | Suite 200  
Las Vegas, NV 89118  
702-455-1673 (office)  
725-377-4270 (mobile)

***My working hours are Monday - Thursday, 7:00 AM - 5:30 PM***

**For Dust Control Applications and Forms, click on this link: [Dust Control Permitting](#)**

You must use **MICROSOFT EDGE** as your search engine. If you have your default browser set to anything else, such as Chrome, the forms will not work.







**CONSTRUCTION SITE INSPECTION REPORT**

**Inspection No. 137568**

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Canduella Rowsell	Feb 1, 2024	9:35 AM	10:05 AM	Follow-up		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Cloudy	Yes	59 degrees	05-09 mph	10 mph	S	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:		Comm. Method:	
No	Yes	Moe Truman	Responsible Official		In Person	
		Spoke With:	Title:		Comm. Method:	
<b>Is the project in compliance with all air quality requirements?</b>						<b>Yes</b>
Action Taken:	No Action Taken		Violation in 1000 feet of:		Not Applicable	
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:			Plume Length:			
Opacity:			Opacity Test Method:			
<b>BMP Compliance:</b>						<b>Yes</b>
Project Soils:	Stable		Size of Instability:			
Trackout Device:	Yes - Effective		Has Trackout:		No	
Mitigation Equipment:	Adequate		Soil Crust Determination:		Not Necessary/Not Performed	
<b>Admin Compliance:</b>						<b>Yes</b>
Acreage Permitted:	3.19 acres	Observed Acreage:	3.19 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.	Equipment Onsite:			
<b>Inspector Notes:</b>			Approved By:		Katrinka Byers	
I conducted a follow up inspection and observed that the site is in compliance at this time. The trackout pad has been installed on both entrances, the soils are stable, and the permit modifications have been received to include the areas for paving on the northern side.						



4701 W. Russell Road 2<sup>nd</sup> Floor  
Las Vegas, NV 89118-2231  
Phone: (702) 455-5942 • Fax: (702) 383-9994  
Marci Henson, Director

August 29, 2024

*FEDERAL EXPRESS TRK #7782 5944 9430*

Moe F. Truman, Project Manager and Responsible Official

E-mail: [moe@eton.me](mailto:moe@eton.me)

Katherine K. Truman, President

ETON Transportation Corp.

3426 Losee Road

North Las Vegas, NV 89030

*FEDERAL EXPRESS TRK #7782 5956 4650*

Moe F. Truman, Individually and as Project Manager and Responsible Official

E-mail: [moe@eton.me](mailto:moe@eton.me)

Environmental Transportation of Nevada, LLC d/b/a ETON

3426 Losee Road

North Las Vegas, NV 89030

*FEDERAL EXPRESS TRK #7782 5975 4210*

Katherine K. Truman, Manager

Environmental Transportation of Nevada, LLC d/b/a ETON

4680 Cimarron Road

Las Vegas, NV 89129

*FEDERAL EXPRESS TRK #7782 5999 3072*

Russell G. Gubler, Attorney

E-mail: [RGubler@mjohnsonlaw.com](mailto:RGubler@mjohnsonlaw.com)

Johnson & Gubler, P.C.

Lakes Business Park

8831 W. Sahara Avenue

Las Vegas, Nevada 89117

## NOTICE OF VIOLATION #10078

Clark County Department of Environment and Sustainability, Division of Air Quality (**Air Quality**) provides this notice to ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON<sup>1</sup>, and Moe Truman (**Truman**), individually, for the violation of the Clark County Air Quality Regulations (**AQRs**) as alleged below and recommends a civil penalty of Thirty-One Thousand Five Hundred Sixty-Two and 50/100 Dollars (\$31,562.50) be assessed as shown in the penalty calculation table attached hereto as **Exhibit A** and incorporated herein.

<sup>1</sup> The DCOP application was submitted by Moe Truman under the permittee name, ETON. ETON Transportation Corp. and Environmental Transportation of Nevada, LLC have active business licenses with Nevada Secretary of State. Katherine Truman is the officer listed for both organizations.

## I. FACTS

- A. On February 8, 2024, Air Quality issued revised Dust Control Operating Permit (**DCOP**) #57148 to ETON, for the 4.99-acre construction project named Stratford-1. A Dust Mitigation Plan was submitted with the initial DCOP application and was incorporated into DCOP #57148 whereby ETON agreed to comply with the control requirements for the selected Best Management Practices (**BMPs**). The Dust Mitigation Plan remained in effect with this revision.
- B. Air Quality Specialists Canduella Rowsell (**Rowsell**) and Noel Crandall (**Crandall**), and Senior Air Quality Specialist Andrew Kirk (**Kirk**) discovered the alleged violations while performing a routine inspection on July 17, 2024, and follow-up inspections on July 25, and 31, 2024, and August 7 and 14, 2024, at the Stratford-1 construction project, located at 2596 Stratford Avenue, in Clark County, Nevada.
- C. On July 17, 2024, at approximately 9:50 a.m., Rowsell and Kirk arrived at the Stratford-1 construction site to conduct a routine inspection. The inspection report is attached hereto as **Exhibit B** and incorporated herein. During their inspection, Rowsell and Kirk observed approximately 1.31 acres of dry, loose, and powdery site soil conditions as shown in Photographs 1 through 6, and Map 1, attached hereto as **Exhibits C** and **D**, respectively, and incorporated herein. While onsite, Rowsell and Kirk spoke in person with Moe Truman (**Truman**), Project Manager and Responsible Official for ETON, concerning their observations of noncompliance and the issuance of a Notice of Noncompliance (**NON**). The NON was emailed to Truman and Russell Gubler (**Gubler**), attorney representing ETON, and is attached hereto as **Exhibit E** and incorporated herein. Rowsell and Kirk also determined the noncompliance issue occurred within 1,000 feet of the outer boundary of a residential area (**Exh D**). Rowsell and Kirk concluded their inspection at approximately 10:20 a.m.
- D. On July 25, 2024, at approximately 3:15 p.m., Kirk arrived at the Stratford-1 construction site to conduct a follow-up inspection. The inspection report is attached hereto as **Exhibit F** and incorporated herein. During his inspection, Kirk was denied access by Truman and was unable to conduct a close-up inspection of the site. Kirk was able to see through the fence and the soils appeared to be dry, loose, and powdery. Kirk took Photographs 7 through 11 depicting the inaccessible project site (**Exh. C**). While onsite, Kirk spoke in person with Truman concerning his observations of noncompliance and the issuance of a NON for failing to allow access to the property for the purposes of an inspection. The NON was emailed to Truman and Gubler on July 29, 2024, and is attached hereto as **Exhibit G** and incorporated herein. In the email correspondence, Kirk notified Truman and Gubler that Truman and ETON consented to inspection of the site during normal hours of operation when the DCOP application was submitted. Kirk concluded his inspection at approximately 3:40 p.m.
- E. On July 31, 2024, at approximately 1:55 p.m., Rowsell and Crandall arrived at the Stratford-1 construction site to conduct a follow-up inspection. The inspection report is attached hereto as **Exhibit H** and incorporated herein. During their inspection, Rowsell and Crandall were denied access by Truman and were unable to conduct a close-up inspection of the site. Rowsell was able to see through the fence and the soils appeared to be dry, loose, and powdery. Rowsell

took Photograph 12 depicting the inaccessible project site (**Exh. C**). While onsite, Rowsell and Crandall spoke in person with Truman concerning their observations of noncompliance. Truman stated that Rowsell and Crandall were not allowed access to the site since they do not have an OSHA 40 certification. Rowsell and Crandall concluded their inspection at approximately 2:15 p.m. At approximately 5:05 p.m., Rowsell sent an email to Truman and Gubler stating she was denied access to the site to conduct a follow-up inspection. Rowsell notified Truman and Gubler that Air Quality Specialists have the authority to complete unscheduled inspections at any reasonable time as stated in ETON's DCOP, and that ETON was in violation with the terms and conditions of their DCOP, AQRs, and Nevada Revised Statutes (**NRS**) 445B.240 and NRS 445B.580, which prohibit any person from refusing entry to any authorized representative of the "Department" for the purposes of inspection. The email correspondence is attached hereto as **Exhibit I** and incorporated herein.

- F. On August 7, 2024, at approximately 2:00 p.m., Rowsell and Crandall arrived at the Stratford-1 construction site to conduct a follow-up inspection. The inspection report is attached hereto as **Exhibit J** and incorporated herein. During their inspection, Rowsell and Crandall were denied access by Truman and were unable to conduct a close-up inspection of the site. Rowsell was able to see through the fence but could not determine the condition of the site soils. It appeared that millings were applied throughout most of the site. Rowsell took Photographs 13 through 15 depicting the inaccessible project site (**Exh. C**). While onsite, Rowsell and Crandall spoke in person with Truman, and Truman stated that he did not hear back from Gubler whether access would be granted to conduct an inspection. Rowsell and Crandall concluded their inspection at approximately 2:15 p.m.
- G. On August 12, 2024, at approximately 9:18 a.m., Rowsell sent an email to Truman and Gubler stating she was denied access to the site to conduct a follow-up inspection. Rowsell notified Truman and Gubler that Air Quality Specialists have the authority to complete unscheduled inspections at any reasonable time as stated in ETON's DCOP, and that ETON was in violation with the terms and conditions of their DCOP, AQRs, and NRS 445B.240 and NRS 445B.580, which prohibit any person from refusing entry to any authorized representative of the "Department" for the purposes of inspection. The email correspondence is attached hereto as **Exhibit K** and incorporated herein.
- H. On August 14, 2024, at approximately 1:50 p.m., Crandall and Rowsell arrived at the Stratford-1 construction site to conduct a follow-up inspection. The inspection report is attached hereto as **Exhibit L** and incorporated herein. During their inspection, Crandall and Rowsell were denied access by a female office worker that stated Truman was in a meeting and was unable to allow them access to conduct an inspection. Rowsell took Photographs 16 and 17 depicting the inaccessible project site (**Exh. C**). Crandall and Rowsell concluded their inspection at approximately 2:15 p.m. At approximately 4:03 p.m., Crandall sent an email to Truman and Gubler stating he and Rowsell were denied access to the site to conduct a follow-up inspection. Crandall reminded Truman and Gubler that Air Quality Specialists have the authority to complete unscheduled inspections at any reasonable time as stated in ETON's DCOP, and that ETON was in violation with the terms and conditions of their DCOP, AQRs, and NRS 445B.240 and NRS 445B.580, which prohibit any person from refusing entry to any

authorized representative of the “Department” for the purposes of inspection. The email correspondence is attached hereto as **Exhibit M** and incorporated herein.

## **II. VIOLATION(S)**

### **Violation 1:**

By failing to employ Best Available Control Measures and comply with soil stabilization standards 24 hours a day, seven days a week, ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON, and Truman violated AQR Sections 94.13(a) and (b).

AQR Sections 94.13(a) and (b) state:

- “(a) Any Person who engages in a Construction Activity or Temporary Commercial Activity, with or without a Permit, shall employ BACM and comply with soil stabilization standards (Section 94.12) and Emissions standards (Section 94.14).
- (b) Control Measures that are listed in the approved Permit, and other measures as needed for the purpose of maintaining Dust control, shall be implemented 24 hours a day, seven days a week, until the Permit is closed in accordance with Section 94.5(n)(2).”

### **Violation 2:**

By refusing entry or access to the Control Officer who requests entry for purposes of inspection, ETON Transportation Corp., Environmental Transportation of Nevada, LLC d/b/a ETON, and Truman violated AQR Section 4.1(d)(1).

AQR Section 4.1(d)(1) states:

#### “4.1 Authority and Responsibilities

...

- (d) The Control Officer may enter and inspect any property, premise, or place where an air contaminant source is located or is being constructed, installed, or established at any reasonable time to ascertain compliance with the AQRs.

#### (1) No person shall:

- (i) Refuse access if the Control Officer requests entry for inspection and presents appropriate credentials.
- (ii) Obstruct, hamper, or interfere with an inspection.”

### III. RECOMMENDED CIVIL PENALTY

Pursuant to AQR Section 9.1, any person who violates any provision of the AQRs, including any permit condition; is guilty of a civil offense and shall pay a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate offense.

Air Quality considered the following in calculating the recommended penalty:

- Violation on July 17, 2024 for unstable soil onsite  $> 1$  acre and  $\leq 5$  acres; and
- Violation occurred within 1,000 feet of the outer boundary of a residential area as described in Paragraph I.C (**Exh. D**).

Air Quality recommends a civil penalty in the amount of \$31,562.50 (**Exh. A**).

### IV. HEARING

Air Quality has scheduled a hearing for **Thursday, September 19, 2024, at 9:00 a.m.** before the Air Pollution Control Hearing Officer to adjudicate the alleged violation(s) and, if appropriate, to levy the recommended penalty. Please complete the enclosed **“Notice of Violation Response Form”** and return it to Air Quality by September 5, 2024. At the hearing, the Hearing Officer will hear evidence on the alleged violation(s) and render a decision. The hearing will be held at the Clark County Building Services Presentation Room, located at 4701 West Russell Road, Las Vegas, Nevada.

If you intend to present any documentary evidence at the hearing, please provide copies of your evidence to Air Quality with the completed Notice of Violation Response Form. If you fail to provide copies of your evidence prior to the hearing, please be advised that Air Quality may request a continuance to have time to review any evidence you bring to the hearing, which will result in the hearing being postponed and rescheduled to a later date.

If the Hearing Officer finds you in violation and levies a penalty, Air Quality staff will mail the Hearing Officer’s order to you along with instructions on remittance of the penalty.

  
Shibi Paul (Aug 29, 2024 10:48 PDT)

---

Shibi Paul  
Compliance and Enforcement Manager

Exhibits:

- A. Penalty Calculation Table, NOV #10078
- B. Air Quality Construction Site Inspection Form #141513, dated July 17, 2024
- C. Digital Photographs 1 through 17
- D. Map 1: Showing approximate size and location of unstable soils within 1,000 feet of a residential area on July 17, 2024
- E. Air Quality Notice of Noncompliance for July 17, 2024
- F. Air Quality Construction Site Inspection Form #141762, dated July 25, 2024
- G. Air Quality Notice of Noncompliance for July 25, 2024
- H. Air Quality Construction Site Inspection Form #141877, dated July 31, 2024
- I. Email Correspondence dated July 31, 2024
- J. Air Quality Construction Site Inspection Form #142040, dated August 7, 2024
- K. Email Correspondence dated August 12, 2024
- L. Air Quality Construction Site Inspection Form #142191, dated August 14, 2024
- M. Email Correspondence dated August 14, 2024

sl



## Exhibit A

### NOV # 10078 Penalty Calculation Table

**ETON Transportation Corp., Environmental Transportation of Nevada, LLC  
d/b/a ETON, and Moe Truman**



4701 W. Russell Road 2<sup>nd</sup> Floor  
Las Vegas, NV 89118-2231  
Phone: (702) 455-5942 • Fax: (702) 383-9994  
Marci Henson, Director

Viol.	Date(s)	Violation Description	AQR Section	Exhibit / Evidence	Base Penalty	Days	Aggravating Description	Agg. Factor	Agg. Amount	Penalty
1	7/17/2024	Failed to fully implement Best Available Control Measures and comply with soil stabilization standards at their site 24/7.	94.13(a) and (b)	Exh. C, Photos 1 thru 6 Exh. D, Map 1	\$ 1,250 <sup>1</sup>	1	Occurred within 1,000 feet of a residential area (+25% per day)	25%	\$ 312.50	\$ 1,562.50
2	7/31/2024	Refused entry or access to the Control Officer for purposes of inspection.	4.1(d)(1)	Exh. C, Photo 12	\$ 10,000	3	N/A	0%	\$ -	\$ 30,000.00
	8/7/2024			Exh. C, Photos 13 thru 15						
	8/14/2024			Exh. C, Photos 16 and 17						

**Total Penalty: \$ 31,562.50**

<sup>1</sup> Unstable soil onsite >1 acre and ≤ 5 acres = \$1,250.00

Regulatory maximum: \$10,000 per day, per violation

[AQR Section 9.1 & NRS 445B.640]



## Exhibit B

### CONSTRUCTION SITE INSPECTION REPORT

#### Inspection No. 141513

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Canduela Rowsell	Jul 17, 2024	9:50 AM	10:20 AM	Routine		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Clear	No	101 degrees	00-04 mph	5 mph	E	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:	Comm. Method:		
No	Yes	Moe Truman	Responsible Official	In Person		
		Spoke With:	Title:	Comm. Method:		
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:	Issued NON With Possible NOV		Violation in 1000 feet of:	Residential		
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:	Plume Length:					
Opacity:	Opacity Test Method:					
<b>BMP Compliance:</b>						<b>No</b>
Project Soils:	Unstable		Size of Instability:	1.31 acres		
Trackout Device:	Yes - Effective		Has Trackout:	No		
Mitigation Equipment:	Inadequate		Soil Crust Determination:	Not Necessary/Not Performed		
<b>Admin Compliance:</b>						<b>Yes</b>
Acreage Permitted:	4.99 acres	Observed Acreage:	4.99 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.	Equipment Onsite:			
<b>Inspector Notes:</b>			Approved By:		Andrew Kirk	
<p>I conducted a routine inspection with Andrew Kirk, Senior Air Quality Specialist, and observed approximately 1.31 acres of dry, loose, powdery site soils. Due to the amount of egregious unstable soils, a soils stabilization test was not conducted due to the fact it was not needed to verify instability. Andrew and I spoke in person with Moe Truman, Responsible Official, and informed him that the site was not in compliance at this time and that a Notice of Noncompliance (NON) with a possible Notice of Violation (NOV) will be issued. Mr. Truman stated that he was in litigation regarding this site with Air Quality. When Mr. Kirk tried to explain to Mr. Truman that the soils needed to be stabilized and maintained in a moist or crusted condition 24/7, per the conditions of his dust permit, Mr. Truman stated that he wasn't going to discuss it and that's what the lawyers are for. Mr. Kirk and I left the site without further discussion. I issued a Notice of Noncompliance with a possible Notice of Violation and sent the NON via email to Mr. Truman and his attorney Mr. Russell Gubler.</p>						

## Exhibit C

# Digital Photographs

Dust Control Permit #: **57148** Permittee: **ETON**

Project Name: **Stratford - 1**

Photos taken by: **See photo description**



**Photograph # 1**

**Alleged Violation # 1**

View looking north at dry, loose, powdery site soils located on the southwestern portion of ETON's Stratford-1 project. Photo taken by Canduella Rowsell.



**Photograph # 2**

**Alleged Violation # 1**

View looking northeast at dry, loose, powdery site soils observed in the central portion of the project. Photo taken by Canduella Rowsell.





**Photograph # 3**

**Alleged Violation # 1**

View looking north at dry, loose, powdery sits soils observed on the southern portion of the project. Photo taken by Canduella Rowsell.



**Photograph # 4**

**Alleged Violation # 1**

View looking east at dry, loose, powdery site soils observed on the southeastern end of the project. Photo taken by Canduella Rowsell.





**Photograph # 5**

**Alleged Violation # 1**

View looking northeast at dry, loose, powdery site soils observed on the northeastern end of the project. Photo taken by Canduella Rowsell.



**Photograph # 6**

**Alleged Violation # 1**

View looking east at dry, loose, powdery site soils observed on the northwestern end of the project. Photo taken by Canduella Rowsell.





**Photograph # 7**

**Alleged Violation # 2**

View looking east at what appears to be dry, loose, powdery site soils observed behind the southern gate blocking access to the project during a follow-up inspection. Photo taken by Andrew Kirk.



**Photograph # 8**

**Alleged Violation # 2**

View looking southeast at closed gate blocking access to the site observed during a follow-up inspection. Photo taken by Andrew Kirk.





**Photograph # 9**

**Alleged Violation # 2**

View looking southeast at shipping containers blocking access to the site observed during a follow-up inspection. Photo taken by Andrew Kirk.



**Photograph # 10**

**Alleged Violation # 2**

View looking east at front door with sign stating "all visitors must register at office" observed during a follow-up inspection. Photo taken by Andrew Kirk.





**Photograph # 11**

**Alleged Violation # 2**

View looking east at closed gate blocking access to the site observed on the southern end of the project during a follow-up inspection. Photo taken by Andrew Kirk.



**Photograph # 12**

**Alleged Violation # 2**

View looking east through gate blocking access to the site observed on the southern end of the project during a follow-up inspection. Photo taken by Canduella Rowsell.



**Photograph # 13**

**Alleged Violation # 2**

View looking northeast at southern gate blocking access to the site observed during a follow-up inspection. Photo taken by Canduella Rowsell.



**Photograph # 14**

**Alleged Violation # 2**

View looking east at office door with sign stating "all visitors must register at office". Photo taken by Canduella Rowsell.





**08/07/2024 14:10:35**

**Photograph # 15**

**Alleged Violation # 2**

View looking east at northern gate blocking access to the site observed during a follow-up inspection. Photo taken by Canduella Rowsell.



**08/14/2024 13:53:10**

**Photograph # 16**

**Alleged Violation # 2**

View looking southeast at closed gate blocking access to the site observed during a follow-up inspection. Photo taken by Canduella Rowsell.



**Photograph # 17**

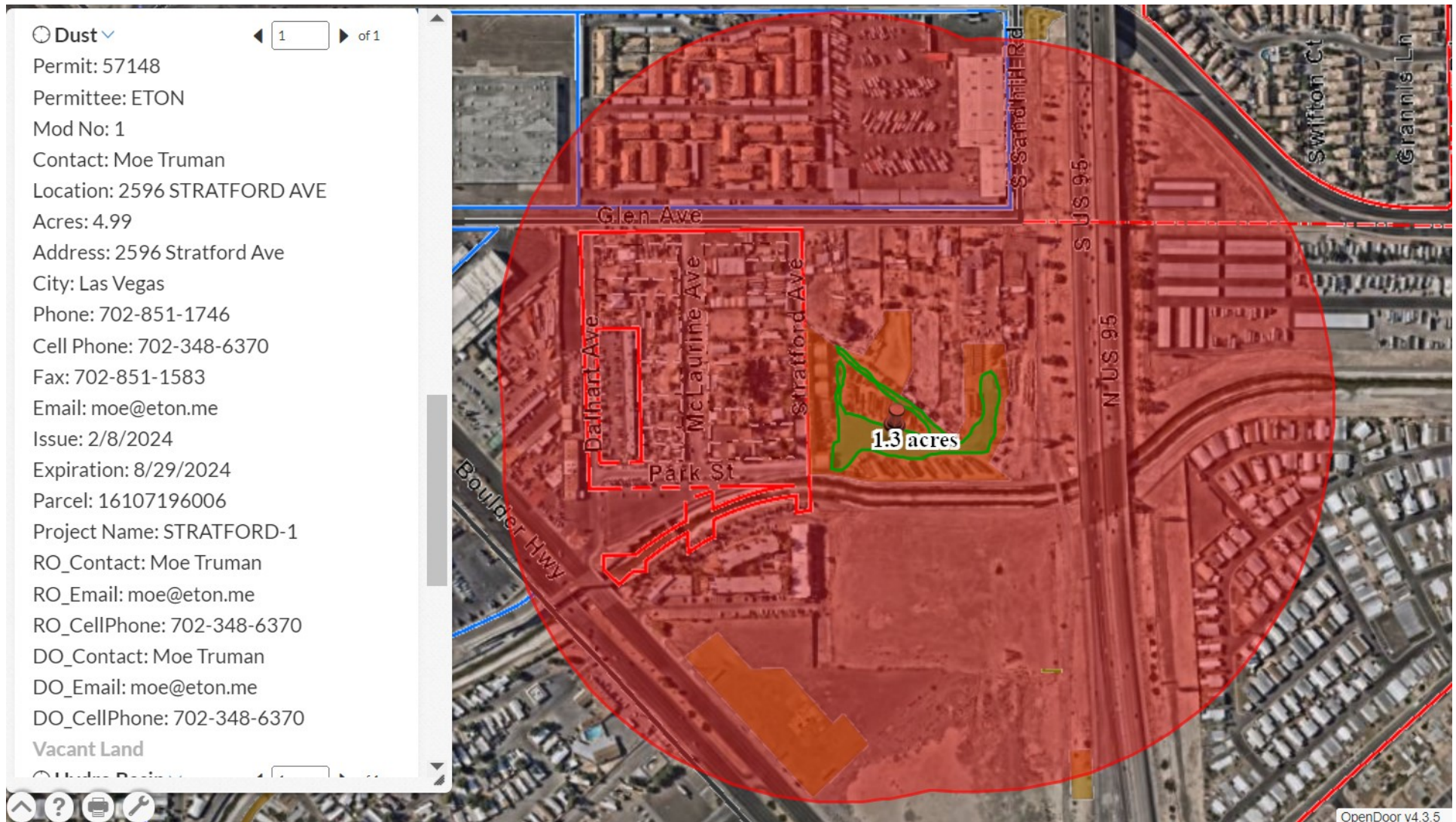
**Alleged Violation # 2**

View looking southeast at shipping containers blocking access to the site observed during a follow-up inspection. Photo taken by Canduella Rowsell.



## Exhibit D

July 17, 2024



Map 1-Showing approximate size and location of unstable soils located within 1,000 feet of a residential area.



Division of Air Quality  
4701 W. Russell Rd. Suite 200 2<sup>nd</sup> Floor  
Las Vegas, NV 89118  
Main Number: (702)455-5942  
Fax Number: (702)383-9994

## Exhibit E

### NOTICE OF NONCOMPLIANCE

Issued To: ETON

Project Name: STRATFORD-1

Location: 2596 STRATFORD AVE

Dust Control Permit No: 57148

Date: Jul 17, 2024

Time: 10:20 AM

**This notice is to advise you that an inspection of your site has found it in noncompliance of the conditions specified in your Dust Control Permit and/or Clark County Air Quality Regulations (AQRs).**

**Unstable Soil Conditions** – Provide and maintain adequate measures to prevent fugitive dust by maintaining all project soils in a visibly damp, crusted, or otherwise stabilized condition per AQR Section 94.12. This applies 24 hours a day 7 days a week.

**Pursuant to AQR Section 4.3, the noncompliance status detailed above may result in the issuance of a Notice of Violation, which includes the imposition of civil penalties.**

- **Failure to comply with this notice may result in additional enforcement action that includes a Notice of Violation.**
- **Please contact DAQ representative below regarding questions related to this notice.**

Person Notified:

Moe Truman

Responsible Official

ETON

(Printed Name)

(Title)

(Company)

moe@eton.me

(Email Address)

Person Notified:

Moe Truman

Designated Onsite Representative

ETON

(Printed Name)

(Title)

(Company)

moe@eton.me

(Email Address)

DAQ Representative:

Candueella Rowsell

725-377-4270

*KLB*

(Printed Name)

(Phone Number)

**From:** [Canduela Rowsell](#)  
**To:** [moe@eton.me](mailto:moe@eton.me); [rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
**Cc:** [David Dean](#); [Katrinka Byers](#); [Andrew Kirk](#); [Catherine Jorgenson](#)  
**Subject:** DCOP#57148 Notice of Noncompliance  
**Date:** Wednesday, July 17, 2024 5:06:00 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[57148\\_20240717\\_NON-Rvd.pdf](#)

---

Good afternoon ,

Please review the attached Notice of Noncompliance (NON) with Air Quality Regulations (AQRs) for the Stratford-1 project, DCOP# 57148, and comply with the requirements by the specified dates.

Please let me know you received this email and understand what is required to comply with the applicable Air Quality Regulations. This NON may result in a Notice of Violation (NOV) that may result in civil penalties. We appreciate your continued cooperation in maintaining compliance on this project. We will continue to conduct inspections to verify compliance on this project. If you have any questions regarding this message, feel free to contact me.

Sincerely,

*Have a great day,  
Canduela Rowsell*

**Canduela Rowsell | Air Quality Specialist II**

**Clark County Department of Environment & Sustainability  
Division of Air Quality**

4701 W Russell Road | Suite 200  
Las Vegas, NV 89118  
702-455-1673 (office)  
725-377-4270 (mobile)

***My working hours are Monday - Thursday, 7:00 AM - 5:30 PM***

**For Dust Control Applications and Forms, click on this link: [Dust Control Permitting](#)**

You must use **MICROSOFT EDGE** as your search engine. If you have your default browser set to anything else, such as Chrome, the forms will not work.





**From:** [Moe Truman](#)  
**To:** [Candueella Rowsell](#)  
**Subject:** Read: DCOP#57148 Notice of Noncompliance  
**Date:** Wednesday, July 17, 2024 5:14:41 PM

---

Your message

To: Moe Truman  
Subject: DCOP#57148 Notice of Noncompliance  
Sent: Wednesday, July 17, 2024 5:06:29 PM (UTC-08:00) Pacific Time (US & Canada)  
was read on Wednesday, July 17, 2024 5:14:21 PM (UTC-08:00) Pacific Time (US & Canada).



## Exhibit F

### CONSTRUCTION SITE INSPECTION REPORT

Inspection No. 141762

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Andrew Kirk	Jul 25, 2024	3:15 PM	3:40 PM	Follow-up		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Partly Cloudy	No	110 degrees	00-04 mph	5 mph	Variable	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:	Comm. Method:		
No	Yes	Moe Truman	Responsible Official	In Person		
		Spoke With:	Title:	Comm. Method:		
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:		Possible NOV	Violation in 1000 feet of:	Residential		
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:			Plume Length:			
Opacity:			Opacity Test Method:			
<b>BMP Compliance:</b>						<b>No</b>
Project Soils:		Unstable	Size of Instability:			
Trackout Device:		No - Not Practical	Has Trackout:		No	
Mitigation Equipment:		Inadequate	Soil Crust Determination:		Not Necessary/Not Performed	
<b>Admin Compliance:</b>						<b>No</b>
Acreage Permitted:	4.99 acres	Observed Acreage:	4.99 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.	Equipment Onsite:			
<b>Inspector Notes:</b>						Approved By: Andrew Kirk
I attempted to conduct a follow-up inspection of this project but was denied access by the Responsible Official, Mr. Moe Truman. I therefore, was not able to complete a close-up inspection of the soils but could see through the fence that they appeared to be dry, loose, and powdery and unchanged from the last inspection on 7/17/2024. I am issuing another Notice of Non-Compliance (NON) for access being denied, which is a violation of Section 4.1 (d)(1) and NRS 445B-240 and NRS 445B.580. I did tell Mr. Truman that he must stabilize all soils immediately and maintain them in a moist or crusted condition 24/7.						



## Exhibit G

Division of Air Quality  
4701 W. Russell Rd. Suite 200 2<sup>nd</sup> Floor  
Las Vegas, NV 89118  
Main Number: (702)455-5942  
Fax Number: (702)383-9994

### NOTICE OF NONCOMPLIANCE

Issued To: ETON

Project Name: STRATFORD-1

Location: 2596 STRATFORD AVE

Dust Control Permit No: 57148

Date: Jul 25, 2024

Time: 3:40 PM

**This notice is to advise you that an inspection of your site has found it in noncompliance of the conditions specified in your Dust Control Permit and/or Clark County Air Quality Regulations (AQRs).**

**Failed to adhere to Section 4.1 (d)(1) and the requirements outlined within the Dust Control Operating Permit (DCOP).**

#### Additional Instructions / Other Noncompliance Items

Section 4.1, Authority and Responsibilities, states:

...

(d) The Control Officer may enter and inspect any property, premise, or place where an air contaminant source is located or is being constructed, installed, or established at any reasonable time to ascertain compliance with the AQRs.

(1) No person shall:

- (i) Refuse access if the Control Officer requests entry for inspection and presents appropriate credentials.
- (ii) Obstruct, hamper, or interfere with an inspection.

**Pursuant to AQR Section 4.3, the noncompliance status detailed above may result in the issuance of a Notice of Violation, which includes the imposition of civil penalties.**

- Failure to comply with this notice may result in additional enforcement action that includes a Notice of Violation.
- Please contact DAQ representative below regarding questions related to this notice.

Person Notified:

Moe Truman

Responsible Official

ETON

(Printed Name)

(Title)

(Company)

moe@eton.me

(Email Address)

Person Notified:

Moe Truman

Designated Onsite Representative

ETON

(Printed Name)

(Title)

(Company)

moe@eton.me

(Email Address)

DAQ Representative:

Andrew Kirk

702-306-0257

(Printed Name)

(Phone Number)

AMK

**From:** [Andrew Kirk](#)  
**To:** [moe@eton.me](mailto:moe@eton.me); [rgubler@mjohnsonlaw.com](mailto:rgubler@mjohnsonlaw.com)  
**Cc:** [David Dean](#); [Catherine Jorgenson](#); [Katrinka Byers](#); [Canduell Rowell](#)  
**Subject:** Notice of Non-Compliance (NON) for DCOP #57148 - Stratford- 1  
**Date:** Monday, July 29, 2024 10:17:17 AM  
**Attachments:** [57148\\_20240725\\_NON.pdf](#)

---

Good morning Mr. Truman and Mr. Gubler,

Please review the attached Notice of Non-Compliance (NON). Basically, I went out to your project, Dust Control Operating Permit (DCOP) #57148 – Stratford -1, on Thursday, 7/25/2024 at approximately 3:20 PM and was denied access. I was told that you needed to speak to your lawyer first before allowing access to the site even though I stated that as an inspector I have the authority to complete an unscheduled inspection at any reasonable time. In fact, on page 3 of 16 of your DCOP it says “In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.” This became binding after the DCOP was signed and issued to you, the Responsible Official.

There are also two Nevada Revised Statutes (NRS) that apply here, and they are:

- NRS 445B.240 – Power of representatives of Department to enter and inspect premises.

-Part 1 of this Statute says “Any duly authorized officer, employee or representative of the Department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640, inclusive, and rules and regulations in force pursuant thereto.”

-Part 2 of this Statute says “No person shall:

(a) Refuse entry or access to any authorized representative of the Department who requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.

(b) Obstruct, hamper or interfere with any such inspection.”

- NRS 445B.580 - Officer of Department may inspect or search premises.

-Part 1 of this Statute says “It is a condition of the issuance of any operating permit required by the Commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by any authorized officer of the Department at any time during the holder’s hours of operation without prior notice. This condition must be stated on each application form and operating permit.”

During our previous inspection of this project on July 17, 2024, where we were allowed access, Air Quality inspector’s observed unstable site soils throughout the entire site. We issued a NON to you at that time to let you know that all soils must be stabilized immediately and maintained in a moist or crusted condition 24/7. However, you stated that you didn’t need to because your property was a part of the Railroad and that it was between your lawyer and Air Quality’s and that you would not discuss the matter further. I let you know that regardless of all that, you needed to comply with Air Quality Regulations because of your active DCOP and the requirements listed within. Furthermore, during my inspection on July 25, 2024, where I was denied access, I could see through the fence that the site soils were still dry, loose, and powdery. Once again, all soils must be kept in a moist or crusted condition 24/7. Thank you,

Andrew M. Kirk  
Senior Air Quality Specialist  
Clark County Division of Air Quality  
4701 W. Russell Road, Suite 200  
Las Vegas, NV 89118  
(702) 455-3529 Office  
(702) 306-0257 Cell  
[Andrew.Kirk@ClarkCountyNV.Gov](mailto:Andrew.Kirk@ClarkCountyNV.Gov)



## Exhibit H

### CONSTRUCTION SITE INSPECTION REPORT

Inspection No. 141877

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Canduela Rowsell	Jul 31, 2024	1:55 PM	2:15 PM	Follow-up		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Clear	No	103 degrees	05-09 mph	10 mph	E	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:		Comm. Method:	
No	Yes	Moe Truman	Responsible Official		In Person	
		Spoke With:	Title:		Comm. Method:	
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:	Possible NOV		Violation in 1000 feet of:		Residential	
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:			Plume Length:			
Opacity:			Opacity Test Method:			
<b>BMP Compliance:</b>						<b>No</b>
Project Soils:	Unstable		Size of Instability:			
Trackout Device:	Yes - Effective		Has Trackout:		No	
Mitigation Equipment:	Inadequate		Soil Crust Determination:		Not Necessary/Not Performed	
<b>Admin Compliance:</b>						<b>No</b>
Acreage Permitted:	4.99 acres	Observed Acreage:	4.99 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.	Equipment Onsite:			
<b>Inspector Notes:</b>			Approved By:		Andrew Kirk	
<p>Air Quality Specialist Noel Crandall and I attempted to conduct a follow-up inspection of this project but was denied access by the Responsible Official, Mr. Moe Truman. I therefore, was not able to complete a close-up inspection of the soils but could see through the fence that they were still dry, loose, and powdery throughout the site and appeared to be unchanged from the last inspections on 7/17/2024 and 7/25/24. There was a front-end loader spreading what appears to be millings on the main area by the south entrance, but I was unable to confirm materials as access was denied. Mr. Truman stated that since Noel Crandall and I don't have OSHA 40 certification, we will not be allowed access on his site. I did tell Mr. Truman that he must stabilize all soils immediately and maintain them in a moist or crusted condition 24/7. I asked Mr. Truman, "just to be clear, you are denying us access to your site, correct?" Mr. Truman stated yes. I stated okay then Mr. Crandall and I left the premises.</p>						

## Exhibit I

**From:** Canduella Rowsell <Canduella.Rowsell@ClarkCountyNV.gov>  
**Sent:** Wednesday, July 31, 2024 5:05 PM  
**To:** moe@eton.me; rgubler@mjohnsonlaw.com  
**Cc:** Catherine Jorgenson <Catherine.Jorgenson@clarkcountyda.com>; David Dean <Dean@ClarkCountyNV.gov>; Andrew Kirk <Andrew.Kirk@ClarkCountyNV.gov>; Noel Crandall <Crandall@ClarkCountyNV.gov>; Katrinka Byers <Katrinka.Byers@ClarkCountyNV.gov>  
**Subject:** Follow up inspection DCOP #57148-Stratford-1

Good afternoon Mr. Truman and Mr. Gubler,

I went out to your project, Dust Control Operating Permit (DCOP) #57148 – Stratford -1, on Wednesday, 7/31/2024 at approximately 1:55 PM for a follow-up inspection and was denied access. I was told that your lawyer needed to figure out if access is going to be allowed since we don't have OSHA 40 certification, before allowing access to the site even though as an inspector I have the authority to complete an unscheduled inspection at any reasonable time. In fact, on page 3 of 16 of your DCOP it says "In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs." This became binding after the DCOP was signed and issued to you, the Responsible Official.

There are also two Nevada Revised Statutes (NRS) that apply here, and they are:

- NRS 445B.240 – Power of representatives of Department to enter and inspect premises.

-Part 1 of this Statute says "Any duly authorized officer, employee or representative of the Department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640, inclusive, and rules and regulations in force pursuant thereto."

-Part 2 of this Statute says "No person shall:

(a) Refuse entry or access to any authorized representative of the Department who requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.

(b) Obstruct, hamper or interfere with any such inspection."



- NRS 445B.580 - Officer of Department may inspect or search premises.

-Part 1 of this Statute says “It is a condition of the issuance of any operating permit required by the Commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by any authorized officer of the Department at any time during the holder’s hours of operation without prior notice. This condition must be stated on each application form and operating permit.”

During a previous inspection of this project on July 17, 2024, where we were allowed access, we observed unstable site soils throughout the entire site. We issued a NON to you at that time to let you know that all soils must be stabilized immediately and maintained in a moist or crusted condition 24/7. However, you stated that you didn’t need to because your property was a part of the Railroad and that it was between your lawyer and Air Quality’s and that you would not discuss the matter further. We let you know that regardless of all that, you needed to comply with Air Quality Regulations because of your active DCOP and the requirements listed within. Furthermore, during the inspection on July 25, 2024, where access was denied the first time, the inspector could see through the fence that the site soils were still dry, loose, and powdery. Once again, all soils must be kept in a moist or crusted condition 24/7.

Have a great day,

Canduella Rowsell

**Canduella Rowsell | Air Quality Specialist II**

**Clark County Department of Environment & Sustainability**

**Division of Air Quality**

4701 W Russell Road | Suite 200

Las Vegas, NV 89118

702-455-1673 (office)

725-377-4270 (mobile)

***My working hours are Monday – Thursday, 7:00 AM – 5:30 PM***

For Dust Control Applications and Forms, click on this link: [Dust Control Permitting](#)

You must use **MICROSOFT EDGE** as your search engine. If you have your default browser set to anything else, such as Chrome, the forms will not work.





## Exhibit J

### CONSTRUCTION SITE INSPECTION REPORT

Inspection No. 142040

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Canduela Rowsell	Aug 7, 2024	2:00 PM	2:15 PM	Follow-up		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Partly Cloudy	No	103 degrees	10-14 mph	25 mph	SE	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:		Comm. Method:	
No	Yes	Moe Truman	Responsible Official		In Person	
		Spoke With:	Title:		Comm. Method:	
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:	Possible NOV		Violation in 1000 feet of:		Residential	
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:			Plume Length:			
Opacity:			Opacity Test Method:			
<b>BMP Compliance:</b>						<b>Yes</b>
Project Soils:	Stable		Size of Instability:			
Trackout Device:	Yes - Effective		Has Trackout:		No	
Mitigation Equipment:	Adequate		Soil Crust Determination:		Not Necessary/Not Performed	
<b>Admin Compliance:</b>						<b>No</b>
Acreage Permitted:	4.99 acres	Observed Acreage:	4.99 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.	Equipment Onsite:			
<b>Inspector Notes:</b>			Approved By:		Andrew Kirk	
<p>I conducted a follow up inspection with Air Quality Inspector Noel Crandall, and was denied access to the site by Mr. Moe Truman, Responsible Official. Mr. Truman stated that his lawyer had not gotten back to him yet as to whether access will be granted for an inspection. I was unable to tell if the soils were stable or unstable since access was denied. It appears that millings were applied throughout most of the site from what I could see through the fence.</p>						

## Exhibit K

**From:** Canduella Rowsell <Canduella.Rowsell@ClarkCountyNV.gov>  
**Sent:** Monday, August 12, 2024 9:18 AM  
**To:** moe@eton.me; rgubler@mjohnsonlaw.com  
**Cc:** Catherine Jorgenson <Catherine.Jorgenson@clarkcountyda.com>; David Dean <Dean@ClarkCountyNV.gov>; Andrew Kirk <Andrew.Kirk@ClarkCountyNV.gov>; Katrinka Byers <Katrinka.Byers@ClarkCountyNV.gov>; Noel Crandall <Crandall@ClarkCountyNV.gov>  
**Subject:** Follow up inspection DCOP #57148-Stratford-1

Good morning Mr. Truman and Mr. Gubler,

I went out to your project, Dust Control Operating Permit (DCOP) #57148 – Stratford -1, on Wednesday, 8/07/2024 at approximately 2:00 PM for a follow-up inspection and was denied access. I was told that your lawyer needed to figure out if access is going to be allowed even though as an inspector, I have the authority to complete an unscheduled inspection at any reasonable time. In fact, on page 3 of 16 of your DCOP is says “In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.” This became binding after the DCOP was signed and issued to you, the Responsible Official.

There are also two Nevada Revised Statutes (NRS) that apply here, and they are:

- NRS 445B.240 – Power of representatives of Department to enter and inspect premises.

-Part 1 of this Statute says “Any duly authorized officer, employee or representative of the Department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640, inclusive, and rules and regulations in force pursuant thereto.”

-Part 2 of this Statute says “No person shall:

- (a) Refuse entry or access to any authorized representative of the Department who requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.
- (b) Obstruct, hamper or interfere with any such inspection.”

- NRS 445B.580 - Officer of Department may inspect or search premises.

-Part 1 of this Statute says “It is a condition of the issuance of any operating permit required by the Commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by any authorized officer of the Department at any time during the holder’s hours of operation without prior notice. This condition must be stated on each application form and operating permit.”

During a previous inspection of this project on July 17, 2024, where we were allowed access, we observed unstable site soils throughout the entire site. We issued a NON to you at that time to let you know that all soils must be stabilized immediately and maintained in a moist or crusted condition 24/7. However, you stated that you didn’t need to because your property was a part of the Railroad and that it was between your lawyer and Air Quality’s and that you would not discuss the matter further. We let you know that regardless of all that, you needed to comply with Air Quality Regulations because of your active DCOP and the requirements listed within. Furthermore, during the inspection on July 25, 2024, where access was denied the first time, the inspector could see through the fence that the site soils were still dry, loose, and powdery. Once again, all soils must be kept in a moist or crusted condition 24/7.

Have a great day,

Canduella Rowsell

**Canduella Rowsell | Air Quality Specialist II**

**Clark County Department of Environment & Sustainability**

**Division of Air Quality**

4701 W Russell Road | Suite 200

Las Vegas, NV 89118

702-455-1673 (office)

725-377-4270 (mobile)

***My working hours are Monday – Thursday, 7:00 AM – 5:30 PM***

For Dust Control Applications and Forms, click on this link: [Dust Control Permitting](#)

You must use **MICROSOFT EDGE** as your search engine. If you have your default browser set to anything else, such as Chrome, the forms will not work.





Division of Air Quality  
4701 W. Russell Rd. Suite 200 2<sup>nd</sup> Floor  
Las Vegas, NV 89118  
Main Number: (702)455-5942  
Fax Number: (702)383-9994

## Exhibit L

### CONSTRUCTION SITE INSPECTION REPORT

Inspection No. 142191

Officer:	Date:	Start Time:	End Time:	Type:	Complaint No.:	Permit No.:
Noel Crandall	Aug 14, 2024	1:50 PM	2:15 PM	Follow-up		<b>57148</b>
Permittee:	Project Name:		Project Location:			
ETON	STRATFORD-1		2596 STRATFORD AVE			
Weather:	Rain:	Temperature:	Wind Speed:	Wind Gust:	Wind Direction:	Site Status:
Clear	No	103 degrees	00-04 mph	5 mph	Variable	Active
PCF Submitted:	Workers Present:	Spoke With:	Title:	Comm. Method:		
No	Yes	Female worker	Office Personnel	In Person		
		Spoke With:	Title:	Comm. Method:		
<b>Is the project in compliance with all air quality requirements?</b>						<b>No</b>
Action Taken:	Possible NOV	Violation in 1000 feet of:	Residential			
<b>Emission Compliance:</b>						<b>Yes</b>
Fugitive Dust Source:	Plume Length:					
Opacity:	Opacity Test Method:					
<b>BMP Compliance:</b>						<b>Yes</b>
Project Soils:	Stable	Size of Instability:				
Trackout Device:	Yes - Effective	Has Trackout:	No			
Mitigation Equipment:	Adequate	Soil Crust Determination:	Not Necessary/Not Performed			
<b>Admin Compliance:</b>						<b>No</b>
Acreage Permitted:	4.99 acres	Observed Acreage:	4.99 acres	Project Size:	Less than or equal to permitted	
Staging/Parking Area:	On-Site	DCOP Sign:	Yes	DCOP Onsite:	Not Verified	
SS Permit(s):	No Equipment	SS Permit No.	Equipment Onsite:			
<b>Inspector Notes:</b>			Approved By:		Andrew Kirk	
<p>I attempted to conduct a follow up inspection with Air Quality Inspector, Canduella Rowsell, but was denied access to the site by a female office worker. She stated that Mr. Moe Truman, who is the responsible official, was in a meeting and was unable to let us in to do an inspection and to come back later. I was unable to tell if the soils were stable or unstable since access was denied but it did appear that millings have been applied throughout most of the site from what could be seen through the fence.</p>						



## Exhibit M

**From:** Noel Crandall <Crandall@ClarkCountyNV.gov>  
**Sent:** Wednesday, August 14, 2024 4:03 PM  
**To:** moe@eton.me; rgubler@mjohnsonlaw.com  
**Cc:** Catherine Jorgenson <Catherine.Jorgenson@clarkcountyda.com>; David Dean <Dean@ClarkCountyNV.gov>; Andrew Kirk <Andrew.Kirk@ClarkCountyNV.gov>; Katrinka Byers <Katrinka.Byers@ClarkCountyNV.gov>; Canduella Rowsell <Canduella.Rowsell@ClarkCountyNV.gov>  
**Subject:** Follow up inspection DCOP #57148-Stratford-1  
**Importance:** High

Good morning Mr. Truman and Mr. Gubler,

Air Quality Specialist Canduella Rowsell and I went out to your project, Dust Control Operating Permit (DCOP) #57148 – Stratford -1, on Wednesday, 8/14/2024 at approximately 2:00 PM for a follow-up inspection and was denied access. I was told by a female office employee that you were in a meeting and denied Rowsell and myself entry for an inspection. I want to remind you that Air Quality Specialist have the authority to complete an unscheduled inspection at any reasonable time. In fact, on page 3 of 16 of your DCOP is says “In accordance with the DCOP and the AQRs, the applicant and the permittee shall consent to inspection of the site during normal hours of operation by Division of Air Quality (DAQ) staff without prior notice to determine compliance with the terms and conditions of the DCOP and the AQRs.” This became binding after the DCOP was signed and issued to you, the Responsible Official.

There are also two Nevada Revised Statutes (NRS) that apply here, and they are:

- NRS 445B.240 – Power of representatives of Department to enter and inspect premises.

-Part 1 of this Statute says “Any duly authorized officer, employee or representative of the Department may enter and inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with NRS 445B.100 to 445B.640, inclusive, and rules and regulations in force pursuant thereto.”

-Part 2 of this Statute says “No person shall:

- (a) Refuse entry or access to any authorized representative of the Department who requests entry for purposes of inspection, as provided in this section, and who presents appropriate credentials.
- (b) Obstruct, hamper or interfere with any such inspection.”

- NRS 445B.580 - Officer of Department may inspect or search premises.

-Part 1 of this Statute says “It is a condition of the issuance of any operating permit required by the Commission or pursuant to any local ordinance for the control of air pollution that the holder of the operating permit agrees to permit inspection of the premises to which the permit relates by any authorized officer of the Department at any time during the holder’s hours of operation without prior notice. This condition must be stated on each application form and operating permit.”

During a previous inspection of this project on July 17, 2024, where we were allowed access, we observed unstable site soils throughout the entire site. We issued a NON to you at that time to let you know that all soils must be stabilized immediately and maintained in a moist or crusted condition 24/7. However, you stated that you didn’t need to because your property was a part of the Railroad and that it was between your lawyer and Air Quality’s and that you would not discuss the matter further. We let you know that regardless of all that, you needed to comply with Air Quality Regulations because of your active DCOP and the requirements listed within. Furthermore, during the inspections on July 25 and 31, 2024, and August 7 and 14, 2024 where access has been denied, the inspector could see through the fence that some of the site soils appeared dry, loose, and powdery. Once again, all soils must be kept in a moist or crusted condition 24/7.

***Have a dust free day!!***

***Noel Crandall***

***New office hours are M-TH, 7:30 – 5:30.***

***All County offices are closed on Fridays.***

Air Quality Specialist II

Department of Environment and Sustainability

Air Quality Division – Enforcement Section

4701 W. Russell Road #200

Las Vegas NV 89118

Phone: (702) 455-1658 Fax: (702) 383-9994

Cell: (702) 274-0702

136596 REV 3/21

9/9/24  
9:05am  
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ORIGINATOR: (800) 463.3339  
VISTA CUSTOMER SERVICE  
FEDEX EXPRESS  
1221 W CHEYENNE AVE

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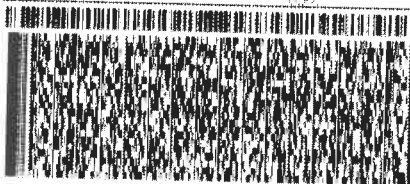
BILL RECIPIENT

NORTH LAS VEGAS, NV 89040  
UNITED STATES OF AMERICA

TO: PAMELA THOMPSON  
CC DEPT OF ENV&SUSTAINABILITY  
4701 WEST RUSSELL ROAD  
SUITE 200  
LAS VEGAS NV 89118

(702) 455-5842

REF: 1202040500

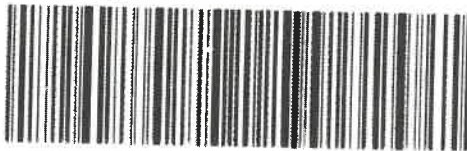


TUE - 10 SEP 5:00P  
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435 RRDB EXP 05/25



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| <input type="checkbox"/> Recipient moved and left no forwarding address or phone number.   | <input type="checkbox"/> We were unable to collect C.O.D. charges.                   |
| <input type="checkbox"/> Recipient was not in when we attempted delivery, and we were not authorized to leave shipment without a signature.      | <input type="checkbox"/> Shipper requested return:                                   |
| <input type="checkbox"/> Recipient's address on your shipment was incorrect and/or incomplete, and we were unable to obtain the correct address. | <input type="checkbox"/> Shipment returned if undelivered after 5 days.              |
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159396 REV 5/20

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5898  
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04/28/24 05:21

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THIS SHIPMENT IS BEING RETURNED FOR THE FOLLOWING REASON(S):

- ☐ Refused by recipient:
- ☐ Recipient moved and left no forwarding address or phone number.
- ☐ Recipient was not in when we attempted delivery, and we were not authorized to leave shipment without a signature.
- ☐ Recipient's address on your shipment was incorrect and/or incomplete, and we were unable to obtain the correct address.
- ☐ A.P.O. box number was the only address given or obtainable.
- ☐ We were unable to collect C.O.D. charges.
- ☐ Shipper requested return:
- ☐ Shipment returned if undelivered after 5 days.
- ☐ Other:

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CAD: 35311717171717171717  
BILL RECIPIENT

TO: PAMELA THOMPSON  
CC DEPT OF ENV&SUSTAINABILITY  
4701 WEST RUSSELL ROAD

LAS VEGAS NV 89118  
(702) 455-5012



TUE - 10 SEP 5:00P  
EXPRESS SAVER

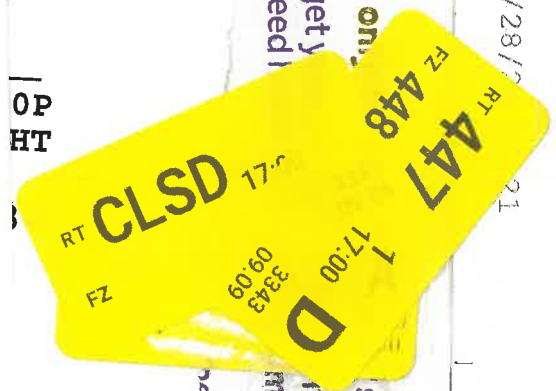
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NV-US LAS



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September 03, 2024

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**Delivery Information:**

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<b>Signed for by:</b>	Signature not required	<b>Delivery Location:</b>	
<b>Service type:</b>	FedEx Standard Overnight		
<b>Special Handling:</b>	Deliver Weekday; Residential Delivery		LAS VEGAS, NV,
		<b>Delivery date:</b>	Aug 30, 2024 15:02

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**Shipping Information:**

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<b>Tracking number:</b>	778259754210	<b>Ship Date:</b>	Aug 29, 2024
		<b>Weight:</b>	0.5 LB/0.23 KG
<b>Recipient:</b>		<b>Shipper:</b>	
LAS VEGAS, NV, US,		LAS VEGAS, NV, US,	

<b>Reference</b>	NOV 10078
<b>Purchase Order</b>	4500387629-033
<b>Department Number</b>	2270.000-1300213000-679610

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<b>Signed for by:</b>	J.LUNA	<b>Delivery Location:</b>	
<b>Service type:</b>	FedEx Standard Overnight		
<b>Special Handling:</b>	Deliver Weekday		LAS VEGAS, NV,
		<b>Delivery date:</b>	Aug 30, 2024 10:07

---

**Shipping Information:**

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<b>Tracking number:</b>	778259993072	<b>Ship Date:</b>	Aug 29, 2024
		<b>Weight:</b>	0.5 LB/0.23 KG
<b>Recipient:</b>		<b>Shipper:</b>	
LAS VEGAS, NV, US,		LAS VEGAS, NV, US,	

<b>Reference</b>	NOV 10078
<b>Purchase Order</b>	4500387629-033
<b>Department Number</b>	2270.000- 1300213.000-679610

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