

March 12, 2009

John B. Walker, Executive Secretary
State of Nevada
State Environmental Commission
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249

**Re: SEC Appeals for Revised Class II Air Quality Operating Permit
AP2992-1473 - Motion to Dismiss Appeals**

Dear Mr. Walker:

The undersigned attorneys, on behalf of Bango Oil LLC (“Bango Oil”), hereby move the State Environmental Commission (the Commission) to dismiss the appeals of the above-referenced permit which have been filed by Lorraine Griffin, Donald Mello and David C. Mathewson, on the grounds set forth below.

The appeals in this case concern the issuance of a revised Class II Operating Permit (at times, the “Permit”), and therefore the issue is whether the Permit violates any regulation adopted by the Commission pursuant to its authority under NRS 445B.210 and 445B.300 to promulgate rules governing operating permits. The general operating permit rules are found at NAC 445B.287 through 445B.3497. Additional rules for Class II Operating Permits are at NAC 445B.3453-.3477.

None of the appellants has alleged a failure to comply with either the Commission’s general operating permit rules or its Class II Operating Permit Rules, or alleged any ground which, if proven, would support the modification or reversal of NDEP’s action in issuing the Permit; therefore each of the appeals should be dismissed.

Applicable Regulations

The revised Bango Oil permit authorized a minor modification to a minor source. The general requirements for minor source permits and minor modifications are found at NAC 445B.308. The primary requirement under this regulation is that permit applicants must submit an environmental evaluation as specified in NAC 445B. 310-311. NAC 445B.308 also sets forth the grounds for denying a permit.

The environmental evaluation must include the location of the source, a map showing topography, a site plan, a dispersion analysis using approved air quality models, and other information the Director may require to assess the effect on ambient air quality. NAC 445B.310-311.

A permit may be denied if the source: 1) will prevent the attainment or maintenance of a state or national ambient air quality standard; 2) will violate the state implementation plan; or 3) will violate any applicable requirement. NAC 445B. 308(2).

Additionally, NAC 445B.318.3 provides that “[a]n operating permit *must be granted* if the Director finds from a stack emission test or other appropriate test and other relevant information that use of the stationary source will not result in any violation of the air quality regulations or the provisions of 40 C.F.R. § 52.21 or 40 C.F.R. Parts 60, 61 and 63, adopted by reference in NAC 445B.221.” (Emphasis added).

NAC 445B.3453-.3477 spell out the procedural and substantive requirements for Class II Operating Permits, including requirements for permit applications, content of permits, and notice and public comment.

The Appeals do not Allege a Violation of any Applicable Regulation or any Other Ground for Reversing or Modifying the Permit

None of the three appeals alleges a failure to perform the required environmental evaluation, or that any of the specified grounds exist for denying a permit. None of the appeals allege the Bango Oil facility will violate any air quality regulations, or the provisions of 40 C.F.R § 52.21 or 40 C.F.R. Parts 60, 61 or 63. Pursuant to NAC 445.318.3, the Director *was therefore required to issue the revised permit*. There is no basis for the Commission, pursuant to its authority under NRS 445B.360.2, to modify or reverse the action of the Director in this case.

The appeals allege a general discontent and dissatisfaction with some aspect of the Bango Oil facility or are otherwise related to other types of permits, such as local government permits. These concerns are not a basis for modifying or reversing the air quality permit in this case, and do not provide a basis for any action by the Commission other than dismissal of the appeals.

The following sets forth additional details for each of the three appeals.

Appeal of Lorraine Griffin

Lorraine Griffin alleges: 1) that the used oil refined at the Bango Oil facility includes used oil from California which is designated as hazardous waste in California; 2) that the Permit was issued without regard for an alleged request by the Churchill County District Attorney to condition issuance of the Permit on the granting of an amended Special Use Permit by the

county; and 3) that the NDEP was aware that a complaint had been filed against Bango Oil respecting four possible violations of their existing Special Use Permit.

Even if true, none of these allegations comprise a basis for denying or modifying the Permit. None of these allegations, even if true, presents a basis for reversing or modifying the Permit.

1) Hazardous Waste Issues. It must be noted that Ms. Griffin does not allege that any hazardous waste requirement has been violated. Even if she had, that would concern enforcement of hazardous waste rules, it would not be a ground for modifying or reversing the Class II Air Quality Operating Permit. Moreover, even if the used oil processed at the Bango facility includes used oil from California, the NDEP's Response to Comments on the Proposed Permit ("Response to Comments") make clear that even hazardous waste does not trigger the federal rules adopted by Nevada where, as at the Bango Oil facility, the material is not stored before processing. The Response to Comments further states that the Bureau of Waste Management has determined that if used oil is defined as hazardous waste in the state of origin and it is then re-refined in Nevada, it is not regulated as hazardous waste in Nevada.

2 & 3) Special Use Permit Issues. Ms. Griffin's contention that a complaint was filed for alleged violations of a county Special Use Permit demonstrates that – even if there is any such violation – it is being pursued in another forum. This Commission is not the forum to entertain such complaints, and the Commission would intrude on the County's authority if it sought to do so.

Appeal of Donald Mello

Donald Mello alleges that: 1) the used oil processed at the Bango facility includes used oil from California designated as hazardous waste in California; 2) odor is a nuisance that the NDEP has not resolved; 3) people at the January 28, 2009 hearing testified to nuisance, perceived health issues, and quality of life issues that have not been addressed by the NDEP; and 4) the ambient air studies relied on by the Director "may have been done" when the facility was at its lowest production or not operating at all and are insufficient data for granting the Permit.

None of these allegations – even if proved to be true – present a basis for reversing or modifying the Permit.

1) Hazardous Waste Issues. Mr. Mello does not allege a violation of hazardous waste laws and, even if he did, complaints about hazardous waste are outside the scope of an air quality permit. Moreover, as discussed in more detail with regard to Ms. Griffin's complaint, even if the used oil were designated as hazardous waste in California, the NDEP's Response to Comments make clear that it is not regulated as hazardous waste in Nevada.

2) Odors. Consistent with NAC 445B.22087, Section I.O of the Permit includes a prohibition against discharging material that violates odor requirements. Pursuant to NAC 445B.22087, a violation is established if two odor measurements taken within one hour result in a detectable odor after the air has been diluted with 8 volumes of clean air. Mr. Mello makes vague claims that complaints from unnamed residents show odor continues to be a nuisance; notably, Mr. Mello does not allege that the Bango Oil facility is causing the purported nuisance, nor does he allege facts that could establish a odor violation under NAC 445B.22087.

NDEP's Response to Comments demonstrates that the agency has been investigating complaints of odors in the area since May 2007, has spent hundreds of man-hours responding to some 220 complaints and reviewing expanded emissions tests, and has conducted 14 facility inspections. Inspectors found that the complaint record was ambiguous and that Bango Oil could not be singled out as the source of resident complaints. Only a mild odor was found at the Bango Oil facility, which odor was noted as "not overly objectionable." Further, despite the fact that no violation was indicated, the NDEP noted that Bango Oil cooperated fully to help identify potential sources of odors and implement measures to eliminate or reduce emissions of odor-causing compounds. All emission tests at Bango indicated very low concentrations of odor-generating compounds and demonstrated compliance with permitted emission limits for VOCs and other pollutants. As a result of all these investigations, NDEP concluded that the complained-of odors "do not meet the definition of persistent, strong odors that constitute a nuisance" under NAC 445B.22087 Odors".

3) Miscellaneous, Vague Assertions. Testimony at the hearing about nuisance, "perceived health issues" and "quality of life" issues are not a basis for action by the Commission. Whatever subjective views might have been expressed, they do not present allegations of facts that could warrant modification or reversal of the Permit.

4) Ambient Air Quality Study. Finally, Mr. Mello's allegation that ambient air studies "may have been done when the facility was at its lowest production or not operating" is mere speculation. The technical review document prepared by the NDEP demonstrates that the Permit would meet all applicable Nevada and Federal ambient air quality standards. NDEP's conclusion was based on modeling of the *permitted emission limits*, not emissions at lowest production or emissions when the plant is not operating. Mere speculation, especially in the face of established and contrary facts, cannot be the basis for modifying or reversing the Permit and therefore cannot withstand this Motion to Dismiss.

Appeal of David C. Mathewson

Mr. Mathewson offers no allegation of a failure to comply with any regulation that governs the review or issuance of operating permits. His appeal must therefore be dismissed. Mr. Mathewson states only that he sent a letter to the NDEP asking questions about "effluents and long term effects" and has received no reply, and that inadequate environmental studies have



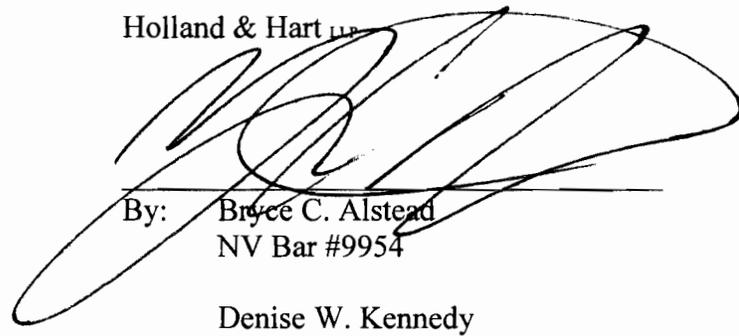
been conducted. On this basis, Mr. Mathewson concludes that NDEP has allegedly violated a general requirement that government respond to citizens. No provisions of the Nevada Revised Statutes or the Nevada Administrative Code are cited in Mr. Mathewson's appeal. Mr. Mathewson's frustration about his perceived lack of response from the NDEP, does not constitute a procedural or substantive violation of the permitting rules; therefore, even if proved, his allegations do not constitute grounds for modifying or reversing the Permit. For that reason, Mr. Mathewson's appeal should be dismissed.

Request for Relief

For the foregoing reasons, Bango Oil LLC requests this Commission to dismiss the appeals of Lorraine Griffin, Donald Mello and David C. Mathewson.

Respectfully submitted,

Holland & Hart ^{LLP}



By: Bryce C. Alstead
NV Bar #9954

Denise W. Kennedy

BCA/DWK:jj