

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2  
3 In Re: )  
4 Appeal of Revised Class II Air Quality Operating )  
5 Permit: Bango Oil LLC )  
6 Permit No. AP2992-1473 )

ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT

7 This matter came before a panel of the State Environmental Commission  
8 (“Commission”) on April 29, 2009 and July 28, 2009. Appellant Lorraine Griffin (“Griffin”)  
9 appeared and represented herself. Appellant Don Mello (“Mello”) appeared and represented  
10 himself. Appellant David Mathewson (“Mathewson”) appeared and represented himself.  
11 Respondent Nevada Division of Environmental Protection (“NDEP”) appeared and was  
12 represented by its counsel, Bill Frey, Esq. Intervener Bango Oil LLC appeared and was  
13 represented by its counsel, Bryce C. Alstead, Esq. and Denise W. Kennedy, Esq.

14 Appellants Griffin, Mello and Mathewson appealed NDEP’s approval of a revision to the  
15 class II air quality operating permit number AP2992-1473 for Bango Oil LLC in Churchill  
16 County, Nevada. Appellants argued in their appeal: (1) NDEP’s decision granting the permit  
17 to Bango Oil denies the citizens of Churchill County the right of due process regarding an  
18 alleged request by the Churchill County District Attorney to “condition issuance of the Permit”  
19 on the granting of an amended Special Use Permit by Churchill County to Bango Oil; (2)  
20 NDEP’s decision granting the permit was taken without regard to complaint(s) filed with  
21 Churchill County against Bango Oil concerning possible violations of the company’s existing  
22 Special Use Permit issued by Churchill County; (3) the used oil processed at the Bango Oil  
23 facility includes used oil from California designated as hazardous waste; (4) odor is a  
24 nuisance that the NDEP has not resolved; (5) people at the January 28, 2009 public hearing  
25 testified to nuisance, perceived health issues, and quality of life issues that have not been  
26 addressed by NDEP; and (6) the ambient air studies relied on by NDEP may have been done  
27 when the facility was at its lowest production or not operating at all and are insufficient data for  
28 granting the permit.

1 At the beginning of the hearing on April 29, 2009, counsel for Bango Oil moved to  
2 dismiss the appeals and counsel for NDEP joined in the motion to dismiss. The Commission  
3 held its decision on the motion to dismiss in abeyance until they heard more information from  
4 the parties. The Commission heard testimony on April 29, 2009 from Greg Remer, Tom  
5 Clark, Colleen Cripps, Larry Kennedy, Griffin, Mello, Mathewson, Sharon Boone, Richard  
6 Wideman and Randy Soule before adjourning for the day. The Commission then reconvened  
7 the hearing on July 28, 2009.

8 Counsel for Bango Oil filed three motions: a motion to vacate and reset the hearing, a  
9 motion for summary judgment, and a motion to limit the scope of rebuttal testimony. The  
10 Commission considered first the motion for summary judgment and heard arguments from  
11 counsel for Bango Oil and NDEP in support of the motion and appellant Griffin's opposition.  
12 Although the Commission heard testimony about odors, the odor issue is an enforcement  
13 issue under NAC 445B.22087 and is not relevant to the permit revision. The Commission  
14 found that NDEP's authority to issue or deny a requested revision to a permit is governed by  
15 NAC 445B.318(3), that a permit must be granted if all the underlying regulations are met, and  
16 that all the underlying regulations were met in this case.

17 IT IS THEREFORE ORDERED that Bango Oil's motion for summary judgment is  
18 GRANTED and NDEP's February 13, 2009 approval of a revision to the class II air quality  
19 operating permit number AP2992-1473 for Bango Oil is AFFIRMED.

20 Dated this \_\_\_\_ day of August, 2009.

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22 \_\_\_\_\_  
23 Alan Coyner, Panel Chair  
24 State Environmental Commission  
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1 Before The State Of Nevada, State Environmental Commission (SEC)  
 2 In Re: )  
 3 NOTICE OF APPEAL HEARING ) **CERTIFICATE OF SERVICE**  
 4 for the Bango Oil, LLC Revised Class II Air )  
 5 Quality Operating Permit AP2992-1473 )

6 CERTIFICATE OF SERVICE

7 The undersigned, an employee of the State of Nevada, State Environmental Commission, does  
 8 hereby certify that on the date shown below, a true and correct copy of the foregoing ORDER  
 9 GRANTING MOTION FOR SUMMARY JUDGEMENT was duly mailed, postage prepaid, to the following:

10 David C. Mathewson  
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26 \_\_\_\_\_  
 Kathy Rebert, Recording Secretary, SEC

27 DATED: August 26, 2009