

## NDEP-BAPC SETTLEMENT AGREEMENTS – December 9, 2009

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER	PROPOSED SETTLEMENT AMOUNT
1	Frehner Construction Company,  Humboldt County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For exceeding the opacity limits for the asphalt plant’s drum dryer and the transfer point between its load-out conveyor and load-out silo.</p> <p>Taking into account opacity exceedances in the range 25-30 percent on two emission units, the Penalty Matrix calls for an initial base penalty is \$1,800. However, Frehner had previous violations within the last 60 months. Application of the Penalty Matrix to account for previous non-compliance results in a 25% increase to the base penalty, or \$450. Hence, the total penalty assessed is \$2,250.</p>	2174	\$2,250
2	Granite Construction Company,  Pershing County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For exceeding the opacity limit for emissions from a baghouse stack and for exceeding the permitted daily hours of operation for the hot mix asphalt plant on two occasions.</p> <p>Based on the Penalty Matrix, the opacity exceedance of 42 percent documented by NOAV 2186 calls for a penalty of \$2,400. The Administrative Penalty Table calls for a penalty of \$600 per violation for exceedances of permitted operational parameters; hence, the operational exceedances documented by NOAV 2187 call for a penalty of \$1,200. The penalty recommended for NOAVs 2186 and 2187 is \$3,600.</p>	2186-87	\$3,600

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(continued)

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3	James Hardie Building Products, Inc.  Storey County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failing to conduct annual emission compliance tests (source tests) on two emission systems in 2008 and for failing to submit Yearly Reports for 2007 and 2008. Each of the source tests were conducted ten months late.</p> <p>For Class II sources, the Penalty Table calls for a penalty of \$600 per month for failing to conduct required source tests; the violations described in NOAV 2190 call for a penalty of \$12,000. Because James Hardie had more than three other reporting violations within the last 60 months, the two reporting violations described by NOAV 2191 are major violations; the Penalty Table calls for a penalty of \$1,200 for these violations.</p> <p>Each of these penalties must be augmented, however, to account for James Hardie’s history of non-compliance (previous violations within the last 60 months). Applying the Penalty Matrix, the penalty for NOAV 2190 is increased 20% (\$2,400) to a total of \$14,400, and the penalty for NOAV 2191 is increased by 45% (\$540) to a total of \$1,740. The total penalty for both NOAVs is \$16,140.</p>	2190-91	\$16,140
4	Road & Highway Builders, LLC  Pershing County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failures to comply with emission limitations (opacity limits), operate required emission controls (wet dust suppression), post copies of its Air Quality Operating Permit on site, comply with permitted throughput limits, and report throughput exceedances in a timely manner.</p> <p>Based on the Penalty Matrix, the opacity exceedances described in NOAVs 2179 and 2182 call for penalties of \$4,800 and \$900. The Penalty Table assesses a base penalty of \$600 for each of the violations described by the other NOAVs, for a subtotal of \$13,800. The NDEP recommends a cash penalty of \$19,500 in settlement of the violations described in the six NOAVs.</p>	2179 – 2184	\$19,500

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5	<p>Sierra Nevada Construction, Inc.</p> <p>Humboldt County</p>	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failure to comply with permitted throughput limits on its hot-mix asphalt plant. In August 2009 Sierra Nevada sent a request to the NDEP-BAPC for an extension of a temporary operating permit, but the plant had already exceeded its total permitted throughput. The plant operated for six days after having exceeded its permitted throughput.</p> <p>The Administrative Penalty Table calls for a penalty of \$600 per violation for failing to comply with a permitted operating parameter. The base penalty of \$3,600 must be increased, however, to account for Sierra Nevada’s non-compliance history. In September 2008, the NDEP issued NOAVs to Sierra Nevada for violations related to opacity exceedances and failing to install and operate required emission controls. Application of the Penalty Matrix results in a 40% increase (\$1,440) to the base penalty of \$3,600, resulting in a total penalty assessment of \$5,040.</p>	2185	\$5,040
6	<p>Wulfenstein Construction, Inc.</p> <p>Nye County</p>	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failure to install emission controls (wet dust suppression) on seven conveyor transfers and failure to comply with the permitted opacity limit on three conveyor transfers.</p> <p>For Class II facilities, the Administrative Penalty Table calls for a base penalty of \$1,000 per violation for failing to install and operate required emission controls. The Penalty Matrix calls for a penalty of \$1,200 per violation for opacity exceedances in the range of 30 to 40 percent. Therefore, the initial penalty assessment for NOAVs 2169 and 2170 totals \$10,600. These violations represent Wulfenstein’s only violations within the last 60 months.</p> <p>Up to 40% of an initial penalty assessment may be mitigated by considering up to 65% of the cost of projects that benefit air quality. Based on Wulfenstein’s commitment to install Durex covers and a wind shield on the screening unit, at a total cost of ~\$7,200, up to \$4,240 of the initial penalty of \$10,600 may be mitigated. The NDEP recommends a cash penalty of \$6,360 in settlement of these violations.</p>	2169, 2170	\$6,360