

**Joint Interim Committee for Growth & Infrastructure
February 3, 2025****Information Requests (*bullet italics text*)
from Chair Assemblymember Howard Watts**

Thank you for your interest in Nevada Division of Environmental Protection (NDEP or Division) oversight of the environment and its intersection with Nevada's growth and infrastructure. The Committee has requested information regarding construction projects by The Boring Company (TBC), as well as general questions about the Division's compliance and enforcement elements.

Before addressing the Committee's individual questions below, the Division offers some additional background and context for the compliance and enforcement programs. NDEP's programs have authority in statute and regulation to protect Nevada's natural resources in air, land, and water. NDEP uses multiple technical and legal tools to ensure regulated sites and facilities achieve and maintain environmental compliance.

The Division's long-standing approach emphasizes technical and compliance assistance first, escalating through enforcement only when necessary. Education and outreach to the regulated community is a powerful tool for achieving compliance and contributing to a vibrant economy. This proactive approach often prevents the need for formal enforcement actions that can lead to administrative fines and civil penalties.

When warranted, enforcement may take the form of informal actions (such as verbal warnings or letters) or formal action. The Division's approach to formal enforcement is based on several factors, and the Division uses various tools as cases warrant, using general statutory enforcement authority. For imminent threats to public health or the environment, the Division may choose to issue Cease and Desist Orders, Stop Orders, or seek a District Court Injunction. For less imminent enforcement situations, the Division may choose to issue a Finding of Alleged Violation and Order. In all cases, administrative and civil penalties, injunctions, and criminal penalties may also be applied.

Entities subject to enforcement actions have statutory appeal rights. Appeals may be resolved with the Division through cooperative resolution of issues, or an appeal can be heard by the State Environmental Commission. Enforcement actions and appeals may also be resolved through the use of other legal instruments such as an Administrative Order on Consent, a Settlement Agreement, or a Consent Decree, with the latter most often used in cases involving the courts or those conducted jointly with the federal government.

The Division seeks to maintain a level playing field and has a strong record of balancing informal and formal enforcement activities when addressing non-compliance. In most cases, programs achieve a "return to compliance" without formal enforcement; but when warranted, legal action is taken and fines and penalties are assessed.

Because TBC's activities are related to the Bureau of Water Pollution Control (BWPC), and Division-wide enforcement policies vary slightly among programs, the responses to Committee's questions focus on BWPC enforcement procedures.

The Division began working with TBC in 2019, starting with one tunnel segment at the Las Vegas Convention Center (LVCC). Since then, activities have expanded to include numerous permits that apply to various sites and activities. Key dates and actions related to TBC include:

- July 3, 2019 TBC obtains first Construction Stormwater General Permit for the first tunnel segment at LVCC.
- July 25, 2019 TBC applies for first NPDES permit (issued February 14, 2020).
- December 13, 2019 NDEP and TBC enter a Compliance Agreement to address certain findings and concerns related to TBC illicit discharge activities while the first NPDES permit is pending issuance.
- December 18, 2020 Finding of Alleged Violation (FOAV) & Order (NOV051320W1 - appealed by TBC January 15, 2021)
- October 24, 2022 Settlement Agreement and Administrative Order on Consent (SA-AOC), amended for minor clarification April 18, 2023.
- September 22, 2025 Notice of Violations and Demand for Stipulated Penalties and Other Penalties

Committee Requests and Questions:

- *Please provide a breakdown of all investigations of The Boring Company conducted by NDEP and the findings of those investigations. Indicate which occurred prior to or were included in the 2022 settlement and which occurred afterward, and any that have occurred following the September cease and desist letter detailing almost 800 violations of the settlement agreement.*

NDEP Response Prep:

The Division prepared this portion of the response by interpreting "investigations" to include NDEP's field activities related to TBC. These activities include routine permit inspections and checks, general reconnaissance, and responses to complaints or spill reports.

Table 1 is attached providing a list of inspections of TBC permits and activities, providing the inspection type and other relevant information in the notes. Inspections in the table begin after issuance of the first permit and the information is broken into three parts:

- Orange = Dates prior to the 2022 SA-AOC;
- Blue = Dates between 2022 SA-AOC and Division pursuit of Stipulated Penalties; and
- Green = Dates after stipulated penalties were applied
 - Note: The Division applied a cutoff date of March 31, 2025, for violations of permits and the SA-AOC, which is the break point from Blue to Green category.

Because Table 1 includes nearly 80 site/permit visits, it is not feasible to provide the findings of each investigation.

- *Please provide the number and amount of fines issued by NDEP to Boring. Include any difference between initial fines proposed and final amounts issued, and whether the fines were contested by Boring.*

NDEP Response Prep:

(a) Civil Penalties in the SA-AOC that resolved the appealed FOAV and Order NOV051320W1.

The December 18, 2020 Order included a requirement for TBC to "coordinate an administrative meeting at [NDEP] to show cause why the Division should not seek civil penalties for the violations cited in the Findings." The FOAV and Order was appealed, which effectively stopped the process the Division uses to determine potential civil penalties for alleged violations.

Section 25 of the SA-AOC required payment of a civil penalty in the amount of \$90,000 to resolve the violations in the FOAV and Order. This amount was a negotiated value in the Settlement Agreement and was not subject to contest by TBC.

(b) September 22, 2025 Stipulated Penalties and Other Penalties.

The September 22, 2025 letter from NDEP was a Notice of Violations and Demand for Stipulated Penalties and Other Penalties pursuant to the SA-AOC. This document enumerated violations related to the Division's findings that violations of permits and the SA-AOC itself, had occurred.

The SA-AOC requires compliance with Nevada Water Pollution Control Law and other laws and regulations under NDEP's authority. Certain violations identified in the agreement are subject to Stipulated Penalties, should such violations occur. The September 22, 2025 Demand for Penalties, was broken down into three sections:

- Part 1: Eight (8) violations, some representing multiple days, resulting from Stipulated Penalties in the SA-AOC Section 27, totaled \$25,000.
- Part 2: The SA-AOC requires weekly site inspections by TBC under a Certified Environmental Manager. NDEP identified 689 instances of non-compliance related to 11 permits. The Division chose to assess Stipulated Penalties as two (2) \$5,000 penalties per permit, totaling \$110,000.
- Part 3: The SA-AOC provides that penalties can be assessed for failure to comply with other requirements and obligations of the agreement, but such other violations are not specifically stipulated to by TBC. Penalties using these provisions are assessed under Section 28 as Other Penalties. NDEP identified 92 violations, totaling \$107,800.

TBC filed for Dispute Resolution under SA-AOC Title XV to contest the penalties. NDEP and TBC are nearing completion of the dispute resolution process.

- *Please describe how and how often NDEP is monitoring Boring for compliance with the settlement agreement*

NDEP Response Prep:

The information in Table 1 illustrates the extent of past field work and reflects the level of effort NDEP has dedicated to the oversight of this one single company.

Additionally, NDEP staff and managers hold routine monthly meetings with the TBC's project manager and their 3rd party Certified Environmental Manager. These meetings provide a forum to regularly discuss the status of ongoing projects, upcoming tunnel segments and permits, and compliance concerns NDEP may have.

- *Does NDEP have any designation for repeat offenders, and if so does such a designation trigger enhanced investigation or penalties?*

NDEP Response Prep:

Generally, the Division does not have a specific designation for repeat offenders. However, entities with reoccurring compliance issues are addressed through agency enforcement practices. Across the Division, entities that struggle with compliance receive more scrutiny than those that are traditionally compliant with permits and implementation of the laws and regulations. Within the Bureau of Water Pollution Control (BWPC), NRS 445A.700 authorizes civil penalties up to \$25,000 per day per violation. If necessary, the Division can commence a civil action for which the Attorney General serves as legal counsel.

Civil action in District Court is rare, as most violations are settled using a procedure developed for the BWPC. This procedure includes consideration of the violator's "History of Compliance/Recalcitrance", which can apply as a reduction of the proposed settlement amount for entities with a particularly good compliance history, or an escalation for repeat offenders. The recalcitrance factor can be a multiplier of 0% to 25%. A settlement offer, calculated using the BWPC's process, is approved by the Administrator before being presented to the violator. Some entities pay the proposed settlement offer; others seek to negotiate another value.

Regarding the TBC SA-AOC, Stipulated Penalties for certain types of violations initially began at \$1,000 per violation per day for the first violation, escalating to \$5,000 per day per violation for the fifth and any subsequent violation. For Other Penalties under Section 28, the agreement states: "The Division and TBC agree that TBC shall be liable for a reasonable penalty for failure to comply with all other requirements and obligations of this Agreement." The Division has discretion to assess these penalties, taking into account prior compliance history.

- *Please describe other instances in which a company has violated a settlement agreement, including when and how much the resulting fines were administratively reduced.*

NDEP Response Prep:

As discussed on Page 1, the Division uses various tools to effectuate compliance and enforcement. Settlement Agreements, Administrative Orders on Consent, and Consent Decrees are generally synonymous. As noted in the question above, the process of settling an enforcement case outside the courts often involves negotiation of administrative fines or civil penalties. During this process, the final fine or penalty may be administratively reduced by the NDEP Administrator prior to final execution of the settlement. Similar to BWPC, other Division programs have statutory authority for maximum penalties, typically expressed as \$ per violation per day. Straight calculations of such penalties for even minor non-compliance can escalate quickly into the millions and thus become unreasonable as a regulatory deterrent. Therefore, arriving at reasonable settlements an important and effective regulatory tool when scaled to the severity of violation(s) and in consideration of other factors.

Once a settlement is reached, it is rare that it is not fully complied with. Most settlements include a monetary component, and may also require specific corrective actions the violator must complete to satisfy the settlement, such as installing additional pollutant controls or other non-monetary requirements. These agreements are a legal and expeditious vehicle to address past non-compliance and set forth certain agreed-upon terms moving forward.

Based on best recollection of current Division managers, there have only been a few other examples of an entity violating a settlement agreement. One similar to TBC involved a mining company that was subject to a Consent Decree (CD) in 2009. Violations of that CD triggered stipulated penalties. In no cases does the Division recall a violation of a settlement agreement resulting in reduction of fines or penalties.

- *Please detail all instances in the last 3 years where the Governor's office has reached out to NDEP regarding a company's violation*

NDEP Response Prep:

This type of record is not tracked by NDEP and such occurrences are generally uncommon. It is standard practice for any Administration to generally expect a heads up on cases the Division is handling that could prompt inquiry from regulated entities or attract media attention. This communication is typically one-way, from the Division through the Department to the Governor's Office, so state Executive Branch leadership is appropriately informed.

Occasionally, certain situations become high-profile, prompting the Governor's Office to request more detailed updates or the Division's perspective. The Division respects and receives guidance from leadership, but it does not experience undue influence. In fact, the opposite is typically the case wherein the Division provides information to help leadership better understand NDEP laws and regulations, at which point the Division receives support for its actions and decisions.

With respect to TBC, there have been instances where time-sensitive issues necessitated coordination, facilitated by the Governor's Office, to resolve situations in a timely and effective manner. One such instance occurred in August 2025 when a tunnel segment encountered an unexpectedly large amount of groundwater flow into the tunnel that was potentially overwhelming the equipment. In response, the company, the Governor's Office liaison, the Department, and the Division Administrator (and at one point US EPA) worked diligently and quickly together to brainstorm solutions and address subsequent permitting modifications with Bureau staff.

- *Please explain why NDEP declined to sample the water pool in November despite that site being a known location where wastewater was improperly discharged. How was it determined that there was no potential for any toxic substances, including caustic concrete accelerants, to leech [sic] into the surrounding groundwater?*

NDEP Response Prep:

To clarify, NDEP has not found there to have been an improper discharge of water from the construction location at 3824 Paradise Road (a.k.a. the "Firefly" site) in November 2025. After becoming aware of concerns about green ponded water, NDEP staff visited the site.

- Staff observed the accumulated water within the area of excavation.
- While media reports mentioned odor complaints, no odor was detected by staff during the site visit.
- The excavated area was noted to be approximately 20 feet deep, with the groundwater (and water level in the excavated area) approximately 10 feet below the ground surface.
- There was no evidence of water discharging from the site.
- TBC representatives noted the company decided not to construct a tunnel exit at this construction site due to encountering excessive groundwater. Approximately two months before this site visit, TBC had sealed off the tunnel, leaving only a manhole-type access point. It is the Division's understanding that the initial excavation and tunnel access at the site was utilized to receive soil from the Paradise to Westgate tunnel segment project. The site was also utilized to deliver tunnel construction forms to the project. Dewatering during the tunnelling activities was directed to TBC's water treatment system located at 4300 Paradise. Once the tunnel access was sealed, groundwater (and potentially stormwater) accumulated in the remaining excavated portion of the site.
- Staff determined the water was most likely groundwater, possibly mixed with stormwater; and found no reasons to believe that it had been polluted by construction activities at the site. In fact, based on staff experience, naturally occurring minerals and metals can tint groundwater green, which has been observed in other areas in the valley.
- Based on previous investigation and existing knowledge, the area of concern lies within a historic underground braided stream channel that existed prior to development. Groundwater flows through this channel in a manner similar to an underground river.

NDEP Response to Questions
Joint Interim Committee for Growth & Infrastructure
February 3, 2026 Hearing
Page 7 of 7

Based on these observations and experience, the Division did not find it necessary to sample the accumulated water at that location.

- As fill material was placed in the excavation, the water was displaced back underground from the weight of the fill, with the water returning to the natural pathway of the channel.
- As of December 3rd when NDEP conducted a subsequent site visit, filling the excavation with soil was close to complete and there was no longer any water at the surface.

Table 1: NDEP Inspection History for TBC Permits and Sites

CSW = Construction Stormwater Permit

TNS = Temporary Nevada State Permit

NPDES = National Pollutant Discharge Elimination System Permit (storm drain/surface water discharge)

Orange = Dates prior to the 10/24/2022 SA-AOC

Blue = Dates between SA-AOC and 2025 Stipulated Penalties (violation cutoff date of 3/31/2025)

Green = Dates after 3/31/2025 Stipulated Penalties

| Inspection Date | Inspection Type | Permit Type | Permit #/ID | Facility/Site Name | Notes |
|-----------------|----------------------------------|-------------|-------------|------------------------|-------|
| 11/25/2019 | Stormwater Compliance Inspection | CSW | CSW-46272 | TBC-The Boring Company | |
| 12/9/2019 | Stormwater Compliance Inspection | CSW | CSW-46272 | TBC-The Boring Company | |
| 12/9/2019 | TNS Compliance Inspection | TNS | TNS-46302 | TBC-The Boring Company | |
| 12/19/2019 | Stormwater Compliance Inspection | CSW | CSW-46272 | TBC-The Boring Company | |
| 5/18/2021 | NPDES Compliance Inspection | NPDES | NV0024235 | TBC-The Boring Company | |
| 7/7/2021 | Stormwater Compliance Inspection | CSW | CSW-49225 | TBC-THE BORING COMPANY | |
| 7/12/2021 | Monthly Inspection Checks | CSW | CSW-49225 | TBC-THE BORING COMPANY | |
| 7/20/2021 | Stormwater Compliance Inspection | CSW | CSW-49225 | TBC-THE BORING COMPANY | |
| 8/4/2021 | NPDES Compliance Inspection | NPDES | NV0024235 | TBC-The Boring Company | |
| 12/15/2021 | TNS Compliance Inspection | TNS | TNS-49228 | LVCC | |
| 12/15/2021 | Stormwater Compliance Inspection | CSW | CSW-49225 | TBC-THE BORING COMPANY | |
| 1/19/2022 | Stormwater Compliance Inspection | CSW | CSW-49225 | TBC-THE BORING COMPANY | |
| 7/19/2022 | Monthly Inspection Checks | CSW | CSW-49225 | TBC-THE BORING COMPANY | |
| 1/30/2023 | Monthly Inspection Checks | CSW | CSW-50319 | West Station | |
| 1/31/2023 | Monthly Inspection Checks | NPDES | NV0024245 | LVCC Riviera | |
| 3/21/2023 | Stormwater Compliance Inspection | CSW | CSW-50856 | 4613 S Las Vegas BLVD | |

NDEP Response to Questions
 Joint Interim Committee for Growth & Infrastructure
 February 3, 2025 Hearing
 Table 1

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|-----------|----------------------------------|-------|-----------|------------------------------------|-----------------------------------|
| 3/21/2023 | Stormwater Compliance Inspection | CSW | CSW-50319 | West Station | |
| 3/21/2023 | Stormwater Compliance Inspection | CSW | CSW-50276 | Westgate-LVCC Connector | |
| 4/19/2023 | Stormwater Compliance Inspection | CSW | CSW-50856 | 4613 S Las Vegas BLVD | |
| 4/19/2023 | Stormwater Compliance Inspection | CSW | CSW-50276 | Westgate-LVCC Connector | |
| 5/10/2023 | Monthly Inspection Checks | NPDES | NV0024245 | LVCC Riviera | |
| 5/10/2023 | Monthly Inspection Checks | NPDES | NV0024256 | Encore-LVCC | |
| 6/21/2023 | Reconnaissance Inspection | CSW | CSW-50276 | LVCC Riviera | Stemming from anonymous complaint |
| 6/21/2023 | Reconnaissance Inspection | CSW | CSW-50319 | LVCC West | Stemming from anonymous complaint |
| 7/5/2023 | Reconnaissance Inspection | CSW | CSW-50276 | LVCC Riviera | Stemming from anonymous complaint |
| 7/5/2023 | Reconnaissance Inspection | CSW | CSW-50319 | LVCC West | Stemming from anonymous complaint |
| 8/7/2023 | Monthly Inspection Checks | CSW | CSW-50276 | LVCC Riviera | |
| 12/5/2023 | Monthly Inspection Checks | NPDES | NV0024245 | LVCC Riviera | |
| 1/18/2024 | Stormwater Compliance Inspection | CSW | CSW-53369 | 4744 Paradise | |
| 1/18/2024 | Stormwater Compliance Inspection | CSW | CSW-50317 | Encore Silver Lot | |
| 1/18/2024 | Stormwater Compliance Inspection | CSW | CSW-46995 | Campus-Wide People Mover Station 2 | |
| 1/18/2024 | Stormwater Compliance Inspection | CSW | CSW-46738 | Campus-Wide People Mover Station 3 | |
| 1/18/2024 | Stormwater Compliance Inspection | CSW | CSW-50291 | Westgate-LVCC Connector | |
| 2/22/2024 | Monthly Inspection Checks | NPDES | NV0024245 | LVCC Riviera | |
| 2/22/2024 | Monthly Inspection Checks | NPDES | NV0024256 | Encore-LVCC | |
| 3/21/2024 | Stormwater Compliance Inspection | CSW | CSW-53404 | Virgin Hotel Site | |
| 3/21/2024 | Monthly Inspection Checks | CSW | CSW-53369 | 4744 Paradise | |
| 4/18/2024 | Monthly Inspection Checks | | | 4744 Paradise | |
| 4/18/2024 | Monthly Inspection Checks | | | Virgin Hotel Site | |

NDEP Response to Questions

Joint Interim Committee for Growth & Infrastructure

February 3, 2025 Hearing

Table 1

| | | | | | |
|-----------|----------------------------------|-------|-----------|-------------------------|---|
| 4/18/2024 | Monthly Inspection Checks | | | Encore Tunnel | |
| 4/18/2024 | Monthly Inspection Checks | | | Westgate and Riviera | |
| 4/18/2024 | Monthly Inspection Checks | | | 4613 S Las Vegas BLVD | |
| 5/22/2024 | Stormwater Compliance Inspection | CSW | CSW-53369 | 4744 Paradise | |
| 5/22/2024 | Monthly Inspection Checks | | | 4613 S Las Vegas BLVD | |
| 7/31/2024 | Stormwater Compliance Inspection | CSW | CSW-54121 | 4300 Paradise Rd. | |
| 7/31/2024 | Stormwater Compliance Inspection | CSW | CSW-54069 | Silver Lot #3 | |
| 7/31/2024 | Stormwater Compliance Inspection | CSW | CSW-53404 | Virgin Hotel Site | |
| 7/31/2024 | Stormwater Compliance Inspection | CSW | CSW-53369 | 4744 Paradise | Associated with Spill Report #240730-04 |
| 7/31/2024 | Stormwater Compliance Inspection | CSW | CSW-50856 | 4613 S Las Vegas BLVD | Associated with Spill Report #240730-05 |
| 7/31/2024 | Stormwater Compliance Inspection | CSW | CSW-50317 | Encore Silver Lot | |
| 7/31/2024 | Monthly Inspection Checks | NPDES | NV0024256 | Silver Lot #3 | |
| 8/14/2024 | Reconnaissance Inspection | | | | Stemming from a Cease and Desist issued by Clark County Water Quality |
| 8/15/2024 | Reconnaissance Inspection | | | Downtown LV-Strat Plaza | Drive by |
| 8/23/2024 | Reconnaissance Inspection | | | Alegiant Stadium Lot B | Drive by |
| 9/17/2024 | Stormwater Compliance Inspection | CSW | CSW-54470 | Bronze Lot | |
| 9/23/2024 | Reconnaissance Inspection | | | | Associated with Spill Report #240919-02 |
| 5/28/2025 | Stormwater Compliance Inspection | CSW | CSW-54842 | Firefly | |
| 5/28/2025 | Stormwater Compliance Inspection | CSW | CSW-54470 | Bronze Lot | |
| 5/28/2025 | Stormwater Compliance Inspection | CSW | CSW-54673 | Gordon Biersch Site | |
| 5/28/2025 | Stormwater Compliance Inspection | CSW | CSW-53369 | 4744 Paradise | |
| 8/14/2025 | Reconnaissance Inspection | | | | Associated with Spill Report #250512-02 and #2508141-06 |

NDEP Response to Questions
 Joint Interim Committee for Growth & Infrastructure
 February 3, 2025 Hearing
 Table 1

| | | | | | |
|------------|----------------------------------|-------|-----------|--------------------------|---|
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-50856 | 4613 S Las Vegas Blvd | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-50276 | Westgate-LVCC Connector | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-50317 | Encore Silver Lot | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-50291 | Westgate-LVCC Connector | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-49225 | TBC-THE BORING COMPANY | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-54069 | Silver Lot #3 | |
| 8/18/2025 | Monthly Inspection Checks | NPDES | NV0024256 | Silver Lot #3 | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-54470 | Bronze Lot | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-54842 | Firefly | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-54673 | Gordon Biersch Site | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-54121 | 4300 Paradise Rd. | |
| 8/18/2025 | Monthly Inspection Checks | CSW | CSW-53404 | Virgin Hotel Site | |
| 8/19/2025 | Reconnaissance Inspection | | | 4744 Paradise | Associated with Spill Report #250512-02 and #2508141-06 |
| 9/4/2025 | NPDES Compliance Inspection | | Various | Various | Sampling of the GAC System |
| 9/18/2025 | Stormwater Compliance Inspection | CSW | CSW-53369 | 4744 Paradise | |
| 11/6/2025 | Reconnaissance Inspection | | | 15595 apex power parkway | Associated with Spill Report #251013-02 |
| 11/14/2025 | Reconnaissance Inspection | CSW | CSW-54842 | Firefly | |
| 12/3/2025 | Monthly Inspection Checks | CSW | CSW-54842 | Firefly | |