

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF October 26, 1992

HELD AT: Reno, Nevada

TYPE OF HEARING:

REGULATORY

YES **APPEAL** **(Coastal Chem)**

FIELD TRIP

ENFORCEMENT

VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES **AGENDA**

YES **PUBLIC NOTICE**

YES **MINUTES OF THE HEARING (Draft Transcript)**

LISTING OF EXHIBITS

AMENDED AGENDA

As provided by Nevada Revised Statutes (NRS) Chapter 233B and Nevada Administrative Code (NAC) inclusive, a panel of the Nevada State Environmental Commission will conduct an appeal hearing on October 26, 1992, beginning 9:00 a.m. at the Department of Wildlife, Conference Room B, located at 1100 Valley Road, Reno, Nevada. The following day, October 27, 1992, beginning **10:00 a.m.** the State Environmental Commission will continue this appeal hearing at the Holiday Inn Express, 521 Front Street in Battle Mountain, Nevada. This hearing may be continued into the following day of October 28, 1992, if deemed necessary by the Commission panel at the Holiday Inn Express in Battle Mountain, Nevada.

This notice has been amended to reflect the change of time at the October 27, 1992 hearing from 9:00 a.m. to 10:00 a.m.

This agenda has been posted at the Department of Wildlife in Reno, Nevada, the Holiday in Express in Battle Mountain, Nevada and the Division of Environmental Protection Offices in Carson City and Las Vegas.

The following items will be discussed and acted upon, but may be taken in different order to accommodate the interest and time of the persons attending.

I. Appeal Hearing - * ACTION

A. Conduct an appeal hearing in the matter of Coastal Chem, Inc., P.O. Box 1287, Cheyenne, WY 82003-1287. They appeal the Nevada Division of Environmental Protection, Bureau of Air Quality Notice of Alleged Air Quality Violation #990. Coastal Chem, Inc's. failure to install, calibrate, maintain and operate a system for continuous measurement of nitrogen oxides in accordance with 40 CFR 60.73 as required by Air Quality Permit to Construct No. 2659 for the Nitric Acid Plant located near Battle Mountain.

B. Conduct an appeal hearing in the matter of Coastal Chem, Inc., P.O. Box 1287, Cheyenne, WY 82003-1287 they appeal the Nevada Division of Environmental Protection, Bureau of Air Quality Notice of Alleged Air Quality Violation #991. Coastal Chem, Inc's. failure to construct and operate a fire tube boiler with low NOx burners which were identified in the permit applications submitted July 1990 and specified in Permit to Construct NO. 2662.

AGENDA
APPEAL HEARING
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C. Conduct an appeal hearing in the matter of Coastal Chem, Inc., P.O. Box 1287, Cheyenne, WY 82003-1287. They appeal the Nevada Division of Environmental Protection, Bureau of Air Quality Notice of Alleged Air Quality Violation #989. Coastal Chem Inc's. emission of pollutants from the nitric acid plant under Permit to Construct # 2659 during plant start-up in sufficient quantity and during meteorological conditions which threatened the health and safety of the general public on July 2, 1992.

II. Settlement Agreements on Air Quality Violations - * ACTION

The Division of Environmental Protection and the below lettered companies have negotiated settlement agreements for their respective Notices of Alleged Violations which require approval by the Commission.

- A. Jim Wilkin Trucking, Notice of Alleged Violation No. 895
- B. Southern California Edison, Notice of Alleged Violation No. 988.
- C. Bing Construction Company of Nevada, Notice of Alleged Violation Nos. 979, 980, 981.
- D. Granite Construction Company, Notice of Alleged Violation No. 993.

AMENDED
NOTICE OF APPEAL HEARING

A three member panel of the Nevada State Environmental Commission will conduct an appeal hearing in the matter of:

Coastal Chem, Inc., P.O. Box 1287, Cheyenne, WY 82003-1287 appeals the Nevada Division of Environmental Protection, Bureau of Air Quality Notice of Alleged Air Quality Violations #990, #991, #989.

1. Coastal Chem, Inc's. failure to construct and operate a fire tube boiler with low NOx burners which were identified in the permit applications submitted July 1990 and specified in Permit to Construct NO. 2662 (NOAV # 991).
2. Coastal Chem, Inc's. failure to install, calibrate, maintain and operate a system for continuous measurement of nitrogen oxides in accordance with CFR 40 60.73 as required by Air Quality Permit to Construct No. 2659 for the Nitric Acid Plant located near Battle Mountain (NOAV # 990)

The hearing will be held Monday:

9:00 a.m.
October 26, 1992
Department of Wildlife
Conference Room B
1100 Valley Road
Reno, Nevada

1. Coastal Chem Inc's. emission of pollutants from the nitric acid plant under Permit to Construct # 2659 during plant start-up in sufficient quantity and during meteorological conditions which threatened the health and safety of the general public on July 2nd, 1992 (NOAV # 989).

The hearing will be held Tuesday & Wednesday:

9:00 a.m.
October 27 & 28, 1992
Holiday Inn Express
Conference Room
521 Front Street
Battle Mountain, Nevada

Hearings scheduled for Monday October 26th, 1992 may be continued to October 27th and October 28th, 1992 or to a later date to be determined by the Commission. The hearing of October 27th and October 28th, 1992 maybe continued to a date later determined by the Commission.

This notice is issued pursuant to Nevada Revised Statutes (NRS) Chapter 233B. The hearing will be held in accordance with Nevada Administrative Code, (NAC) 445.980 to 445.995, inclusive.

COASTAL CHEM INC.
APPEAL HEARING
OCTOBER 26, 1992
DEPARTMENT OF WILDLIFE
(DRAFT TRANSCRIPT)

MEMBERS PRESENT: WILLIAM MOLINI, CHAIRMAN
FRED WRIGHT
FRED GIFFORD
JEAN MISCHEL, DAG

BEGINNING 9:00 A.M.

Chairman Molini: I would like to call to order this hearing before the hearing panel of the State Environmental Commission. This is the date and time set for the hearing on the following matters. This is an appeal hearing. The first matter is that of Notice of Alleged Air Quality Violation No. 990, against Coastal Chem Inc., P.O. Box 1287, Cheyenne, Wyoming. They are appealing that NOAV #990, which deals with the failure to install, calibrate, maintain and operate a system for continuous measurement of nitrogen oxides in accordance with 40 CFR Part 60.73. The second part of the hearing, Item I.B., is an appeal by Coastal Chem Inc., of NOAV #991, alleging failure by Coastal Chem to construct and operate a fire tube boiler with the low NOx burners which were identified in the permit application submitted July 1990 and specified in Permit to Construct No. 2662. Further Item I.C., an appeal hearing again involving Coastal Chem Inc., who is appealing the NOAV #989, which alleges an emission of pollutants from a nitric acid plant under Permit to Construct No. 2659 during plant start up insufficient quantity and during meteorological conditions which threaten the health and safety of the general public on July 2, 1992. Furthermore, we have aside from the appeal hearing an agenda Item II which are settlement agreements on various air quality violations.

Let me indicate that this an open and public hearing. It has been duly noted in accordance with the Nevada Open Meeting Law and any other applicable statutes. The panel members today, let me introduce them myself, Willie Molini as Chairman. On my left is Fred Wright, on my right Fred Gifford. We have had a request, because we have an individual here from Southern California Edison to handle the settlement agreements first. Let me ask counsel for NDEP and for Coastal Chem if they would have a problem if we did that.

Brian Chally: No we wouldn't.

John Metzke: Mr. Chairman we would have no problem with that.

Chairman Molini: Okay, hearing no objection with that, let us move ahead and handle hopefully expeditiously on Agenda Item II., Settlement agreements on Air Quality Violations.

Mr. Porta, are you going to handle that?

Tom Porta: Yes, Mr. Chairman.

Chairman Molini: Please proceed, we will take all of them in the order, if you think that we can do that expeditiously. It shouldn't take too long I guess, and start with Jim Wilkin Trucking, NOAV #895. (Correction NOAV #985.)

Tom Porta: Okay, would you like me to give you just a brief summary?

Chairman Molini: Yes, very brief.

Tom Porta: Okay, we issued Jim Wilkin Trucking NOAV #985 on July 22, for failure to operate the required pollution control equipment, i.e. water sprays on a crushing system. We substantially went with Jim Wilkin Trucking and in the meeting, enforcement conference, they expressed the high winds that they were experiencing that day was causing a problem with the pollution control device, i.e. The winds were blowing the water away from the dust and wasn't collecting as the way it should. And they also had some other areas where they didn't have the water sprays on. Anyway, we negotiated a \$1,500.00 settlement for that violation with the understanding that Jim Wilkin on windy days will hopefully see better judgement and shut the plant down during those days.

Chairman Molini: What is the, Mr. Porta the enforcement history with Jim Wilkin Trucking?

Tom Porta: As you can see on the compliance summary we did have, the most recent one was back in August of 1991, where they had some unpermitted equipment. I believe that stemmed from an NDOT project where they were trying to crush some type of material. Anyway they brought in some extra equipment that wasn't permitted for that site and that time we cited them \$3,000.00 for that. They know the regulations, they have been the state for quite awhile. I think on this particular violation, they didn't use better judgement and shut down during the high winds situation. But the history has shown some problems, but they seem to have gotten the message.

Chairman Molini: Is there anyone here from Jim Wilkin Trucking?

Seeing none, let me ask the other panel members, do you have any questions of Mr. Porta?

Members: No.

Chairman Molini: I would entertain a motion.

Fred Wright: I'll move that we uphold the Administrative Fine of \$1,500.00 as agreed upon, for the NOAV #985.

Fred Gifford: Second.

Chairman Molini: It has been moved and seconded to accept the settlement agreement and the \$1,500.00 fine.

Is there any further discussion?

If not I will call for the question. All in favor say aye?

Members: Aye.

Chairman Molini: So order, we will move on to II. B., Southern California Edison, NOAV #988.

Tom Porta: Southern California Edison was issued NOAV #988 for failure to maintain an operate a continuous NOx emission monitor on an auxiliary boiler for their facility. This participated from an audit which was performed and the data and so forth from the monitor over the year that we did review, which the year was 91. The data was so mixed up we couldn't make heads or tails out of when the monitor was operating, when it was not operating and then even when it was operating, there was even some question as to if the numbers were accurate or not. We met with Southern California Edison representatives and they are in the process now and I believe they almost installed a new NOx monitoring system with the new data recording system. Which will hopefully keep this monitor on line and running, functioning properly. Because there was so many days that we couldn't know how many were in violation and how many days they weren't in violation we decided to assess a one time maximum penalty of \$5,000.00 for the violation. That was agreed upon at the enforcement conference.

Chairman Molini: Questions of Mr. Port?

Fred Wright: Yes, Mr. Chairman.

Chairman Molini: Yes, Mr. Wright.

Fred Wright: Was this a one year occurrence, or have you had prior problems with this type of reporting?

Tom Porta: Well one of the reasons this is so important is it was and EPA mandate that this NOx monitor be on these auxiliary boilers for PSD considerations. And we felt that since, this was an EPA mandate we incorporated into our permit, it was a pretty

serious offence. The NOx monitoring we really haven't seen any history that you have another opacity monitor on the units which we heard about down in Laughlin. But it hasn't been a typical problem. This particular violation happened over a period which we did our audit beginning in January of 91. So it was for the whole year that whole monitoring system just appeared to be in disarray.

Fred Wright: Mr. Chairman. The EPA mandate started when?

Tom Porta: I believe that was back in 1985 or 1986.

Fred Wright: Have you made audits?

Tom Porta: Yes.

Fred Wright: This has not been a problem before?

Tom Porta: No.

Fred Wright: Thank you.

Chairman Molini: Any other questions for Mr. Porta at this time?

I understand that there is a representative from Southern California Edison.

Jeff Coch: Yes sir.

Chairman Molini: Did you care to comment, or testify?

Jeff Coch: No sir, unless you questions, I am here to answer them as best I can. Unfortunately I am the only person from Edison who could be here and I am an attorney, rather than on the technical side.

Chairman Molini: Any questions of Mr. Coch?

Fred Gifford: In terms of verification, how do you verify the monitoring data?

Tom Porta: Basically what we do is we go in and we start reviewing the records and look for daily calibrations on the monitor to insure that it has been calibrated and that the calibration value is close to what it should be. Also we look for times when the unit was operating and the monitor was not operating and we make those comparisons and in this case, I think we found less than 50% that the auxiliary boiler was running, the monitor was not running. And that is how we do our audits. The regulations say that you must install, maintain and calibrate a CEM and in this case a 50% or less up time of the monitor was not adequate. As a matter of fact the

CEM regulations I am proposing for next year should address that.

Chairman Molini: Any further questions by panel members of Mr. Porta or Mr. Coch?

If not, I would entertain a motion on agenda Item II. B.

Fred Gifford: I will move that we accept the agreed upon administrative fine of \$5,000.00 for NOAV #988 and the corrective measures.

Fred Wright: I will second.

Chairman Molini: Okay, it has been moved and seconded that we accept the settlement agreement of a \$5,000.00 fine, including the corrective measures for NOx emissions and instrumentation to monitor that.

Any further discussion?

Fred Wright: I guess after the vote.

Chairman Molini: Okay. Hearing no further discussion, I will call for the question. All in favor of the motion say aye?

Members: Aye.

Fred Wright: I was curious if the equipment has been installed by September 1.

Tom Porta: Maybe Mr. Coch could answer that.

Jeff Coch: I am sorry I didn't quite hear all of it.

Chairman Molini: The question was, has the indicated equipment that was supposed installed by September 1, has that been done?

Jeff Coch: I don't have the agreement in front of me. I have talked to the station yesterday and my understanding was they were completely on schedule in terms of installing the equipment. I can't remember exactly the

Tom Porta: As far as I know they are on schedule. We haven't gone down to verify it yet, but we will.

Chairman Molini: Okay, very good, thank you Mr. Porta. Let's move on to agenda Item II.C., Bing Construction Company of Nevada, NOAV #979, #980, and #981. Mr. Porta.

Tom Porta: Yes, this was an inspection that we conducted back in May and at the time we found as you can see quiet a few problems at the plant site. The unpermitted source was a small

scalper screen. It wasn't very big, but however it does require a permit and they did not have it. We did also site them for fugitive dust, because there weren't controls on the developer screen. As you can see it was around a crushing unit and Mr. Bing again is very familiar with the regulations on what is required and he had no defense during the enforcement conference. The only defense that he has that his foreman wasn't there on the day of course our inspectors stopped in and that if his foreman had been there the controls would have been operating and so forth. And so I asked him what he was going to do to insure that his foreman is out again, how is he going to handle this. And he has put together a short chain of command if you will and list the responsibilities of the plant people that are on site were pretty concerned about Mr. Bing operations because his lie in the middle of residential area. And he has been there first and the homes have built up around him. But we occasionally get complaints and so forth. Anyway we negotiated a \$3,000.00 fine for the violations in addition to a \$125.00 which he paid for the fugitive dust.

Chairman Molini: Is there anyone here from Bing Construction Company?

Appears there is no one.

Are there any questions by panel members of Mr. Porta?

Mr. Wright.

Fred Wright: Yes, Mr. Chairman, looking at the past of 1987 and 1988, that is not too bad of a track record from what we see. But I was interested in the fact that they had been in business this long and just now putting in a chain of command or procedure in absence. Those things are interesting with these types of companies I guess.

Tom Porta: Yea, it kind of comes to the fact until you call them to the carpet do these types of things get organized and squared away. And you know the penalties meant to sting a little bit and it kind of precipitates the chain of command.

Fred Wright: Yes. So we add a new one to our docea in addition to water trucks, we have their chain of command and smog equipment.

Tom Porta: Right, and again we offer at all these enforcement conferences, we tell everybody that every six months we offer the course for people to come in, operators, plant owners that come in and Mark or Les my inspectors give a presentation on what they look for in an inspection. How they go through the permits and so forth. In the hopes that these people police themselves and our goal is not to have violations like this.

Chairman Molini: Further questions?

Jean Mischel: Mr. Chairman, I have a question.

Has the unpermitted source now have a permit.

Tom Porta: Yes. As a matter of fact, we also issued stop order with this and immediately got the applications and permit.

Chairman Molini: Anyone care to make a motion?

Fred Wright: I will move that we accept the administrative fine of a total of \$3,000.00 for the three NOAV #979, #980 and #981.

Chairman Molini: I will second that. It has been moved and seconded that we accept the administrative fine of \$3,000.00 of a \$1,000.00 each for NOAV #979, #980 and #981. We recognized that there was a fine, a minor fine, in the amount of \$125.00 already paid for NOAV #978 and the record reflect that the operation has been permitted.

Any further discussion on the motion?

I will call for the question. All in favor of the motion say aye?

Members: Aye.

Chairman Molini: So order, we will move to agenda Item II.D., Granite Construction Company, NOAV #993, Mr. Porta.

Tom Porta: Yes, we issued this NOAV because the original venture wet scrubber which had been with the plant when Granite purchased it had been modified to the point, or actually taken out and changed. That it no longer was an effective control device. So then we sited them on the 17th for failure to have the proper control device in there. Granite Construction came in at a conference and was very agreeable. They understood that they, they were trying to do the right thing with the equipment, but it was just to no avail and therefore they recognize now that they have to put a better control device in as they are in the middle of Carson City. And therefore, we negotiated that they are going to put on approximately a \$90,000.00 bag house system on the asphalt plant and I agreed to that in lieu of a \$5,000 per day fine that they had the control device modified or actually taken out. There is actually no fine associated with this unless they do not install the baghouse by next paving and I have got the work orders and purchase orders that they are purchasing the bag house.

Chairman Molini: Thank you Mr. Porta.

Is there anyone here from Granite Construction?

Seeing there is no one are there any questions by panel members?

Fred Wright: Thank you. In our last sitting we had Granite Construction on another batch plant and they indicated that they were in the process of trying to upgrade all of it, so this fits right in with that operation.

Tom Porta: Right. I think it is probably their last plant to upgrade, they have already upgraded the one out in their Truckee River Valley.

Fred Wright: What about the Gardnerville?

Tom Porta: The Gardnerville facility, I don't know the status at this time. So far we haven't had too many problems other than the people complaining about the trucks and so forth. It seems to be doing okay. There is one thing I would like to enlighten the commission on in regards to the opacity question and the NDOT temperature. There is a system now that is being, I think, I don't if we force this in the industry, but we have the problem with the smoke points of the asphalt. There is a system now that Granite will be installing in this plant called the AVIS system, which stands for asphalt, vapor, injection system and what they do is mix the asphalt and their aggregate in pug mill and then take the vapors off of that through a hood duck system and then use it in the primary air in the asphalt to combust those particles. So there is no more visible plume and it seems to be working quiet well. This system just came about within the last year and they will be putting one of those also in addition to the baghouse on this plant.

Chairman Molini: Tom as we look at Granite's compliance history it is less than sterling. Are you satisfied that they are moving aggressively to update their equipment and comply with regulations.

Tom Porta: Yes, I think their doing a pretty good job. At least when they came in for this enforcement conference there appeared to be a different attitude. You know that they really wanted to do something, instead of just telling us stuff they would like to do. They had the paper work, they had everything, that they were committed to doing this, so I think somebody's attention has been gotten.

Fred Wright: Mr. Chairman. I think that when you consider the locations of both this and the Gardnerville plant, particularly in the proximately of people, this is the only they can go in this day age.

Tom Porta: Right, especially with them here in town.

Chairman Molini: Any further questions?

Do we have a motion?

Fred Gifford: I will move that with respect to the NOAV #993, we accept the corrective actions as

negotiated.

Fred Wright: I will second it.

Chairman Molini: It has moved and seconded to accept the settlement agreement with the corrective actions that have been negotiated that are indicated here which looks like an expenditure on the part of Granite in the neighborhood of 90 plus thousand dollars to correct the problem.

Any discussion on the motion?

If not I will call for the question. All in favor of the motion say aye?

Members: Aye.

Chairman Molini: So order. Thank you Mr. Porta.

We will return then to the appeal hearing with Coastal Chem Inc. Let me indicate for counsel for the State and Coastal Chem, the procedures we will follow. We will have opening statements by both parties and I would appreciate at that time if you would...if counsel would introduce themselves and indicate the witnesses you would call. After opening statements, starting with the state and followed by the appellant, we will have the presentation of evidence on the cases and chief with the state, Division of Environmental Protection going first. Witnesses will be sworn. We will of course direct examination and cross examination of witnesses, redirect and recross if necessary. Then the commission, panel members may ask questions of the witnesses at that time. We will follow the same procedure for the appellants case and chief. There is opportunity for rebuttal. It is optional if you choose, we can have rebuttal, if not we will then go to closing arguments. With closing arguments, first by the division and then by the appellant and then rebuttal by the Division of Environmental Protection. The case then will be submitted to the panel for deliberation. We will deliberate publicly and make our decision indicating our reasoning for that decision.

Any questions on the procedure?

If not we will go ahead and begin with an opening statement by the parties. Mr. Chally.

Brian Chally: Thank you Mr. Chairman. For the record Brian Chally, with the Attorney General's Office representing the Division of Environmental Protection. For our case today, we will be calling two witnesses. They are Tom Porta and then Steve Fry. Initially, I would like to inform the panel and go on the record that we have made the decision to dismiss NOAV #990. I made this decision on Friday after we discussed the matter. We got some additional information from Coastal Chem and since we don't

have any intention of presenting marginal cases to the commission or forcing the defendant to defend marginal cases. We are moving to dismiss it. I would have preferred to dismiss it earlier, but I was involved in litigation for basically the last two weeks that prevented me from inquiring about it earlier.

Chairman Molini: Jean, would it be appropriate for us to take action on that motion for dismissal at this time?

Jean Mischel: Yes it would be a motion to dismiss on the request of state.

Brian Chally: Mr. Chairman that is with prejudice, we won't be bringing this NOAV again.

Chairman Molini: Okay. Panel members have heard the motion from the state to dismiss NOAV #990 with prejudice based on the fact, I guess they feel there is appropriate grounds to pursue this or evidence.

Do panel members have any questions of Mr. Chally? Apparently not. I would entertain a motion from the panel members then.

Fred Wright: I guess I do have a question Mr. Chairman. I guess I would ask Mr. Chally if he would want to tell us about the foundation for this, just so we have an insight.

Brian Chally: Without getting into the details of the discussions with my clients. Basically it involved a regulatory interpretation, a conflict in that interpretation and once we got additional evidence records from Coastal Chem, we applied it to the interpretation and we felt that it could go either way. It was ambiguous and it was confusing and we didn't want to deal with that sort of issue.

Fred Wright: Does that refer to 40 CFR Part 60.73, ambiguity in that one?

Brian Chally: Yes, as applied to this specific monitoring violation.

Chairman Molini: Mr. Metzke. Do you have any comment relative to this?

John Metzke: I certainly have no objection to the motion dismissed and Mr. Chally's office has been very cooperative with us throughout. So I certainly understood his schedule the past couple of weeks, so I certainly have no problem with this being dismissed today, finding out about it today.

Chairman Molini: Okay, very well.

Panel members, could I have a motion?

Fred Wright: Mr. Chairman I would move that we accept the counsel's recommendation to dismiss NOAV #990, with prejudice.

Fred Gifford: Seconded.

Chairman Molini: It has been moved and seconded that we accept the motion of the state to dismiss NOAV #990 with prejudice.

Any further discussion? If not I will call for the question. All in favor of dismissal of this violation say aye?

Members: Aye.

Chairman Molini: So order, that was dismissed and we won't be dealing with agenda Item I.A., so we will be dealing with agenda Item I.B. and I.C. Mr. Chally you may proceed.

Brian Chally: Thank you Mr. Chairman. Today we will be dealing with NOAV #991, because of Mr. Fry's schedule we will be introducing some brief testimony relating to tomorrow's hearing. The bulk of the hearing on the NOAV will be heard in Battle Mountain. With respect to NOAV #991, which we are hearing today. It was issued on August 13 of this year. The basic violation is that Coastal Chem did not install required pollution control equipment and that the equipment was required, both by the permit that they signed off on and by Coastal Chem's explicit promise that they would install that pollution control equipment. The low NOx burners which are the pollution control equipment that are issue here were included Coastal Chem's 1990 application. At the time they made a PSD application, or prevention is significant deterioration application, which you may be familiar with. PSD involves a great a deal of time an expense, a detailed review of what's going on and it applies to major sources and in fact is a major concern of the Clean Air Act and of Nevada's Clean Air Act. In 1991, Coastal Chem filed a new application which put them into the non PSD category. From their standpoint they saved a lot of time and a lot of money. The problem is that in both applications they said that on the boilers at their facility, they would be installing low NOx burners. Particularly once they have submitted the 1991 non PSD application. It became very important that all the pollution control equipment be installed and functioning because they were actually very near the PSD limits. Explicit permit condition, again that they signed off on was, "any relaxation of the emission limits, may involve crossing the PSD limitation", would require a full PSD review. Even if they finished the construction of the facility. So DEP was concerned about crossing that line through the entire process. Coastal Chem again promised to install the equipment, they signed off on the permit and they did not install it on the fire tube boiler. So besides the PSD issue and other issues which Coastal Chem we will be settling with them in the coming months. Perhaps the commission will be settling them. Here we have a

very straight forward issue. There is a violation and I don't think there is any significant factual dispute that in fact the low NOx burners were not installed on the fire tube boiler. I think today, what were really here for is just to discuss the amount of penalty that should be assessed. Coastal Chem offered two excuses for why the low NOx burners were not installed. The first excuse is that the contractor that they hired to build the facility failed to install them. In fact Coastal Chem knew for weeks that the low NOx burners had not been installed. They were aware of it in July and took it up with the contractor, but what they failed to do was to report it to DEP at that time. And the person who actually failed to report it was their Environmental Manager. DEP found out the low NOx burners were not installed purely by accident because they got a phone call from the prime contractor Sundt Corporation, stating that the low NOx burner had not been installed on the fire tube boiler. The second excuse that was offered by Coastal Chem is that 40 CFR Part 60 provides for a 180 day grace period during which environmental deficiencies such as not installing the low NOx burner are excused. We completely disagree with that interpretation because in fact 40 CFR Part 60 does not apply to the boiler. It applies to other parts of the facility, but not to the boiler and provides no excuse for failing to install the low NOx burner.

We think that you should reject those defenses or other defenses that attack the basic existing set of violations. Because here were dealing with the situation where we have a large sophisticated corporation that violated an explicit permit condition. They discovered the violation. They failed to report it and they continued to operate without reporting it. We think that here we can show that there are least 66 days of violation from the time of start up in early June, to the time of NOAV on August 13. As you know that is up to \$5,000.00 per day. We believe that this case does not call for a slap on the wrist. I think that it is important to get the message to the industry of Nevada that self compliance and self reporting are very important aspects of the Pollution Control Program in Nevada. Additionally, I think that we don't want to send the message to DEP that a significant violation should simply be passed by. And with that we will be ready to show our case to you.

Chairman Molini: Thank you Mr. Chally. Mr. Metzke.

John Metzke:

Mr. Chairman and members of the panel, thank you, good morning. My name is John Metzke and I am the Attorney from Cheyenne, Wyoming and I am outside counsel to Coastal Chem. I represent them in a very variety of matters. We appreciate the opportunity to appear before the commission this morning. Coming from a sparsely populated, yet friendly state I do appreciate the courtesies that has been shown to us. I would be particularly complimentary of the commission staff with the people of NDEP, with which I have contacted, very courteous and very helpful and very responsive to our request. I want to have the panel made aware of that.

Our position on #991 briefly is that we believe that NDEP may have acted prematurely in issuing the NOAV. We will present two witnesses this morning to the panel. Mr. Philip Morrow, Vice President of Coastal Chem, and Mr. Thomas Spooner, the Battle Mountain facility Plant Manager.

The testimony this morning will reveal the good faith efforts which were made by Coastal Chem to deal with this situation and we would request that the panel pay close attention to the efforts which were made by Coastal Chem throughout this process. The testimony will reveal that Coastal Chem contracted with Sundt Corporation to install the low NOx burner and that Sundt Corporation was required to make sure that all the equipment constructed by them met all air quality permits and the requirements of those permits. After start up of the facility which the start up date was June 5th, 1992. Coastal Chem acquired some third party tests of the performance of the burner and the associated boiler. They calculated those results and by July 10th determined that the burner was not functioning such that the permit requirements could be met. Coastal Chem then took immediate steps to address the problem with Sundt Corporation. This led to meetings on August 5th and 6th with Sundt Corporation where various alternatives were discussed. And at that time it came down to an issue as to who was going to have to pay for the improvements which would be necessary on the burner at issue. Later in August Sundt was directed to go ahead and make the necessary improvements. The cost of the improvements was born by Sundt in the amount of approximately \$19,000.00. The new burner was installed and functioning properly by September 27th. Independent third party tests on September 29th revealed that the burner in fact was functioning properly and Coastal Chem at that time believed that the permit requirements were being met and could be met. We believe the testimony will show that Coastal Chem acted promptly to rectify the problem once it was discovered. We believe that there is no evidence that prior to the time that the independent third party tests were conducted in late June of this year. That Coastal Chem knew that there was a problem with the burner. We would respectfully disagree with the state's position concerning the applicability of the code of federal regulations provisions. We believe that Section 60.44 B of volume 40 of the CFR ties compliance to the performance testing requirements of Section 60.8 of volume 40, which in affect allows up to 180 days following the start up with which to be in full compliance with the various requirements. That's the position of Coastal Chem.

There was a problem, Coastal Chem discovered the problem and they acted promptly to deal with the problem and believe that our testimony will show the good faith effort of Coastal Chem to deal with this situation. Thank you Mr. Chairman.

Chairman Molini: Thank you Mr. Metzke. Mr. Chally you may proceed with your case and chief.

Brian Chally: Thank you Mr. Chairman. We call Tom Porta as our first witness.

Chairman Molini: Tom, or Mr. Porta, please raise your right hand, you swear to tell the whole truth and nothing but the truth.

Tom Porta: I do.

Chairman Molini: Thank you.

Brian Chally: Would you please state your name for the record.

Tom Porta: Yes, Tom Porta.

Brian Chally: What is your position?

Tom Porta: I am the compliance Branch Supervisor for the Nevada Bureau of Air Quality.

Brian Chally: Are you familiar with this case that were involved in?

Tom Porta: Yes I am.

Brian Chally: Have you reviewed the file of this case?

Tom Porta: Yes I have.

Brian Chally: I have given you some documents that are in a package together. You can identify those documents?

Tom Porta: Yes, these are from the Coastal Chem file from almost the beginning of time from the permit to the most recent correspondence.

Brian Chally: So all 10 pages come from the Coastal Chem files?

Tom Porta: That is correct.

Brian Chally: And those are all public records?

Tom Porta: That's correct.

Brian Chally: Just then on this basis that they are public records, I would move for admission of the evidence. I understand that Mr. Metzke may as we go through them interpose

objections to relevancy, that sort of thing.

Chairman Molini: Mr. Metzke, Mr. Chally, then your moving to entire packages States Exhibits 1-10.

Brian Chally: Yes, actually we can do one exhibit, just pages 1-10.

Chairman Molini: Okay, States Exhibit 1, then would be pages 1-10.

Mr. Metzke are concerned with that?

John Metzke: Mr. Chairman, I would object to the admission of Exhibit 1 on the basis of relevancy. I do not see the relevancy as opposed to this particular NOAV.

Brian Chally: Pages 1-10?

John Metzke: Exhibit 1.

Brian Chally: I apologize, I haven't had a chance to review this.

Brian Chally: I will go through them as were doing the testimony and if you want to object at that time to each page that we are talking about, that is fine with me. I am just moving into admission a public record right now. So that we can get them into evidence and discuss them, but if you object on relevancy later and the commission upholds you, that is fine, we will drop it at that point.

Chairman Molini: Is that okay with you?

John Metzke: That would be fine with me Mr. Chairman, thanks.

Chairman Molini: Let's proceed that way then.

Brian Chally: Mr. Porta could you provide the commission with some back ground on Coastal Chem and their facility in Battle Mountain?

Tom Porta: Yes, Coastal Chem currently has a ammonium nitrate facility in Battle Mountain, which consists of basically two types of plants. A nitric acid plant and then the actual ammonium nitrate or ????(prill) tower process where they make the ammonium nitrate. Their applications were submitted back in July of 1990 to bring this facility into our state. That is basically where we stand.

Brian Chally: So they just briefly then produced two kinds of products there, nitric acid and prill.

Tom Porta: That is correct, the nitric acid is produced in order to make the ammonium nitrate.

Brian Chally: The ammonium nitrate is used for what?

Tom Porta: Anywhere from fertilizer industry to explosives in mining industry.

Brian Chally: Was the Battle Mountain plant, a new plant?

Tom Porta: No, it was new to the State of Nevada, it originally been to my understanding the nitric acid plant was originally in Hannable, Missouri.

Brian Chally: Do you know approximately what time it operated in Missouri before it was moved out here?

Tom Porta: My understanding was in the 80's and then moved out here in the beginning of the 90's. I am not sure what transpired between the companies on how it was purchased, but it was originally in Hannable, Missouri.

Brian Chally: Could you look at pages 1 - 3 of this division's exhibit and explain what those pages are?

Tom Porta: Yes, this is the initial application done by a contractor ENSR on the nitric acid ammonium nitrate facility and these pages come from that actual text that they presented for a permit applications of the facility.

Brian Chally: So this was the original PSD application from 1990?

Tom Porta: That is correct.

Brian Chally: And if you could look at page 2 and down near the bottom on line (a) of the pollution control equipment. It says low NOx burners, can you explain what that is?

Tom Porta: Yes this is a standard industrial process application form we have and this was for the Cleaver Brooks steam boiler or the fire tube boiler in question. We require that the applicant put what type of control measures they are planning to install on the facility. In this case it is low NOx burners.

Brian Chally: Later after this application had been submitted. Did Coastal Chem submit another Non-PSD application?

Tom Porta: My understanding yes, I don't know if they specifically submitted another application, but there was correspondence or letters sent that they wish to reduce their emissions of NOx to below the 100 ton a year threshold, so they would not be PSD.

Brian Chally: Was that application accepted and eventually permitted to Coastal Chem?

Tom Porta: Yes it was.

Brian Chally: Did it include low NOx burners on the fire tube boiler?

Tom Porta: Yes.

Brian Chally: As part of the application?

Tom Porta: Yes and as part of the permit.

Brian Chally: Could you explain to the commission the difference in some of the factors I mentioned were time expense enforcement concerns between PSD and Non-PSD?

Tom Porta: PSD, Prevention of Significant Deterioration is set by EPA through the Clean Air Act and the purpose of PSD is to insure that these major emitting sources be the particulate NOx, CO are controlled to the best of their ability. In another words, what we call BACT, or Best Available Control Technology is usually applied to PSD type sources. An other words if somebody submits us a PSD application, typically a BACT analysis, an other words the best available control measures to date have to be included typically with the permit application and will be eventually installed on the facility. Also PSD is very time consuming, it can take up to a minimum, of probably 8 months to a year, just from the background monitoring that is required of a particular pollutant. In this case, if Coastal Chem would of been PSD, and stayed PSD, they at least would of had to do a years worth of monitoring for nitrogen dioxide. So there is a lot time, more time it takes to issue a PSD permit and BACT analysis and so forth than a regular state issued permit.

Brian Chally: In terms of the context of the State Division's relationship with EPA. What is the significance of PSD?

Tom Porta: PSD are sort of the major sources, our power plants, are major emitters and EPA is very concerned about these facilities and insuring that the BACT are in place and that they are meeting their emission limits that's allowed to reduce...obviously PSD stands for the prevention of significant deterioration to reduce the emissions to the extent best practical.

Brian Chally: Would you say the EPA Region IX for instance, says, has a closer ?? on PSD sources (1357) than other sources?

Tom Porta: Yes they look very close, as a matter of fact they are the main concern of EPA Region IX are

our larger sources or PSD type sources yes.

Brian Chally: Is the enforcement responsibility memorialized in the EPA State Agreement?

Tom Porta: Yes it is. As a matter of fact, PSD or NSPS type sources. There is specific agreement and time lines and enforcement actions and penalties for various violations, we must seek in the agreement, to maintain that agreement.

Brian Chally: Could you describe the boiler for the commission, that we're talking about?

Tom Porta: It is a standard fire tube boiler that produces steam for their process. Physically the dimensions probably shouldn't be any bigger than this room here. So it is not that large a boiler when we talk about boilers in general. It is more of a package type, steam type boiler vs. a utility type boiler on a much much larger scale.

Brian Chally: For physical size alone, how big is a low NOx burner?

Tom Porta: Well a low NOx burner is a term that is used as a design, it is more of a design term on how the company designs a low NOx burner. My understanding is the ratios of air firing, the fuel firing are closely monitored. Also the flame dispersion, if you think of a typical flame being a cone type. Most low NOx burners I am familiar with have a fan type burner which lowers or prevents the formation of thermal NOx. So it is a design type burner situation that lowers the NOx.

Brian Chally: Earlier you stated the Coastal Chem has been permitted after the DEP review for that included a low NOx burner on the fire tube boiler.

Was that permit issued after the public comment period?

Tom Porta: That is correct, yes.

Brian Chally: If you could please turn to pages 4 through 6 and identify those pages for the commission.

Tom Porta: Yes this is the Permit to Construct for the Scoth Marine Fire Tube Boiler that was issued subsequent to the application review by our permitting staff.

Brian Chally: So this is the permit that is specific to the boiler in question?

Tom Porta: That is correct.

Brian Chally: Could you please turn to paragraph number 1 on page 4 and explain if the installation of a low NOx burner is required by that paragraph or not?

Tom Porta: Yes they are.

Brian Chally: In what words do you use to rely on?

Tom Porta: Well basically the whole paragraph. That is why it is the first thing there. All equipment, facilities and systems installed are used to achieve compliance with terms and conditions of the Permit to Construct shall at all times be maintained and in good work order and be operated as efficiently as possible as to minimize air pollution emissions. That is why it is number one.

Brian Chally: And that includes the low NOx burner?

Tom Porta: That is correct.

Brian Chally: If you could please turn to page 5 and look at paragraph 6. A., the second sentence and explain what you think the significance of that sentence is.

Tom Porta: Yes, this is our pollution clause for all our permits, typically you will find them on paragraph 6. A., but this is a specific control equipment that we require for a source in this particular case it is low NOx burner.

Brian Chally: If you could please turn to paragraph 6.C.1.(b) and I believe that is the emission limits for nitrogen oxide.

Tom Porta: Correct.

Brian Chally: Is this limit set with the low NOx burners in mind?

Tom Porta: Yes it is.

Brian Chally: If the low NOx burners aren't in place, could it affect at least the analysis or the setting of that limit.

Tom Porta: Potentially yes, no question.

Brian Chally: If you could please turn to paragraph, 16 on page 6 and the sentence there. Does this literally mean that a low NOx burner has to be in place in order to come into compliance or to be in compliance with the Clean Air Act and the Nevada Statutes.

Tom Porta: Yes, per paragraph 16, yes. It just says basically that they must comply with the provisions of the act, i.e. that you have your equipment installed for minimizing your emissions.

Brian Chally: If you could look at paragraph 15, please. What does this sentence reflect from the division's point of view?

Tom Porta: Okay, typically we issue this with most all of our permits, but in this case it's very important, since we had a potential source at the beginning that they identified through their application, it could have been over the PSD limit. Then they subsequently submitted another PSD application to reduce those emissions below the PSD limit. This paragraph states that any relaxation of any limits contained in this permit and increase the potential to emit above the applicable PSD NSR threshold will require full PSD NSR review of the source as though construction had not yet commenced.

Brian Chally: And in this case that's not a mere boiler plate?

Tom Porta: No that is very serious, I mean they all serious restrictions, but this one should have been paid attention to particularly in this case.

Brian Chally: Is the signature at the bottom of the page, that says Authorized Representative of Coastal Chem Incorporated. Do you know your knowledge, is that a Coastal Chem Representative that signed off on this?

Tom Porta: Best to our knowledge, yes it is.

Brian Chally: This is the permit that covers the construction and operation of the fire tube boiler?

Tom Porta: That is correct, until we demonstrate compliance and at which time then an operating permit would be issued.

Brian Chally: If you could please turn to page 7. This is of course what Coastal Chem was sited under NAC 445.696. If you could explain specifically the violation as it applies to this regulation?

Tom Porta: Yes, we sited a under .696 specifically for the wording. Anybody that the director shall issue a Notice of Violation to any owner or operator who A., fails to construct in accordance with the application as approved by the director. B., fails to construct and operate a source in accordance with the conditions imposed by the director which appear on the Permit to Construct. In that case both conditions in my opinion are violated.

Brian Chally: Between June and August did you visit the Battle Mountain site very often?

Tom Porta: I personally did not, no

Brian Chally: How many times did you go there between June and August, yourself?

Tom Porta: Oh, between June and August, well of course the July 2nd incident I was there as well as July 8th to observe the start up. And we were out there just here about two or three weeks ago.

Brian Chally: During that same period of time June to August, were there other DEP personnel who visited the site?

Tom Porta: Yes there were.

Brian Chally: Who were they and approximately, how often did they go there?

Tom Porta: Les Gould was the inspector and I believe that he has been there approximately a half a dozen times. Four to six times would be my estimate.

Brian Chally: If you could please, well initially could you please turn to page 8 and just identify that document?

Tom Porta: This is a notice of Alleged Air Quality Violation No. 991 we issued to Coastal Chem once we had knowledge that the low NOx burner were in fact, not installed on the fire tube boiler.

Brian Chally: How did the division learn that the low NOx burners had not been installed?

Tom Porta: It precipitated from a conversation that Mr. Greg Remer in our permitting staff had with the Representative of Sundt Corporation.

Brian Chally: Is that conversation memorialized on page 9 of the exhibit?

Tom Porta: Yes it is. This is the record of communications between Mr. Remer and Mr. Olsen of Sundt Corporation that after the conversation Mr. Remer came over and spoke with me and then wrote the record of communication, this is it.

Brian Chally: Is Sundt the prime contractor to your knowledge for this facility?

Tom Porta: I don't know if it is for the facility, but for the boiler it is my understanding that they are the prime contractor, yes.

Brian Chally: To your knowledge, either when you were there or if you got reports from lets say, Les or any other division person who visited the site. Was the non-installation of the low NOx burner ever mentioned?

Tom Porta: Not to my knowledge and my inspector did not have any knowledge of it either, or at least

did not convey that to me and this phone conversation was the first time we have heard about it on August 11th.

Brian Chally: Who is Charles Barnhart?

Tom Porta: Charlie Barnhart is the Environmental Manager for Coastal Chem.

Brian Chally: Has he been at the site during the June to August period?

Tom Porta: To my understanding is off and on, yes he has been between Cheyenne and Battle Mountain.

Brian Chally: Have you talked to him?

Tom Porta: Yes I have.

Brian Chally: Did he ever mention that the low NOx burners had been installed?

Tom Porta: Not until after we issued the Notice of Violation.

Brian Chally: Did he ever tell you that he knew that they had not been installed in July?

Tom Porta: No.

Brian Chally: If you could turn to page 10 please. Can you identify that document?

Tom Porta: Yes, this was a letter, I believe the last page of the letter that was sent to us after the Notices of Violations were issued.

Brian Chally: Who sent it to you?

Tom Porta: I believe it was Charlie Barnhart and I think it was to Mr. Dodgion.

Brian Chally: Representing Coastal Chem?

Tom Porta: That is correct.

Brian Chally: And this is their response to NOAV #991, isn't it?

Tom Porta: That is correct.

Brian Chally: If you could go down to the last sentence of the first paragraph, where it says, "the discovery that the engineer in the construction firm did not fulfill their obligation concerning Coastal Chem's steam generator, was discovered in July of 1992 and was made

known to the engineering/construction firm immediately. Does that indicate to you that Mr. Barnhart or somebody at Coastal Chem knew of the non-installation in July?

Tom Porta: Yes it does.

Brian Chally: Do you from an enforcement perspective do you believe that there was a requirement for reporting upon that discovery?

Tom Porta: I would certainly under the conditions of the permit if somebody had found, a company representative had found a boiler or whatever piece of equipment did not have the proper pollution control equipment. I think it would of been prudent for somebody to notify us immediately.

Brian Chally: But during the period of June to August, was the fire tube boiler in operation?

Tom Porta: To my understanding was yes, cause it is used for various process or makeup steam.

Brian Chally: Does pollution control equipment have to be installed prior to operation, prior to start up or at sometime during that period?

Tom Porta: Yes that is the condition of the Permit to Construct.

Brian Chally: Do you know if Coastal Chem had Coastal Chem personnel at the site during the period of construction?

Tom Porta: Yes, I believe they had people there. I don't from which offices that were there, but Coastal Chem Representatives were most likely there, yes.

Brian Chally: Is it normal in the industry to have a company representatives on site during construction?

Tom Porta: Yes most definitely to insure that plans and so forth are being constructed in accordance with what they had.

Brian Chally: Coastal Chem indicates they believe that the contractor was negligent. In your experience as an enforcement officer for the division, who is responsible for complying with the permit?

Tom Porta: The person named on the permit and we have had several other incidents where company's who have the permit have tried to blame the contractor and it has been consistent with us that person who's name is on the permit, they are the responsible party.

Brian Chally: If you had not accidentally learned of the non-installation, when do you think is the earliest

time that you would of in fact found out that there low NOx burners had not been installed?

Tom Porta: Well we may have never found out if they would of had them installed before the performance specification test. If they would of conducted the performance specification test without the burners installed, then we would of known at that time, but that probably would of been the only time we of found out.

Brian Chally: If you could return to page 8 please, which is NOAV #991. We had heard earlier from Mr. Metzke that the start up was on June 5th and the NOAV was issued on August 13th, that is 69 days. Is that the period of time that your seeking a penalty for?

Tom Porta: It is a period of time the penalty would actually arise from each day they fired the boiler. I am sure that there were some days within that period that the boiler was not fired.

Brian Chally: I would like to turn to defense's that had been offered by Coastal Chem at this point. When Coastal Chem says that it is the contractors fault, that it was the contractor's negligence. From enforcement prospective, what is your reply to that?

Tom Porta: Once again, it is the responsible, the people responsible, companies responsible are the people that are named on the permit and anytime we have issued notices it is always to the permittee. They are the ultimate responsible party.

Brian Chally: Do you see some difference with, let's say a small mom and pop type operation and a larger company like Coastal Chem?

Tom Porta: I don't see that. They've got ENSR for a contractor, Sundt Corporation, I mean they had all these contractors. I am assuming they are fairly well off to hire these people and conduct the work, so there are a number of professionals working on the project.

Brian Chally: So in the past you've treated mom and pop operations in the same way that your seeking to treat Coastal Chem today?

Tom Porta: Pretty much so and maybe even a little more on the enforcement end because they have these people that specifically deal with this and should know the regulations and what is required.

Brian Chally: If negligence or a contractor fault can be used as a defense, from your enforcement experience, is the purpose of the NRS chapter 445 achieved?

Tom Porta: No, if I have to rescind the notices that were blamed on the contractors, I think that I probably would only be issuing 50% of the notices that I do issue. So it is a common problem, however, as a matter of fact that is one of the reasons we went to

signatures on the permits, such that a company representative reads signs and understands what is required in the permit. We changed this about 4 or 5 years ago, because people would come in and say, well it wasn't my fault, it was the contractors and I didn't get a chance to read the permit and so forth.... I gave the permit to the contractor or something, so that is why we initiated the signature so it is clear that you know, hopefully when these people read this that the seriousness of these restrictions. And that they need to comply with them.

Brian Chally: In your estimation and experience as an enforcement officer, is good faith an adequate excuse for non-installation?

Tom Porta: No it is not.

Brian Chally: Is prompt action, once the division becomes aware of it an excuse for non-installation?

Tom Porta: No it is not.

Brian Chally: The other defense that has been raised is 40 CFR Part 60, and this 180 day non-compliance grace period that Coastal Chem asserts to have. Does this apply to the fire tube boiler?

Tom Porta: No and we even contacted EPA Region IX to verify that to insure it is not subject to the NSPS regulations and it is not, as a matter of fact we issued the permit understand state regulations, not federal regulations.

Brian Chally: Could you explain a little more about NSPS and why the boiler doesn't fall under NSPS?

Tom Porta: NSPS for the acid plant which is...

Brian Chally: First, what is NSPS?

Tom Porta: NSPS stands for New Source Performance Standards. The federal government has outlined very specific industries and types of processes and set standards for monitoring emission limits and so forth for those facilities.

Brian Chally: And that is outlined in 40 CFR Part 60?

Tom Porta: That is correct.

Brian Chally: And 40 CFR Part 60 and NSPS apply to what, if any portions of the Coastal Chem facility?

Tom Porta: In this particular case it applies to the nitric acid plant only.

Brian Chally: Do you believe, or have you gotten an indication that Coastal Chem is confused between the application of the CFR's and the state standards that the permits were issued under?

Tom Porta: Yes, it appears so based on the appeal grounds.

Brian Chally: If you could, earlier you indicated to me, but if you turn to page 4 please. Do you believe the source of that confusion might come from either paragraph 5 on page 4, or paragraph 6.B 1. on page 5?

Tom Porta: Potentially it could be confusing, but just to cover all the basis we put in here paragraph 4 and 5 to insure that if somebody as potentially an NSPS if they at least look at those regulations and see if they are applicable and also 61 (1939) tape ???

Brian Chally: Well it might be confusing to look for an (1942) ??? and an attorney like me. Is this interpretation, no one in the enforcement community in the industry that NSPS does not apply to something like a fire tube boiler?

Tom Porta: Yes, yes.

Brian Chally: Even if 40 CFR Part 60 did apply to this case. Would that excuse the failure to install the low NOx burners in the first place?

Tom Porta: No we would expect them to install the control device even if it was an NSPS or if it wasn't an NSPS before they started operation.

Brian Chally: So there would be no 180 days grace period?

Tom Porta: No question.

Brian Chally: I would like to ask you about, is it from your enforcement perspective, do you consider this a serious violation and if so, why?

Tom Porta: Yes I do, mainly because were potentially exceeding this PSD threshold for NOx and a specific piece of control equipment was not installed for period of about 4 months, which potentially could threaten that PSD limit and this is a great concern that you know, that this limit not be exceeded because that is what we issued the permit on the basis of. That this plant would not exceed this PSD limit.

Brian Chally: That is all the questions I have.

Chairman Molini: Thank you Mr. Chally and Mr. Metzke you may cross examine.

John Metzke: Thank you Mr. Chairman. Mr. Porta for how long have you been an compliance officer?

Tom Porta: Approximately I worked in the compliance for 9 years and I have been the head of enforcement for 4 years.

John Metzke: So you would say that you understand applicable rules and regulations pretty well by this point in time?

Tom Porta: Fairly well, but time to time I still have to contact EPA Region IX for various interpretations as well as Mr. Chally, on regulations and their applicability.

John Metzke: Can you point to any statute or regulation which required Coastal Chem to report to your division, the discovery made by Coastal Chem that Sundt Corporation had not installed the probable burner?

Tom Porta: I don't think that there is any report requirement, however in our permits that we issue under paragraph 14 we make it quite clear, that would be page 3 of (2028) 3.269 that we must have all the information available and nobody should make any false statements, or mis-represent, or not tell us that there is a potential violation. But as far as a specific regulation goes to report that, no.

John Metzke: Can you point to anything that would support your interpretation of 14.B., that Coastal Chem failed to notify a report as required by the permit or director?

Tom Porta: I am not quite sure I understand, could you restate it please?

John Metzke: I will be glad to do that, thank you. You had indicated I believe in your testimony that you put paragraph 14 in there so that it is clear to people that they are to report things to you.

Tom Porta: Right.

John Metzke: And I am asking you, given paragraph 14 B., if you can point to any failure on the part of Coastal Chem to make notification or make a report as required by the permit or the director?

Tom Porta: I would probably have to say no that there is not a requirement to report because...to report the incident..., but clearly I think it's still the issue that the low NOx burner should of been installed and reporting the incident. I would think on a prudent company would, should have done that without trying to install it without telling us.

John Metzke: Isn't one of the contentions of your case that Coastal Chem, strike that please. So your focus then would be on the failure to have the correct burner installed then, and not on the failure to report.

Tom Porta: Correct, that is the violation for which we issued.

John Metzke: I believe in your direct testimony you used the words the that would be prudent to notify NDEP when an occurrence such as this occurred. What did you mean by that?

Tom Porta: Well I think if a company was conscientious and they discovered a problem, had a risen, especially in the case where it appears that the contractor had installed this boiler without the low NOx burners that I think that it should of been the responsibility of the company, although maybe not require to notify DEP of the problem that they had. Typically we have companies that do that.

John Metzke: Under the facts that you know, what difference would it have made for Coastal Chem had notified the Department?

Tom Porta: Difference we probably would of issued a Notice of Order to immediately insure that procedures were being set in place by Coastal Chem to get the problem rectified.

John Metzke: Do you have any reason to believe that Coastal Chem was not setting such procedures in motion at the time they first learned of this problem?

Tom Porta: Not after we received the letter from Mr. Barnhart regarding that obviously some type of plan or something had been set in the motion after it was discovered.

John Metzke: Just a moment please Mr. Chairman.

Brian Chally: Mr. Chairman, if I can just for the record, I'll represent and if you feel it is necessary, I'll provide the original document, but page 10, I think is a letter, it was attached to a letter dated July 16th. I just noticed there is no date anywhere on it, to put in the context of when it was received.

John Metzke: Mr. Porta, I believe you may have brought in Part 60 of Volume 40 CFR with you. Can I ask you to direct your attention to that.

Tom Porta: Sure. Section, part.

John Metzke: Section 60.44b.

Tom Porta: 60.44b?

John Metzke: Yes. Sub A.

Tom Porta: Are you under subpart (g) under the general provisions?

John Metzke: Subpart D.(b).

Tom Porta: Subpart D.(b.), okay. 44b., standards for nitrogen oxide.

John Metzke: And subpart A.

Tom Porta: Okay.

John Metzke: You may need to take a moment to look at that, but are you familiar with that provision?

Tom Porta: I am familiar with the subpart in the fact that I don't believe that we received delegation from Region IX for subpart D.(b.), I am not sure. But this refers to industrial commercial steam generating boilers and this 44 d., standards to which that such boiler would be subject to. ????? check on. in 40 CFR

John Metzke: But it is your testimony that in this particular case, this provision is not applicable?

Tom Porta: We did not issue the permits under subpart D.(b.), otherwise it would have been stated in the permit. Yes.

John Metzke: Mr. Chairman, I have no further questions for Mr. Porta.

Chairman Molini: Thank you Mr. Metzke. Mr. Chally, redirect.

Brian Chally: Mr. Porta, just to confirm, I believe Mr. Metzke is correct that we're not really contesting the non-reporting here. The violation is actually for non-installation.

Tom Porta: Right, we did not issue a violation for failure to report.

Brian Chally: That is all.

John Metzke: No redirect Mr. Chairman.

Chairman Molini: Okay, panel members questions of Mr. Porta? Mr. Wright.

Fred Wright: Mr. Chairman thank you. On Exhibit 1, page 10, I would like a little further clarification on the genesis of this page. I understood it was from an attachment to a letter, I believe of July 16th from Coastal Chem.

Tom Porta: That is correct. It was in response to, after we issued the Notices of Alleged Violation, this was their response letter.

Brian Chally: I can explain to the commission, why we only have this page. The original letter and the other attachments dealt with other NOAV's and it was my intent to focus on this particular NOAV. I am not trying to drag them through the mud on other claims, that you may hear or that had been dismissed.

Fred Wright: Okay, thank you.

Chairman Molini: Any further question of Mr. Porta? Mr. Gifford.

Fred Gifford: Mr. Porta, with respect to a page 4 and page 5 on the Air Quality Permit to Construct. In terms of the order in which things are carried out and just kind of for my own information here. Item 6.b., would be carried out before Item 2 would be applicable. Is that correct, or Item 2, is in effect anytime?

Tom Porta: This Section b. is a performance specification testing that is required. Basically stating that they have 180 days to test the facility for emissions. Section 2 deals that they must submit a protocol to us prior to the testing to give us ample opportunity to review any testing changes that may be made. Or if we find any problems with the testing methods that they proposed. So 2, in this case would definitely come before 1, yes, on the protocol, on 6.(b). And also it allows the opportunity to have an inspector observe or make sure that the tests are conducted in accordance with the reference methods.

Fred Gifford: Okay, let me rephrase my question then, 6. b. 1., would be carried out before Item 2, on the previous page, on page 4 would become effective. Is that correct? Another words you go through the performance testing in 6 b.1., prior to the excess emissions, notifications and so forth would go into affect.

Tom Porta: We would require that even in that interim that they would report any excess emissions if they had knowledge and that is what this states here. So if they knew i.e. through monitoring of some other types of testing. If they did have an excess emission, they would certainly be held to this and be required to report it as such, due to start up or malfunction, or whatever the problem may have been. And that the performance test is the status that the date they have to test to insure compliance with the emission limits that had been set. But we would certainly want to know those excess emissions and record them and do like we normally do with excess emissions, after they are reported.

Fred Gifford: Okay and so in terms of their third party investigative measures on their boiler in which it was indicated by July 10th that they knew that they were in violation then. The only that could of come about would be through failure of equipment in another words.

Tom Porta: Right, potentially, unless you measure it, you really don't know, but the likelihood is pretty high, that if you didn't install the pollution control equipment you would not beat the emission limit that you were held to.

Fred Gifford: Is that where you coming from then, in terms do you feel like that you should of been notified?

Tom Porta: No, again the notification issue was something Mr. Metzke brought up that we aren't pursuing that.

Fred Gifford: I realize that, but...

Tom Porta: I would think, yeah again, they should of probably, if they would of known that had an excess emission. If the tests that they had showed that they were over the emission limit they should of reported that. There again, we didn't site them for that.

Fred Gifford: Okay, I just wanted to clarify that, thank you.

Chairman Molini: Mr. Porta, I want to try and get something clear in my own mind here. Was this air quality permit to construct was issued under the obis of prevention and significant deterioration?

Tom Porta: It was issued with the understanding that they would not, because of their emission would not reach that threshold, so it was not a PSD permit.

Chairman Molini: I see. Therefore, this low NOx burner as best available control technology, BACT does not apply in this case then.

Tom Porta: That's correct. And BACT would apply to the whole facility, not just this particular piece of equipment, but the whole facility.

Chairman Molini: Okay, thank you. Any further questions by panel members? If not thank you Mr. Porta. Mr. Chally you may call your next witness.

Brian Chally: Mr. Chairman, could I have approximately 5 minutes, I need to discuss one issue with him.

Chairman Molini: Any objection to that Mr. Metzke?

John Metzke: No Mr. Chairman.

Chairman Molini: We will stand and recess. We will reconvene the hearing. Mr. Chally you may call your next witness.

Brian Chally: Thank you Mr. Chairman, we call Steve Frey.

Chairman Molini: Mr. Frey, raise your right hand. Do you swear to tell the whole truth and nothing but the truth?

Steve Frey: I do.

Chairman Molini: Thank you.

Brian Chally: Mr. Frey, for the record could please state your name and spell your last name.

Steven Frey: My name is Steven Frey, that is f r e y.

Brian Chally: What is your place of employment, your position of employment?

Steven Frey: I work for the US Environmental Protection Agency Region IX Office in San Francisco.

Brian Chally: How long have you worked there?

Steven Frey: I have been a little over 4 years.

Brian Chally: What part of Region IX's Office do you work in?

Steven Frey: I work in our Air and Toxic's Division in the Enforcement Section.

Brian Chally: How long have you worked in that section?

Steven Frey: 4 years now.

Brian Chally: Can you give us, the commission a little idea of your enforcement and other experience in air programs?

Steven Frey: I have been with the EPA over 15 years now. I first started in our New York Office for a few years, then about 8 years in our Denver Office. The last four out here in San Francisco. During that time period I've worked with enforcement, permitting, interpretation of application of federal and State regulations for almost that entire period.

Brian Chally: Since you been out west, have you had the opportunity to work with Nevada's enforcement program?

Steven Frey: Yes I have. Since I have been here I have handled questions that have come up from the Nevada DEP.

Brian Chally: Do you have other experience in working with states based on state EPA agreements and enforcement agreements?

Steven Frey: Yes I do.

Brian Chally: Could you give the commission an overview of EPA's perspective on PSD and the importance of PSD under federal and State programs?

Steven Frey: EPA and the states generally worked out an enforcement agreement that discusses how states how have the primary enforcement responsibility will address violations of different state regulations and federal regulations that the state's implement. Some of those, two of the real important ones have fit into that state EPA enforcement agreement or enforcement of the new source performance standards and also prevent a significant deterioration regulations. EPA considers any violation that those regulations to be important and enforcement in getting the proper injunctive relief and penalties as an important element of an enforcement program. And our agreement basically gives the states the first opportunity for taking that enforcement. We agreed to a certain time period for them to do that before EPA would look at whether what was appropriate for EPA action.

Brian Chally: We have heard testimony that Coastal Chem facility is non-PSD facility. It originally was applied for as a PSD facility. It was changed to non-PSD facility. Can you explain to the commission from a technical standpoint, the importance of the difference between PSD and non-PSD.

Steven Frey: Well a source that goes through the prevention of significant deterioration permitting has a number of steps they have to go through. There are three principle ones. They have to do ambient impact assessment that requires monitoring usually for period of 1 year prior to even making an application for a permit. They have to assess their impacts on federal class I areas, state class I areas I guess here and they have to apply BACT. Sources that are on the border line for being subject to the PSD regulations, frequently look to see whether there is some additional controls that they can put on their facility to see if they can reduce the emissions to try and avoid the length of time it usually takes to get a PSD permit and go through the process. Often the types of controls that are put on the facility are as good, sometimes even better than what might come out of the BACT determination. Basically their entering into pretty much a contract with the state to implement those controls and or, to avoid going through the PSD permitting process.

Brian Chally: Is a low NOx burner an example of one of those kinds of controls?

Steven Frey: It is one. It probably also could possibly be considered BACT, depending on the emission limit.

Brian Chally: We've had Coastal Chem raise the defense of 40 CFR Part 60 excuses or exempts the

installation, or the non-installation of the low NOx burner. Can you explain to the commission, if 40 CFR Part 60 applies, or if it does not?

Steven Frey: There are quite a few portions 40 CFR now. I think that we're up to, if we go through subpart D to now subpart 000 or so, there are a lot of them. The nitric acid plant at this facility is subject to one of those subparts of Part 60. It is possible that the boiler is also subject to another one of those subparts and it depends on the size of that boiler. Coastal Chem Corporation was speaking to 40 CFR Parts 60.44B, I think it is. That is for the new source performance standards for commercial/industrial size boilers for one that are between a 100 million btu's per hour and 250 million btu's per hour heat input. My understanding is that this boiler in question, is not that large. There is another subpart to 40 CFR that is called subpart DC that applies to institutional size boilers, very much between 10 million btu's per hour and 100 million btu's per hour. That subpart does not have a limits for nitrogen oxides, so there is no nitrogen oxide requirement there. There is no testing requirement, it simple doesn't apply. In any event compliance with any of the NSPS subparts, you are not given a blanket exemption your emission, applying the emission controls. The 60 days from reaching maximum operation or 180 days from start up is to allow the source to shake down. It's process equipment and control equipment, but they still have to apply what is considered good air pollution control practice. They are not given a blanketed exemption. It also does not have any impact on a state or local agencies implementation of it's own regulations as it applies to that facility. For instance in this case the requirement for a low NOx burner, the source had a permit, but required that the NSPS doesn't give any exemption for a time period to put that in.

Brian Chally: In this case we have had testimony that the permit required a low NOx burner at a specific emission limit for the boiler. Under this state program, does the subpart that you referred to that it applies to boilers between 10 million and 100 million btu's exempt, or somehow pre-empt the state emission requirements and state low NOx burner requirement?

Steven Frey: It does not.

Brian Chally: That is all the questions that I have.

Chairman Molini: Thank you Mr. Chally. Mr. Metzke cross.

John Metzke: I have no questions for this witness Mr. Chairman.

Chairman Molini: Mr. Chally I assume no further redirect. Panel members any questions of Mr. Frey? Mr. Frey, I guess that I would have one. I think you clarified it, the essence is that state regulations can be more stringent than the federal regulations.

Steven Frey: That is correct.

Chairman Molini: Further questions?

Fred Wright: I guess not.

Chairman Molini: Thank you Mr. Frey. Mr. Chally, do you have further witnesses?

Brian Chally: No, that is all the witnesses that we have.

Chairman Molini: Okay, Mr. Metzke are you ready present your case?

John Metzke: Yes we are Mr. Chairman.

Chairman Molini: You may call your first witness.

John Metzke: As my first witness I would like to call Mr. Philip Morrow.

Chairman Molini: Mr. Morrow, please raise your right hand, do you swear to tell the whole truth and nothing but the truth?

Philip Morrow: Yes sir I do.

Chairman Molini: Thank you.

John Metzke: Mr. Morrow, will you please state your full name for the record and spell your last name?

Philip Morrow: Philip Morrow, m o r r o w.

John Metzke: Where do you reside?

Philip Morrow: Cheyenne, Wyoming.

John Metzke: Are you employed Mr. Morrow?

Philip Morrow: Yes.

John Metzke: What is your position?

Philip Morrow: Vice President of manufacturing for Coastal Chem.

John Metzke: How long have you held that position?

Philip Morrow: About 2 1/2 years now.

John Metzke: How long have you worked for Coastal Chem?

Philip Morrow: 4 years.

John Metzke: Do you other relevant professional work experience?

Philip Morrow: Yes, I have been in the manufacturing of chemical and petroleum products for about 18 years now.

John Metzke: Would you please summarize your education background for the panel?

Philip Morrow: I have a degree in chemical and petroleum refining engineering from the Colorado School of Mines. I went to work for Gulf Oil Corporation, later on for Chevron and then in 1988 for Coastal.

John Metzke: What are your duties as Vice President of manufacturing for Coastal Chem?

Philip Morrow: It is the overseeing of the business of the facility in Cheyenne, Wyoming of which there is a hydrocarbon facility and a nitrogen facility and the Battle Mountain, Nevada facility.

John Metzke: Is Coastal Chem Incorporated affiliated with any other companies?

Philip Morrow: Yes, Coastal Chem is the chemical subsidiary of the Coastal Corporation. The Coastal Corporation is a company that has a number of divisions, gas and oil expiration, gas transportation, refining and marketing, environmental bio-remediation, coal mining and trucking transportation.

John Metzke: What is the approximate value of the assets of the Coastal Corporation?

Philip Morrow: About 9.4 billion.

John Metzke: What is the approximate value of the assets of Coastal Chem?

Philip Morrow: About 250 million.

John Metzke: Could you describe the business of Coastal Chem?

Philip Morrow: Coastal Chem is in the business of manufacturing specialty chemicals. We manufacture ammonia for agricultural and industrial sales and also as an intermediate product

for a manufacturer of nitric acid. Ammonium nitrate, Urea for animal feed. We manufacture CO2 for refrigeration and for industrial use. The ammonium nitrate that we produce, we manufacture for two different purposes. One is industrial ammonium nitrate for use in blasting agents for gold mining companies, coal companies, highway departments for building roads and so forth. The other one is an agricultural grade of ammonium nitrate that we use for fertilizer. The Urea plant manufactures and animal feed grade urea. Again ammonium is used for both industrial and agricultural purposes and as an intermediate grade. Then we also sell a we have a new plant that we built that makes MTBE, which is a clean air gasoline additive, for use by the refining marketing group.

John Metzke: How long has Coastal Chem been in business?

Philip Morrow: Coastal Chem was built in Cheyenne in 1964. We have been in the similar business as far as what Battle Mtn. which is nitric acid and ammonium nitrate since that time. So it has been about 28 years.

John Metzke: Where are Coastal Chem facilities located?

Philip Morrow: The hydrocarbon and nitrogen facility are located in Cheyenne, Wyoming, just outside of Cheyenne, Wyoming and then we have a facility in Battle Mtn., Nevada, which is a nitric acid plant, ammonium nitrate facility.

John Metzke: Describe a little more which products are produced at the Battle Mtn., facility?

Philip Morrow: The Battle Mtn. facility we produce nitric acid, which is a product that is used not only for sale, but also as an intermediate product for the manufacturer of ammonium nitrate. The ammonium nitrate produced there is used primarily for the mining industry, local mining industry and also for agriculture.

John Metzke: What approximately is the capital expenditure associated with the Battle Mtn. facility?

Philip Morrow: About 23 million dollars.

John Metzke: Approximately how many people does Coastal Chem employ at the Battle Mtn. facility?

Philip Morrow: They are currently 25 full time employees.

John Metzke: What is the approximate annual payroll of the Battle Mtn. facility?

Philip Morrow: In the neighborhood of 1 and half million dollars on payroll.

John Metzke: In terms of facilities under operation, how would Coastal Chem compare with other companies that have nitric acid plants, or ammonium nitrate plants in regard to the numbers of plants under your control?

Philip Morrow: We currently have four nitric acid plants similar to the one in Battle Mtn. and then of course three ammonium nitrate plants. There are only probably three companies in the United States that have more nitric acid and ammonium nitrate plants.

John Metzke: I have no further questions.

Chairman Molini: Mr. Chally, cross examination.

Brian Chally: I have no questions.

Chairman Molini: Okay, panel members any questions of Mr. Morrow?

Fred Wright: I guess not.

Chairman Molini: Just as a point of interest, do you manufacture ammonium nitrate at Battle Mtn. that does have agricultural applications?

Philip Morrow: Yes we do. The chemical composition of ammonium nitrate, whether it be used for industrial grade, or whether it be used for agricultural grade, is exactly the same.

Fred Wright: I guess I will follow on with that. It is my understanding what makes explosives is diesel fuel added to it, is that it?

Philip Morrow: The internal structure of the ammonium nitrate is more absorbent to the oil, so it allows itself to be used as the oxidizer, as the blasting agent in fuel oil, diesel oil. It is normally what the mines use to manufacture that blasting agent.

Chairman Molini: Okay Mr. Morrow, thank you.

Fred Wright: I guess Mr. Chairman, I am not sure if either party is going to get into the health aspects of the emissions.

Jean Mischel: That will be in the next violation.

Chairman Molini: Mr. Metzke, you may call your next witness.

John Metzke: I would like to call Thomas Spooner.

Chairman Molini: Mr. Spooner, please raise your right hand, do you swear to tell the whole truth and nothing but the

truth?

Thomas Spooner: I do.

Chairman Molini: Thank you.

John Metzke: Mr. Spooner, will you state your full name for the record and spell your last name please?

Thomas Spooner: Thomas Spooner, s p o o n e r.

John Metzke: Where do you reside Mr. Spooner?

Thomas Spooner: In Elko, Nevada.

John Metzke: Are you employed?

Thomas Spooner: Yes sir.

John Metzke: What is your employment at the present time?

Thomas Spooner: I work for Coastal Chem Inc. in Battle Mtn.

John Metzke: What is your position with Coastal Chem?

Thomas Spooner: I am the Plant Manager for that facility.

John Metzke: How long have you held that position?

Thomas Spooner: One year.

John Metzke: Could you please summarize your educational background for the panel?

Thomas Spooner: I have a Bachelor's of Science degree in Chemical Engineering from New Jersey Institute of Technology. I had worked for prior to Coastal Chem for Olan Corporation in the Gulf coast and the petro chemical industry for 14 years.

John Metzke: What are your duties as plant manager of the Battle Mtn. facility?

Thomas Spooner: Briefly it is to oversee the operation of the facility. I ensure that everything works right.

John Metzke: Are you familiar with the allegations of NOAV #991?

Thomas Spooner: Yes I am.

John Metzke: Are you also familiar with the requirements of Permit to Construct No. 2662?

Thomas Spooner: Yes I am.

John Metzke: Is it your understanding that Construction Permit No. 2662 required Coastal Chem to operate a low NOx burner at the Battle Mtn. facility?

Thomas Spooner: Yes.

John Metzke: Is it your understanding that Coastal Chem contracted with the contractor to install the low NOx burner?

Thomas Spooner: That is correct.

John Metzke: Who was the contractor?

Thomas Spooner: Sundt Corporation.

John Metzke: Was the burner installed prior to the time of the plant start up on June 5th of 1992?

Thomas Spooner: Restate that please?

John Metzke: Was a burner, fire tube boiler, burner for the fire tube boiler installed at the Battle Mtn. facility prior to June 5th of 1992?

Thomas Spooner: Yes.

John Metzke: At some point in time did Coastal Chem discover that Sundt Corporation had not installed a burner capable of meeting the emission standards set forth in Permit No. 2662?

Thomas Spooner: Yes we did.

John Metzke: How did you come about to make that discovery?

Thomas Spooner: After establishing the operation of the unit and we entered into an agreement with the third party to come in and do emission testing on the source.

John Metzke: When approximately was that?

Thomas Spooner: That was on June 30th of this year.

John Metzke: Who was that third party?

Thomas Spooner: John Zinc, manufacturer of Boiler Burners.

John Metzke: Did John Zinc perform the testing?

Thomas Spooner: Yes they did.

John Metzke: What did you do with the testing data received from John Zinc?

Thomas Spooner: We took their data and calculated out...they give the data in parts per million and then we calculate it out as for comparison with the permitted levels.

John Metzke: John Zinc is totally independent of Coastal Chem?

Thomas Spooner: That is correct.

John Metzke: What did your calculation reveal?

Thomas Spooner: It showed that the burner was out of compliance with the permitted level.

John Metzke: Once that discovery was made, what did you do?

Thomas Spooner: We discovered June 30th, we did the testing on July the 10th, we were aware of it that it was in exceedence of the permitted levels. We immediately notified the contractor of the situation. That would be Sundt Corp.

John Metzke: What happened as a result of the notification of Sundt Corp?

Thomas Spooner: They went back to the supplier of the fire tube boiler to investigate what would be required to meet the permitted levels.

John Metzke: Did they inform you of what would be required?

Thomas Spooner: Yes they did.

John Metzke: When did you find out what would be required?

Thomas Spooner: August the 5th, they unofficially presented the technical requirements in order to bring the operation of the boiler with in the permitted levels.

John Metzke: So they detailed at that time what would be required?

Thomas Spooner: Yes.

John Metzke: What did Coastal Chem do as result of that meeting?

Thomas Spooner: We urge them to continue on. They assume full responsibility for the cost and boiler that cost and additionally we insisted and they agreed that they would apply an incentive award to ABCO/Global which is the service organization for that boiler to improve... expedite the delivery of the burner.

John Metzke: What Sundt directed to install the new burner?

Thomas Spooner: Yes they were.

John Metzke: Was that done?

Thomas Spooner: Yes that is completed.

John Metzke: When was that completed?

Thomas Spooner: August the 27th. I am sorry, September 27th.

John Metzke: Now there appears to be a gap in time there from August until installation of the burner on September 27th of 1992. Can you explain the reason for that gap in the time period from the time you notified Sundt Corporation until the time that the burner was actually installed?

Thomas Spooner: Yes I can. Once Sundt was notified that the burner in fact did not conform to the permitted levels, they contacted the engineering group of ABCO Industry or Global, I am going to use the two, but their almost synonymous. One is service arm of the other. In that organization had to go back and consider the design and the installation of our specific boiler. The boilers are designed specifically for each application. Work up, essentially engineer what was required in order to meet those permitted levels and then design and manufacture the burner prior to installation.

John Metzke: Based upon your experience in the industry, do you believe that it took an unreasonable amount for Sundt to do these things and ultimately install this burner?

Thomas Spooner: No, I don't think that it was excessive.

John Metzke: After the burner was installed on September 27th, to the best of your knowledge was it performing properly?

Thomas Spooner: Yes it was, we had a performance run on September the 30th, which showed that it was within the permitted NOx.

John Metzke: Do you have any reason at this time to doubt this particular burner will not be able to fully comply with the requirements of Permit No. 2662?

Thomas Spooner: No.

John Metzke: Mr. Chairman, I have no further questions at this time.

Chairman Molini: Okay, thank you Mr. Metzke. Mr. Chally, cross?

Brian Chally: Mr. Spooner were you on sight during the construction period?

Thomas Spooner: For part of it, yes sir.

Brian Chally: That is all I have.

Chairman Molini: Are there any questions of Mr. Spooner by panel members?

John Metzke: Mr. Chairman, may I redirect?

Chairman Molini: Yes you may, I made an assumption, but yes you may do that, certainly.

John Metzke: Did you have any reason to suspect until you had John Zinc perform the tests on June 30th, that the burners installed would not be capable of meeting the emission requirements of Permit No. 2662?

Thomas Spooner: No I did not. Not at all. The contractor had full responsibility for compliance with all applicable regulations, codes and permits for the facility.

John Metzke: I have nothing further, Mr. Chairman.

Chairman Molini: Mr. Chally, will you recross?

Brian Chally: Yes, are you saying that John Zinc, or the contractor of Sundt Corporation bares full responsibility for complying with the permit that Coastal Chem signed off on?

Thomas Spooner: No, I am not saying that.

Brian Chally: Thank you, that's all.

Chairman Molini: Okay, questions by panel members of Mr. Spooner?

Fred Wright: Yes, Mr. Chairman. As I understand that the contractor was Sundt Corporation, specified a low NOx burner.

Thomas Spooner: That's correct.

Fred Wright: And your company did not during the contract, do any inspection or just checking to see if they meet the specifications, not only on that issue, but any of the others?

Thomas Spooner: Yes we did.

Fred Wright: Did you find any other discrepancies in meeting the specs. by the builder?

Thomas Spooner: These specs, meaning all applicable regulations? In some cases yes, but generally they did a fair job of meeting all of the required regulations. That was their charter. Their charter was essentially a turn key operation in which it, per the contract language there was minimal, all most no involvement in by Coastal Chem and then they presented the units as they were complete.

Fred Wright: We heard that early on that some of the material, or parts or pieces of this facility came from Missouri and prior operations. Is that what we heard?

Thomas Spooner: That is correct.

Fred Wright: So then some of it had been used and some I assume is new of modifications.

Thomas Spooner: That is correct.

Fred Wright: That is it for the moment.

Chairman Molini: Mr. Spooner, when you hired John Zinc an independent contractor on June 30th to conduct emission control testing, was that meet the requirements of the permit?

Thomas Spooner: To evaluate whether the sources would meet the permit levels, yes.

Chairman Molini: And you indicated, I believe, I may not have the date right that on or about July 10th, you were aware that from the emission testing conducted by the independent contractor John Zinc, that you were not going to be able to meet the emission control requirements of the permit. And you notified Sundt Corporation of that problem. On August 5th Sundt Corporation apparently had a meeting, I think that you said, unofficially, and I am not sure what that meant, but anyway they presented to you some technical requirements to bring that facility up to meet the required emission controls. My question is simply between July 10th and September 27th, when you testified that the low NOx burner was installed and operational, did you operate that boiler?

Thomas Spooner: Yes, there were times that boiler did operate.

Chairman Molini: Do you know how often that was?

Thomas Spooner: I honestly couldn't say.

Chairman Molini: Is it in the normal course of the operation of that facility use that boiler periodically?

Thomas Spooner: That is correct. It is not a full time operating facility...that boiler.

Chairman Molini: Did you have any concern that knowing that you weren't going to meet emission control requirements, that you should be operating that boiler until you had the low NOx burner on it?

Thomas Spooner: Sometimes we were required to operate the unit for... to restrict... I want to be careful how I use the word... to restrict other damage to the facility. For example, the boiler is used for steam tracing which will keep the lines from freezing ammonium nitrate. During the process of manufacture is a molten liquid, it is melted and failure to operate that boiler could cause substantial damage to the process. Some of the low pressure steam as this is, what we refer to is a low pressure boiler. It is also instrumental in other emission controls for the process.

Chairman Molini: Any further questions? Mr. Gifford.

Fred Gifford: Yes. Did Sundt Corporation just volunteer to pick up the cost on this or how did you come to that arrangement?

Thomas Spooner: It was...no very seldom we don't contractors to run in and volunteer to pick up the costs, but if a contract interpretation, they agreed it was their responsibility to provide a low NOx burner and a boiler.

Fred Gifford: And do you have documents or anything... where they actually done that. I mean do you have an agreed upon kind of a document to verify that or anything at this point, or was it just kind of gentlemen's agreement and they just went ahead and did it.

Thomas Spooner: That's pretty much the case. I don't have something that would say, "I Sundt Corp agreed to bare full responsibility." They issued the purchase order which we have and the incentive to bring it into compliance. It is in the boats of the August 5th meeting that Sundt Corp. would bare full responsibility for the installation of the low NOx burner.

John Metzke: Mr. Chairman, may I interrupt and correct Mr. Spooner. We do have a purchase order that we could present to Mr. Gifford, if that would be useful to him.

Fred Gifford: This was for the original installation of all...everything, or just to do with low NOx burners?

John Metzke: This is just to do with the reworking of the low NOx burner. I believe your questioning dealt with Sundt assuming the responsibility of the costs of correcting the problem.

Fred Gifford: I wouldn't mind looking at that.

Chairman Molini: We would like to examine it.

Are there any further questions of Mr. Spooner?

I don't think that we ever resolved entering State's Exhibit 1, and while we were reviewing that Mr. Metzke, did you have any objection... you voiced an objection about relevancy, I guess of the cover sheet, initially, but.

John Metzke: That would be my only objection as to the entire document and page 1 in particular.

Brian Chally: I guess I am perplexed. I think that it is an application, it is the original application. Nothing else serves as background and we have had substantial testimony that in fact applied as a PSD facility, they then reapplied as a Non-PSD facility and this is just to show that in fact they did apply as a PSD facility originally. It also ties in with exhibiting the concern that both the Division and EPA Region IX have with a facility that is marginally near PSD, not having the proper control equipment installed.

Chairman Molini: Mr. Metzke, unless you have some other substantial argument which I am certainly willing hear, I would overrule the objection to accept this. I think it some relevancy and it has dates and indicates that there was a consulting engineering firm etc.

John Metzke: I have no further grounds for the objection.

Chairman Molini: We will accept this package then as State Exhibit 1.

Do panel members have any further questions for Mr. Spooner while we still have him here.

Fred Wright: I am under the assumption that this is a gas fired boiler and I am assuming it is a natural pipe gas.

Chairman Molini: Mr. Gifford, do you have any further questions?

Fred Gifford: Okay, I guess I am still... at a little bit of a mystery how it can be stated so clearly that there should of been a burner and yet here it is kind of tack on kind of item at the end.

And in terms of the original request for equipment and so forth, where the NOx burner is specified specifically, or was it just one of these general requirements where they will meet all applicable requirements for whatever? Did the NOx burner show up specifically in the original request for equipment, or was it under one of these again more general kinds of things where equipment was required to meet all specifications for whatever?

Thomas Spooner: To try an answer the question, prior to Sundt Corps. issuance of the order for this boiler package, they were given a copy of the air permit 20662, I believe is the number if I recall properly and said this is the performance standards for that boiler.

Fred Gifford: And as the company representative do you or somebody might delegate this responsibility too? Do you set down and do they actually sort of double check, if you will in terms of equipment coming in to be installed and so forth that it actually has met the requirements in terms of construction and so forth? Installation in this case, of proper burners, or does everything go in and then you kind of hope that somebody in this case, the provider, Sundt Corporation, just hope they've got it right kind of thing? How do you operate there?

Thomas Spooner: It is pretty much a, I'll use the terms spot audit the same way a building inspector would come out if you were putting up a brand new building. The building inspector will come out occasionally, they will make certain checks as you go through the process of construction, but he or she will not be on site to observe every electrical determination and wall switch to measure every stud to make sure that it is 16 and not 16 1/4 ", or things like that. Because of Coastal Chem's contract and limited involvement, it would be impossible short of doing the entire construction project by ourselves to of check everything. Therefore, the agreement and the contractual language with Sundt Corp., that they were in fact responsible and that... and we did, we had meetings, we had periodic monthly meetings, we had weekly meetings, we had off to the side meetings to insure that they were meeting to the best of our ability all of the requirements.

Fred Gifford: In terms of air pollution equipment and again, where it specifically says a control system including the NOx burners. Would that be a high priority item for somebody to talk about or converse about, to go look at or anything, or how would that be viewed in terms... I realize that every electrical outlet kind of an argument, but would this be a major item that somebody ought to be concerned about, company wise, or not?

Thomas Spooner: You know all of the regulations are important because that is what is required to do our business properly. I can't say that one is anymore important than the other.

Chairman Molini: Is there any other questions of Mr. Spooner? Mr. Spooner, thank you. Mr. Metzke do you have any

further witnesses?

John Metzke: Mr. Chairman, I have no further witnesses.

Chairman Molini: I guess the panel be prepared to move to closing arguments. Mr. Chally.

Brian Chally: Mr. Chairman, in rebuttal I would like to recall Mr. Porta for several questions.

Chairman Molini: Alright, you may do that.

Brian Chally: Mr. Porta, we heard Mr. Spooner say that there was burner installed at the time of start up.
In your experience is it true, that every boiler needs a burner?

Tom Porta: Yes that's true, that's is primary function to heat. Basically water and turn it steam.

Brian Chally: Is every burner a low NOx burner?

Tom Porta: No it is not.

Brian Chally: Is it your understanding in our exhibit page 9, that Sundt Corporation, in fact said that there was no low NOx burner installed?

Tom Porta: That is correct. That was the premise of our violation and also it appears that a low NOx burner has been installed now and Mr. Spooner seemed to indicate that the boiler is now meeting the emission limits.

Brian Chally: What would you rate the installation function of a low NOx burner in terms of importance to check?

Tom Porta: Well I think if your... you know a source that is potentially PSD and this is one of the control pieces of equipment that is affecting that 100 ton a year for NOx and so forth. I wouldn't equate it to all a wall switch. I think it would be high on my priority list.

Brian Chally: That is all.

Chairman Molini: Mr. Metzke, do you want to ask any questions in rebuttal?

John Metzke: If I may to this witness.
Are you an expert on low NOx burners?

Tom Porta: No I am not.

John Metzke: Do you know how many types of low NOx burners there are?

Tom Porta: I don't know the specific number, but I know that there is a variety of burners that can be installed on various boilers. I mostly deal with utility size boilers, not small package ones.

John Metzke: Now you testified that between the period of May and August had been the Coastal Chem site at least two times.

Tom Porta: That is correct.

John Metzke: And you also testified that other people under your direction had been on site several other times?

Tom Porta: That is correct, yes.

John Metzke: During that time did any of your people discover that the proper burner had not been installed?

Tom Porta: No, they did not.

John Metzke: Are you saying that Mr. Spooner was giving false testimony when he testified that this problem was not discovered until John Zinc came in and did the independence performance test?

Tom Porta: No, I am not saying that Mr. Spooner gave false testimony, I am not.

John Metzke: I have nothing further.

Chairman Molini: We will now have the opportunity for members of the panel to ask to recall any witness and ask them questions. Mr. Wright you have a question of Mr. Porta?

Fred Wright: Yes I do. Mr. Porta, while your not an expert on burner configuration, you indicated that a low NOx burner displays a fan type, or different burner flame pattern. On the boiler, do you know of whether there is a eye-port to look into the boiler while the flame is burning?

Tom Porta: No I do not.

Fred Wright: When a low NOx burner and a regular... or another kind of burner, or a variety of low NOx burners are sitting in view. Is there a way to tell that it is a low NOx burner?

Tom Porta: I can answer that on the utility type boiler, something we're talking about several thousand million btu's being produced, but on the package size boilers, since we're talking

about here, I am not really sure if you can tell the difference or not. I do not personally know.

Fred Wright: I guess maybe we need to recall Mr. Spooner.

Chairman Molini: Let me follow along with that line of questioning. Then the only sure way to tell is to conduct an emission test as were conducted and whether there is high nitrous oxide involved in the emissions.

Tom Porta: Well I will certainly have to start with the design because there is a definite design difference between a normal burner and a low NOx burner. I mentioned earlier a lot of the design concerns have to do with the air to fuel ratio and then also I can testify as I said a large steam generating unit, how the flame is dispersed in lowering what they call thermal NOx emissions. It makes a difference verses a cone, verses a fan type. That is the primary... of my understanding... of the primary way these types of burners work.

Chairman Molini: We don't really need to recall... we can ... I would remind all the witnesses that your still under oath. If there is a question, just directed to that witness.

Fred Wright: Mr. Spooner I would ask you the same question that I asked Mr. Porta in regard to the boiler, is there an inspection whole in the opening front end of that boiler?

Thomas Spooner: I believe there is one on the back side, yes.

Fred Wright: Well, whichever where you can see the flame.

Thomas Spooner: Yes.

Fred Wright: Thank you.

Chairman Molini: Mr. Gifford.

Fred Gifford: Yes, to Mr. Porta. In terms of the, when you refer back to the exhibit 1., page 9, where in terms of the telephone conversation with Bill Olsen to Greg Remer.

Thomas Spooner: Yes.

Fred Gifford: Again, I'm just trying to play around here a little bit and the sense of how this was overlooked and the middle of that paragraph there, starting with the sentence, "apparently". Now and I assume that Mr. Remer is writing this. Is that correct?

Tom Porta: That is correct.

Fred Gifford: So apparently that would be his conclusion then.

Tom Porta: Correct.

Fred Gifford: That Coastal has had Sundt install a boiler and in other words apparently Mr. Olsen didn't indicate at least in this conversation that it was Sundt's mistake. It was Coastal's mistake and they got, they being Sundt ended with the boiler then that didn't meet the specifications there. Am I reading too much into this?

Tom Porta: As far as we were concerned, all we knew was that obviously there was not a low NOx burner installed as to who was to blame. I wasn't involved with the conversation, so I really don't know what the intent was. All I was concerned with in fact we didn't have a low NOx type burner installed in this boiler to meet the permit condition. I am not sure if Sundt you know, I can't testify knew or didn't know they were supposed to give Coastal Chem a low NOx burner for their boiler.

Chairman Molini: Mr. Spooner, let me ask you a question on that line of thinking. You testified that in the contract you entered with Sundt...Sundt had contracted with Coastal Chem to provide a facility that essentially I think they called it a turn key operation that would meet all emission control standards and requirements. So, am I correct is that what you indicated?

Thomas Spooner: Yes sir.

Chairman Molini: Therefore, you provided, I think you testified that you provided the permit. The air quality permit to construct # 2662 to Sundt and indicate that this would constitute the standards for emission control and then have to meet the developing, designing, constructing of this facility.

Thomas Spooner: Yes.

Chairman Molini: Okay, thank you. Further questions of any of the witnesses?

Fred Wright: I would ask of this of, Mr. Chairman of either Mr. Porta or Mr. Spooner in regard to permit #2662 which we scanned but haven't had a chance to digest. I know that Mr. Chally had lead Mr. Porta through under on page 5, 6.c.b., Mr. Porta is that the key item that leads one to believe to meet that requirement a low NOx burner would have to be installed.

Tom Porta: Yes. Dealing with these types of permits, looking at that low a number which is very low for nitrous oxide, especially with the LPG fire type(4576) most definitely you have to have something other than the standard burner to meet that emission limit.

Fred Wright: So whereas the permit... that is why I say we haven't had a chance to digest it. I don't believe anyplace in the permit that says the word low NOx burner.

Tom Porta: Yes there is.

Fred Wright: Where?

Tom Porta: Provision 6.a., air pollution control equipment. That very same page.

Fred Wright: Okay, thank you, that answers my question.

Chairman Molini: Any further questions by Mr. Gifford?

Fred Gifford: Yes a question for Mr. Frey. Could you briefly review the health hazards of nitrogen oxides in general. Why the concern?

Steve Frey: I am not surely really if I am the expert to testify on that. EPA does have a national ambient air quality standard for nitrogen oxides. I am not really positive of the inside health affects. We developed the standards with background health documents and then my enforcement and permitting groups responsibility to make sure that air is sort of meeting those standards. And then there(4635) with respect to prevention significant deterioration there is also an increment that the air is not allowed to deteriorate more than that increment.

Fred Gifford: Mr. Porta can you help us out there, or do you kind of fall in the same category.

Tom Porta: I am not a hygienist or anything, but like Mr. Frey stated it is a national what we call criteria pollutants. There one of seven criteria pollutants that were specifically looking at reducing a nitrogen oxide is one of them. This boiler, in my opinion without the low NOx burner probably did not pose any health threats to the people of Battle Mountain, this boiler. But as to the total emissions from this facility, we do not know yet, because we do not have any testing data to see what NOx emissions we're actually looking at yet. But the boiler by itself probably would not pose any real health risk, unless of course the gases were directed into a populated area or something, group of people.

Chairman Molini: Any further questions. I am going to then give the respective attorneys a moment to thing about closing arguments. Because we are just going to take a very brief recess. We will reconvene the hearing on NOAV 991. Before we hear closing and I didn't technically dismiss the witness. I think the commission has a couple more questions. Let me ask Mr. Spooner, you indicated that this boiler was operated

periodically. Do you have a record on how many days it was operated?

Thomas Spooner: I don't believe I do.

Chairman Molini: Could you give some ballpark figure, most of the days, half of the days, very few of the days in your best recollection and judgement.

Thomas Spooner: My best estimate is going to be about 60% of the time.

Fred Wright: 60%?

Thomas Spooner: Yes.

Chairman Molini: Is there any further questions? Mr. Wright.

Fred Wright: I will follow along on that. I guess my question would be. While you may not have any records here. Does the plant maintain operating records?

Thomas Spooner: Yes we do, but not necessarily on each individual piece of equipment. I guess the part that gets a little confusing is that even when this boiler is operating, it cycles on and off. The design and control system is such that the, as the plant comes up to rate some... the acid plant is up and running and the nitrate plant is up and running the steam demand for this pressure steam diminishes, so the boiler automatically shuts itself off. Should that system pressure drop, either through utilization, condensing, demand, then the boiler automatically fires itself back up to meet the pressure requirements. Even when I say it is operating, it is not continuously operating.

Chairman Molini: Mr. Morrow, did you want to clarify that?

Philip Morrow: It is kind of ??? to it. It is like a hot water heater and it is looking at instead of looking at the temperature of the hot water and then putting the gas on until the temperature comes up and then cutting itself off. It is looking at this low pressure steam header pressure and it comes on like a hot water heater and it builds up the steam in that header and then it shuts itself off. It is not very big so it's kind of like a hot water heater, then when the pressure falls on this steam header then it lights its little pilot and fires up the burner and brings the pressure back up. It might be on for 30 minutes and then not come on again for 3 or 4 hours and then come for 10 minutes and not come on for 2 hours. It is a cyclic operation.

Chairman Molini: Mr. Gifford.

Fred Gifford: Mr. Spooner a question in terms of this operating time. I am not familiar with the equipment so in terms of changing burners, if you will. The time that we're talking would be

July 10th through September 27th. How much of that is actually installation time? Say or is it a matter of recognizing that the wrong burners were there and so most of that time is time that goes into ordering the right kind of burner and getting it delivered and so forth and then when it is finally on site it takes a day or something to actually put the correct burners in. Like what are we actually talking about there, can you give me some perspective?

Thomas Spooner: The actual installation took three days. It began on the 25th and was completed on the 27th. The rest of that was design and engineering and construction.

Fred Gifford: Thank you.

Chairman Molini: Mr. Porta, I would like to ask you a question or two. In the NOAV, you indicate that the person named in this notice is ordered it and it is signed by Mr. Shifley, but the corrective action is to install low NOx burners within 90 days and submit burner manufacturer model numbers for all boilers at the Battle Mountain facility by August 25, 1992. Were those conditions met?

Tom Porta: To my understanding since they got the low NOx burner by September, they met condition number 1. At the meeting I believe they stated that they didn't have any other boilers that didn't have a low NOx burner. So I am assuming that condition number 2 has been met as well.

Chairman Molini: Okay, thank you. Further questions of any witnesses? Okay if not that will be the end of the testimony and we dismiss the permanently the witnesses and we will now move to closing arguments. Mr. Chally.

Brian Chally: Thank you Mr. Chairman. The basic issue here, the basic premise that underlies all of the Clean Air Act enforcement is that it is a self reporting, self compliance system. If it's a different system as was suggested by testimony, cross-examination by Mr. Metzke of Mr. Porta. If the Division has to rely and go to an inspection system. If we've got to find all the problems, the entire system is going to collapse because there is simply isn't enough resources in Nevada to deal with even problems of major sources, much less all the minor sources. The whole premise is that when a permit is issued and there is specific requirement such as a low NOx burner to meet and that the entire responsibility rests with the company that signs off on that permit. It is just not an acceptable or an effective argument to say. It is not our fault, it is the contractors fault. They have already gotten what they needed from the contractor. They've gotten the \$19,000 or whatever it is and they've gotten the burner installed. The initial responsibility can rest no where else but with Coastal Chem. They've adopted a very specific approach on this. As Mr. Spooner said, we have a minimal involvement with the construction phase. We have a limited involvement with construction phase, it is very easy to structure contracts to keep

yourself isolated from the responsibility of the ultimate responsibility of complying with the permit. That again is not an acceptable excuse for trying to avoid responsibility. We understand that they moved in good faith. We understand that they tried as expeditiously as possible, but that is not the standard. The standard is compliance to have the equipment installed in very first place and to know whether it is or not. Everybody in Nevada all sources, major sources, minor sources, mom and pop operations have been held to that very standard and Coastal Chem should have no particular exception from it. They are a large company, they have 250 million dollars in assets, they have full time environmental managers. They nationally known consulting firms to prepare their plans and this was an important portion of what they, the facility they actually put up. They got below the PSD limit, this was a major portion of keeping below that limit so they didn't have to go through the full PSD review. They didn't check it... violated the permit condition, it may trigger further PSD review. We may have to go back. We have a lot of other issues to deal with outside of this hearing. But what is clear is that there was a violation, the low NOx burner was not installed and operated as Mr. Spooner said, probably 60% of the 69 days between start-up on June 5th as represented by Mr. Metzke and the date that the NOAV was issued. At a minimum were looking at a minimum 60% of 69 days, although they don't have the records to show that it wasn't the full 69 days, and up to \$5,000 per day. I think that the penalty needs to be strong and needs to be imposed. We're dealing with a major source, a potentially major source of pollution in Nevada. It just no longer just a minor non-PSD possibility were dealing with. So it is important to send a message to industry that self compliance, self reporting is very crucial in Nevada. It is important to send a message to the Division that this kind of enforcement is appropriate that violations will not be allowed to slide by. I think that it is also important to send a message to the citizens of Battle Mountain, just because they're in rural area, they are going to get less consideration than people who are in the more populous areas, such as Washoe and Clark County. Thank you.

Chairman Molini: Mr. Metzke.

John Metzke:

Mr. Chairman, members of the panel, thank you. Coastal Chem can not change the facts of this case. We believe they been presented fully, completely and honestly by our witnesses. We have told you what happened and what we did about it. I believe that the record is clear Coastal Chem acted promptly, and reasonably under these circumstances. We hired an outside third party contractor to run tests after the plant was up and operating. That time we discovered the burner was not performing as required by the permit. We then took immediate action to remedy the problem and I believe the State admits that we acted promptly, reasonably, in good faith in this regard. That is what we did Mr. Chairman and members of the panel. We took corrective action as expeditiously as possible and in fact as the Notice of Alleged Violation indicated under the corrective action. We beat the deadline for installing

the low NOx burners by approximately 45 to 50 days. So this was something that was important, it was something that Coastal Chem dealt with promptly. Coastal Chem considers itself a responsible company. It doesn't disregard people of Battle Mountain, Nevada or the State of Nevada. This panel must interpret the law, the regulations, they believe they apply to everyone, but the same time we believe that interpretation and application must be reasonable. We believe that actions were reasonable under the circumstances and were carried out promptly and efficiently. And for that reason we would ask the panel to give serious consideration to the arguments of Coastal Chem as they apply to the facts of this case. And agree with our position that the NOAV # 991 should be dismissed. Thank you Mr. Chairman.

Chairman Molini: Thank you Mr. Metzke. Mr. Chally you have an opportunity for rebuttal.

Brian Chally: Thank you Mr. Chairman. As a practical matter we deal very few (flagrant) violators. It is a technical area to comply and the only standard to apply is compliance with the technical standards and everybody knows that it is laid out here. It was laid out in the permit. I think again really what we're arguing about is the amount of the penalty. There is no question that there was a violation as opposed to Coastal Chem's good faith and prompt performance in correcting the problem. I think you have to weigh the other sides of what goes into the balance of how you assess a penalty. Some of that is punishment. They may claim that the good faith sort of offsets that, the expeditious action offsets that. But there are other interests that are at stake here and that the legislature considered when they set up \$5,000 per day penalty standard. One of those and a very important one is deterrence. Another one is vindication of the public interests and another one is that the future beneficiary of the Clean Air Law, Nevada's Clean Air Law in particular is stated in the statute itself, our future generations of Nevadan's. The time to assess, the time to get deterrence, the time to get compliance into effect is now and not later, not for future generations. Thank you.

Chairman Molini: Thank you to both parties, that will conclude the hearing and we will take the case under deliberation. What I would like to do at this time is recess until 1:30.

Chairman Molini: That will conclude the hearing, and we will take the case under deliberation. What I would like to do at this time is recess until 1:30 p.m. and we will be back.

Let's have this meeting come to order on the deliberation of Alleged Air Quality #991. And it is time for the commission panel to take this issue under consideration, deliberate and make a decision. I know that my fellow panel members have had a minute to get their thoughts organized.

Fred Gifford: Would you like me to lead off?

Chairman Molini: If you would like, that would be very good.

Fred Gifford: Well let me toss out my observations and we can go from there. I think in general that I have to agree with the contention that the permit holder is responsible in this case and that would be Coastal Chem. Inc. Number 2, I really feel that the NDEP should have been notified as to the problem. And even though that isn't a part of the alleged violation here, I think that it is something that should have been done, actually. And kind of following up on that, they went ahead and continued to operate. Then during the period, and I guess that there would be several dates here maybe to consider. One date that was tossed out was from June 5th to September 27th and I think that somebody added that up to be something like 69 days, or something like that. The assumption there, I think everybody would have to make or at least I did, is without the low NOx burners that they were probably operating definitely in violation there. If you kind of mellow that 69 days a little bit with the feeling that maybe the third party counseling, Mr. John Zinc coming in to do some comparisons and did find that they were out of compliance that would move that date to, instead of June 5th to July 10th, although again, in terms of quality control, accompanied quality control and so forth in my own opinion I think they should have caught it even by the June 5th date. But never the less, just looking at it from the standpoint of the third party coming in and their definitely being aware of it by July 10th. That makes it 48 days, if you will. If you figure July 10th into September 27th, if you figure that of those 48 days that three days based on the testimony we had. Three days involved installation time, that knocks it back to about 45 days and then if you take the 60% figure, which granted was an estimate of operating time. 60% of 45% days leaves us with about 27 days according to my calculation of time. That would be kind of a minimal consideration here in terms of the total time involved there, with respect to this particular violation. But I have a very difficult time accepting the argument that the contractor was to blame. I would agree that I don't think that we would want to get into that kind of a ball game. It doesn't sound to me, I haven't accepted the argument that the 180 day grace period pertained to this situation. So that is where I am here.

Chairman Molini: Mr. Gifford, thank you. Mr. Wright.

Fred Wright: I basically agree. I think our responsibilities stops with the holder of the Permit No. 2662. Beyond that it is outside of our arena. So I guess I am ready to make a motion, because I concur with Mr. Gifford in what he has come to conclusion with. I have to accept the expertise of the representative of Environmental Protection Administration as to having not seen the statutes or the code of regulations that were cited. I have to accept as an expert witness that those are fact and therefore, that code doesn't apply.

Chairman Molini:

I basically in essence agree with what both of you said. I think that there may be some ameliorating circumstances, but I am not sure of that. The thing that sticks in my mind is we heard testimony that the contract... Let me back up, and say that I agree the permit holder, especially now the format, that the permit holder signs a permit indicating that they read and understand it's stipulations and provisions. I think clearly they have the accountability and responsibility to be in compliance with the provisions and stipulations of the permit. I do understand when I think it moderates the situation a bit, when one contracts for a kind of a turn key operation that is supposed to meet the requirements. Now that is the responsibility of the permittee to insure that the contractor does that. I think that it is beyond our purview to reach beyond the permittee and try to put our hands on the contractor. I don't know how reasonable it is to, or how simple to determine, in fact, if you have a low NOx burner. When we heard varying testimony that wasn't totally convincing about how easy that is to do. I heard testimony that in fact without conducting a performance test, maybe there was a chance you couldn't be sure. Although, I suppose in reviewing the specifications of the contractor, it would be indicated in the plans and specs that it would be a low NOx burner, whether in reality it is. I don't know if there is a visual inspection as you referred to Mr. Wright about looking through a port and looking at the shape of the flame on the burner to make that determination. I think that Mr. Gifford, although I am not sure if I followed all his calculations of days, but I think what he came to is certainly not unreasonable. I do feel that there was testimony that indicated, and I think appropriately that Coastal Chem Inc. did proceed in an expeditious fashion to get this done. I think where the failing comes in, is not being sure before the start up of operation if they have a low Nox burner. And they admit they just didn't realize that until they had the performance test and then recognized and then moved ahead in what I think is fairly reasonable and expeditious fashion to try and get that corrected. So, I think there is certainly some of responsibility on the part of Coastal Chem Inc., even though I agree that it appears to me that they have done a reasonable job of trying to get it corrected, but maybe should have been more conscientious in monitoring the construction to know that it was in place before they operated for the period that they did. Unless there is further comment, I would certainly entertain a motion, which we can discuss.

Fred Wright:

Yes. Based on the following findings of fact that the Permit to Construct No. 2662, clearly included requirement with the need for a low NOx burner under Part 6. A., and by inference under 6 C.(b.), that Coastal Chem Inc. did operate the boiler periodically during 69 days being out of compliance with Permit Construct No. 2662, whereby Coastal Chem Inc. estimates they operated the boiler without the proper burner installed approximately 60% of the time. Therefore, I move that we uphold NOAV #991 and set the fine at 60% of 60 days at \$5,000.00 per day.

Chairman Molini: To discuss the motion I need to ask for a second, but I think that the time parameters are going to be fairly critical here and I guess I would ask Fred if you would concur. And ask Fred Gifford if he would go back on how he made his determination in 27 days.

Fred Gifford: Okay, rather than using the June 5th to September 27th day, I used the time apparently Mr. Zinc reported his findings.

Chairman Molini: The performance test was done.

Fred Gifford: The performance testing which apparently was July 10th, at least according to my notes here. That at least the company knew for sure on July 10th, so the time period from July 10th to September 27th according to my calculations comes out to be 48 days. It was stated that three of those days require installation, or involved installation of the NOx burners and so that reduced it to 45 days. An operating 60% of that time, 60% x 45 came out to be 27 days.

Fred Wright: Since I don't have a second, I would be willing to change 60 days to 45 days and that is all that would need to be changed in my motion.

Fred Gifford: Or 27.

Fred Wright: No, 60% of 45 days at \$5,000.00 a day.

Fred Gifford: I would second that.

Chairman Molini: The bottom line is it would be the same number. It has been moved and seconded that we uphold the, support the NOAV #991 that the penalty be calculated on the basis of 45 days as articulated by Mr. Gifford. The motion would apply that maximum penalty of \$5,000.00 a day for 60% of those days, or 27 days. Is there discussion on the motion?

Fred Wright: Any discussion on the finding of facts that I stated?

Chairman Molini: No, not from me. I think your finding and facts were accurate. Well we have heard testimony that 60% of the days it was operated and I think you have that in your finding in facts. I guess the only thing that bothers me a bit is, maybe we will have further insight on this after tomorrow, but this is a clear cut case. It is a clear cut issue for hearings that we ought to go ahead and take action on it today and not incumber our minds with testimony that we might hear tomorrow on the next violation. I guess the question in my mind, although we have heard the State say, we have to set the consistent record for industry and get their attention that they need to comply, they must comply with these things. I guess I just wonder from what I have seen if a maximum penalty is warranted in this case. I am not convinced that there was a

willful effort to circumvent the stipulations of this permit.

Fred Gifford: Well, the key to me was the point and I think it was a very worthy point, is that much of this kind of activity is self policing, if you will. And the point was also made, which I firmly believe, unless we increase our resources by 100 fold or something, we're not going to have the resources to send people out to do all of this from the State's standpoint. So I think there is element here of personal integrity in terms of asking for a real quality kind of a effort by the people that are asked to police themselves. I think what were looking for would include things like a good honest effort. We're looking for accurate data. Data that can be validated and I just think that it is absolutely critical here as part of our considerations and if we loose confidence in the people that are doing this. I don't think we can afford to loose confidence in the people doing this. I don't think that they want that confidence lost either and so that is where I am. I think that's critical to our considerations.

Fred Wright: I agree on this self compliance, self reporting system that we have in Air Quality Control in Nevada. We have sat on a number of cases where the, particularly in the mining industry whereby they have come forward and exposed themselves and said, "we haven't been in compliance." Until I heard Mr. Chally say today, that is the thresh of the bottom line of the system is self reporting and self compliance. I wonder why these mines would come forward and subject themselves to the fines that we have opposed. So I think it is a key point in the issue here. This thing has to...if were going to have the statutes on the books and the regulations to operate against, it is a tough call.

Chairman Molini: Well I think that both points are well taken. The point about the need to insure that we have a self policing and self reporting and solid data. And I often speculated myself Mr. Wright on the very thing you referred in some of the mines. And I've speculated further and I think it's a risk assessment that it is worth running the risk of violating to produce the ore. I don't know if that's, I guess I am not as convinced that may be the case here, but I don't have any evidence before me that would clearly indicate that one way or another. Well, is there any further discussion? If not, I will call for the question. All in favor of the motion say Aye?

Members: Aye.

Chairman Molini: So order. We uphold the violation, the penalty to be assessed at 27 days at maximum penalty of \$5,000.00 per day. And we will have a written order out in the near future, in 30 days. I thank you all for your attendance. We will recess or continue this hearing to move on to the next NOAV #992 commencing at 10:00 a.m. tomorrow morning at the Holiday Inn Express in Battle Mountain.