

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

FOR THE HEARING OF: February 26, 2004

HELD AT: Carson City

TYPE OF HEARING:

YES REGULATORY  
APPEAL  
ENFORCEMENT  
VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES AGENDA  
YES PUBLIC NOTICE  
YES MINUTES OF THE HEARING  
LISTING OF EXHIBITS

**Nevada State Environmental Commission**  
**Agenda**  
**February 26, 2004**

The Nevada State Environmental Commission (SEC) will conduct a public hearing commencing at 9:30 a.m. on Thursday, February 26, 2004, at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada.

This agenda has been posted at the Clark County Public Library and the Grant Sawyer Office Building in Las Vegas, the Department of Wildlife and the Washoe County Library in Reno, and the Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. The Public Notice for this hearing was published in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – January 28, February 4, and February 11, 2004. 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(a). Discussion of Agenda Items**

**I(b). Approval of minutes from the September 18, 2003 hearing. \* ACTION**

**II. Regulatory Petitions \* ACTION**

**III. Settlement Agreements on Air Quality Violations \* ACTION**

**IV. Public Comments**

**V. Additional Information**

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**II. Regulatory Petitions**

• **Air Pollution Control Petitions**

**1.) Petition 2003-07<sup>(a)</sup> - LCB File No. R-198-03: This Petition proposes changes to the permitting provisions of NAC 445B - Air Pollution Control.** The amendments will add an opacity limit and reduce the time allowed for exceptions to visible emissions from steam generating units; remove the state visibility standard; make violations of the fugitive dust regulations a major violation after the first offense; and revise the procedures for determining when an application for a Class I/PSD operating permit is considered complete. The amendments will require public notification of certain minor revisions to Class I operating permits, as well as public notification of certain Class II operating permit applications and revisions to allow public comment pursuant to Clean Air Act Title I.

Accordingly, the amendments will increase fees for processing Class I and II operating permit revisions and renewals to cover the costs of implementing the public notification requirements.

The amendments will also increase timelines for issuance of such permits and revisions, depending on the new public notification requirements. For Class II and Class III sources, the amendments will clarify how much -- in advance of the permit expiration date -- a renewal application must be submitted. The amendments will also remove ambiguity with respect to the Director's discretion in implementing the regulations dealing with incinerator burning and schedules for compliance. Finally, several clarifications, technical corrections and updates are proposed.

These amendments are necessary for the following reasons: Many of the amendments align the NAC with Nevada's Applicable State Implementation Plan (SIP) and will, thereby, allow USEPA to approve an updated SIP. Federal regulation requires public notice of permitting actions for minor sources of air pollutants and minor revisions to Class I operating permits. Amending the renewal timeline for Class II operating permits ensures consistency with revisions to NAC 445B.3457. The amendments also ensure that Class II and Class III renewals are submitted with sufficient time for processing before they expire. Reassigning fugitive dust into the major violations category will allow NDEP to achieve compliance with the regulation earlier in the process. Revising the process for determining the completeness of a permit application for a source subject to PSD requirements will prevent an automatic triggering of the PSD increment if the Director fails to act within 30 days after receipt of an application. The recent adoption of the national regional haze rule, the visibility standard is removed because it is no longer necessary.

While the proposed amendments will have no measurable economic effects on the public, the proposed changes will affect both major and minor stationary sources of air pollution. Since there will be additional costs to the agency for implementing the proposed public notification requirements, fees will increase by \$500 if the public notice includes publication in statewide newspapers and mailing to interested parties and by \$350 if the public notice can be sent electronically. The amendments being proposed will not restrict the formation, operation, or expansion of the regulated industry, nor do they overlap or duplicate any regulations of other state or government agencies. The amendments are also no more stringent than what is established by federal law.

<sup>(a)</sup>**Note:** The 30 day public notice for this regulatory hearing listed Petition numbers 12 & 14; the substance of those Petitions are now included in the above referenced Petition number 2003-07.

- **Air Quality Planning Petitions**

**2.) Petition 2003-11 - LCB File No. R-232-03: This Petition proposes changes to NAC 486A: Fleets Use of Alternative Fuels.** The amendment reflects changes made to NRS 486A made during the 2003 legislative session (AB 237). The changes include removal of low-sulfur diesel fuel from the list of designated alternative fuels and replacement with three diesel fuel variants; at the end of 2006 ultra low-sulfur diesel and California diesel sunset. Also, the petition removes the definition of "certified vehicle" and all references to certified vehicles in NAC 486A. The definition of "dedicated alternative fuel motor vehicle" was amended in statute to include

vehicles certified by the EPA as being in compliance with ultra low-emission vehicle standards regardless of the type of fuel they use. By reference to the amended NRS (486A.060), a "certified vehicle" is now included in the NAC definition of "alternative fuel vehicle," making a separate definition of "certified vehicle" in the NAC unnecessary.

While regulated business and industry are unaffected by these changes, the proposed amendments will have a small economic effect (related to fuel costs) on State and local government fleets that acquire diesel fueled vehicles to comply with this regulation beginning with State Fiscal Year 2004. The regulations will otherwise not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**3.) Petition 2003-13 - LCB File No. R- 237-03: This Petition proposes changes to NAC 445B.22067, Open Burning.** The amendments would prohibit the burning of household trash at single-family residences within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. Open burning of yard waste and untreated wood waste would continue to be allowed in these areas. The amendments would also prohibit the burning of rubbish by agricultural operations within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. The amendments would further prohibit residents of certain towns and cities from obtaining a variance from the NDEP to burn waste, if local authorities do not authorize it. Burning of yard waste and untreated wood waste is allowed in these areas if authorized by an officer of the state or its political subdivisions and concurred with by the director. The amendments are necessary to protect human health from the harmful effects of toxic pollutants such as dioxin that are produced when household waste or rubbish is burned. Removing NDEP's authority to issue open burning variances is necessary to ensure consistency with open burning decisions made by local authorities.

These amendments will have an economic impact on agricultural operations that use open burning to dispose of waste. Costs will vary depending on the volume of trash created by individual operations and the rates charged by the local collection and disposal service. Cost impacts will be similar for single-family residences. There will be no additional costs to the agency for enforcement of these amendments, the regulations do not overlap or duplicate other state requirements, and the amendments do not address fees.

- **Hazardous Waste Petitions**

**4.) Petition 2003-06 - LCB File No. R-126-03: The proposed amendment is to the Nevada Hazardous Waste Regulations.** The State of Nevada is authorized by the United States Environmental Protection Agency (US EPA) to enforce federal hazardous waste regulations. Between July 1, 2002 and July 1, 2003, the EPA approved revisions to existing federal hazardous waste regulations and published them in the Federal Register. The State of Nevada is required to modify its state regulations accordingly. The Nevada Division of Environmental Protection (NDEP) is proposing to incorporate these federal revisions into state regulations by adopting the applicable sections of the Federal Register as it existed on July 1, 2003. This regulatory petition

affects NAC 444 and 445. Updating these regulations will allow NDEP to continue to implement the RCRA program in lieu of the federal government.

The proposed regulations are not anticipated to have any significant economic impact on Nevada businesses, but conversely should make it easier for affected business to comply by simplifying the requirements. The regulations are not expected to have any economic effect on the public; they will not duplicate or overlap existing federal regulations; and they do not include any new provisions which are more stringent than federal regulations. The regulations will not provide for a new fee nor increase an existing fee.

**5.) Petition 2003-08 - LCB File No. R-208-03: The proposed amendment is to the hazardous waste regulations, NAC Chapter 444.** The Division is seeking specific limited changes to the state's definition of hazardous waste as defined at NAC 444.843. These changes establish and define two (2) subcategories of waste that are generated outside the state and will provide for more uniform regulatory treatment and equitable assignment of fees when such wastes are managed in Nevada. The two subcategories identified are remediation wastes and federally delisted wastes. The proposed amendments pertain to NAC 444.842 to 444.960, inclusive. The proposed amendments are needed to mitigate the effects of unequal regulatory treatment of some types of "hazardous waste" as currently defined and regulated by other states (namely, California) when compared to Nevada. The proposed regulatory action will allow Nevada to adjust (i.e., reduce) or amend the current fee structure, as it applies to wastes that are no longer hazardous wastes, such that hazardous waste disposal facilities in Nevada can more evenly compete for wastes in these categories.

The proposed regulations will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. These regulations are more stringent than the federal regulation in that the federal regulations do not provide for, or establish, fees for the disposal of waste. The proposed regulations are less stringent than current state regulations defining a hazardous waste, but are at least as stringent as the federal definition of hazardous waste.

All fees collected pursuant to NAC 444.8452 regardless of the impact of the proposed change to the state's definition of hazardous waste, will continue to be deposited in the hazardous waste management fund and used for the purposes established by NRS 459.535. Although the Public Service Commission and Division of Emergency Management will not receive funds from fees paid on the new proposed waste subcategories, these changes should prolong the expected life and productive capacity of hazardous waste disposal facilities in Nevada. Additionally, continued operation of these facilities is a benefit to businesses that are located in Nevada and generate hazardous waste requiring disposal.

- **Water Quality Petition**

**6.) Petition 2003-09 - LCB File No. R- 226-03: This petition addresses proposed changes to the water quality standards for the Class Waters contained in the Nevada Administrative Code (NAC) 445A.124 through 445A.127.** Under section 303 of the Clean

Water Act and 40 CFR 131, States have responsibility for setting, reviewing and revising water quality standards. Proposed revisions include changes to existing formats for listing water quality standards in the NAC's. Proposed changes will make the tables contained in the NAC's easier to read and understand. NDEP is also proposing a revision of the existing pH criteria, and total phosphorus criteria for various Class Waters throughout the state. Other revisions include corrections for names and locations of certain water bodies including clarification of the extent of the "reaches" as well as revisions based on the need to clarify the appropriate trout or nontrout standards for various water bodies

The proposed regulations will not have an economic impacts, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees

- **SEC Rules of Practice Petition**

**7.) Petition 2003-10 - LCB File No. R- 227-03: This Petition is an amendment to the State Environmental Commission's (SEC's) Rules of Practice; NAC 445B.875 to 445B.899.** The new amendments allow the following provisions. The SEC can order briefs to be filed before or after a hearing; it can allow a party to intervene in a proceeding by filing a written petition, along with specifying time periods and minimum content of such petitions. The SEC can further allow interveners to appear in proceedings and/or be dismissed from proceedings, where no substantial direct interest or public interest is apparent. The amendments also allow the SEC to consolidate a proceeding, where issues are substantially the same and rights of parties are not prejudice; in such proceeding, moreover, the SEC may determine the order in which the parties introduce evidence and present testimony as well as limit redundant testimony. The amendments further allow the SEC to take any action to maintain order during a hearing, require hearings to be recorded electronically, and where a court reporter is requested by a party, the cost for such services are paid for by the requesting party.

The proposed regulations (Petition 2003-09 & -10) will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

### **III Settlement Agreements on Air Quality Violations \* ACTION**

- A. American Borate Company; Notice of Alleged Violation Nos. 1805, 1806, 1807, 1808, 1809, 1810 and 1811
- B. American Cement and Aggregate; Notice of Alleged Violation Nos. 1814, 1815, 1816 and 1817
- C. Steve Brown Construction; Notice of Alleged Violation No. 1771
- D. Brown Brothers Construction; Notice of Alleged Violation No. 1788

- E. Canyon Construction; Notice of Alleged Violation No. 1802
- F. Capitol City Concrete; Notice of Alleged Violation No. 1789
- G. Chemetall Foote Corporation; Notice of Alleged Violation Nos. 1800 and 1801
- H. Fisher Sand & Gravel Company; Notice of Alleged Violation No. 1776
- I. Fisher Sand & Gravel Company; Notice of Alleged Violation No. 1803
- J. High Sierra Concrete; Notice of Alleged Violation No. 1777
- K. Johnson Development, LLC; Notice of Alleged Violation No. 1787
- L. Ron Murphy Construction; Notice of Alleged Violation No. 1818
- M. Newmont Mining Corporation – Lone Tree Mine; Notice of Alleged Violation No. 1779
- N. Newmont Mining Corporation – Twin Creeks Mine; Notice of Alleged Violation Nos. 1785, 1786 and 1793
- O. Northeastern Nevada Regional Hospital; Notice of Alleged Violation Nos. 1790 and 1791
- P. Specialty Clays Corporation; Notice of Alleged Violation No. 1798
- Q. Wulfenstein Construction; Notice of Alleged Violation No. 1796

#### **IV. Public Comments**

#### **V. Additional Information**

Copies of the proposed regulations may be obtained by calling the Executive Secretary, John B. Walker at (775) 687-9308. The text of the proposed regulations are also available in the State of Nevada's Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau, pursuant to NRS 233B.0653. ( see: <http://www.leg.state.nv.us/Register/> )

In addition, the State Environmental Commission develops an Internet webpage for each SEC regulatory hearing; the above referenced proposed regulations and other supporting documentation, including links to previously held public workshops, are available on the SEC Website:

- February 26, 2004 Webpage: <http://www.sec.nv.gov/main/hearing0204.htm>
- SEC Homepage: <http://www.sec.nv.gov/index.htm> .

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-9308, by 5:00 p.m. February 19, 2004.

**Nevada State Environmental Commission  
Notice of Public Hearing &  
Notice of Intent To Act Upon Regulations**

The Nevada State Environmental Commission (SEC) will conduct a **public hearing commencing at 9:30 a.m. on Thursday, February 26, 2004, at the Nevada Department of Wildlife's** Conference Room A, 1100 Valley Road, Reno, Nevada.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

**1) Petition 2003-06 LCB File No. R-126-03:** The proposed amendment is to the Nevada Hazardous Waste Regulations. The State of Nevada is authorized by the United States Environmental Protection Agency (US EPA) to enforce federal hazardous waste regulations. Between July 1, 2002, and July 1, 2003, the EPA approved revisions to existing federal hazardous waste regulations and published them in the Federal Register. The State of Nevada is required to modify its state regulations accordingly. The Nevada Division of Environmental Protection (NDEP) is proposing to incorporate these federal revisions into state regulations by adopting the applicable sections of the Federal Register as it existed on July 1, 2003. This regulatory petition affects NAC 444 and 445. Updating these regulations will allow NDEP to continue to implement the RCRA program in lieu of the federal government.

The proposed regulations are not anticipated to have any significant economic impact on Nevada businesses, but conversely should make it easier for affected business to comply by simplifying the requirements. The regulations are not expected to have any economic effect on the public; they will not duplicate or overlap existing federal regulations; and they do not include any new provisions which are more stringent than federal regulations. The regulations will not provide for a new fee nor increase an existing fee.

**2) Petition 2003-07 LCB File No. R-198-03:** The proposed amendments will change several sections in the permitting provisions of NAC 445B – Air Pollution Control. The amendments will remove the ambiguity concerning implementation of regulations covering incinerator burning and schedules for compliance as well as add an opacity limit and reduce the time allowed for exceptions to visible emissions from steam generating units. The amendments will also remove the state visibility standard; make violations of the fugitive dust regulations a major violation; and revise the procedures for determining when an application for a Class I/PSD operating permit are considered complete. These amendments are necessary for the following reasons: Alignment of the NAC with the Applicable State Implementation Plan will allow USEPA to approve the updated Plan. Reassigning fugitive dust into the major violations category will allow NDEP to assess fines that are at least equal to the cost of controlling dust. This will trigger an incentive for industry to control dust. Revising the process for determining the completeness of a permit application for a source subject to PSD requirements will prevent an automatic triggering of the PSD increment. And removal of the state visibility standard is now appropriate given recent adoption of the



national regional haze rule.

The proposed regulations will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**3) Petition 2003-08 LCB File No. R-208-03:** The proposed amendment is to the hazardous waste regulations, NAC Chapter 444. The Division is seeking specific limited changes to the state's definition of hazardous waste as defined at NAC 444.843. These changes establish and define two (2) subcategories of waste that are generated outside the state and will provide for more uniform regulatory treatment and equitable assignment of fees when such wastes are managed in Nevada. The two subcategories identified are remediation wastes and federally delisted wastes. The proposed amendments pertain to NAC 444.842 to 444.960, inclusive. The proposed amendments are needed to mitigate the effects of unequal regulatory treatment of some types of "hazardous waste" as currently defined and regulated by other states (namely, California) when compared to Nevada. The proposed regulatory action will allow Nevada to adjust (i.e., reduce) or amend the current fee structure, as it applies to wastes that are no longer hazardous wastes, such that hazardous waste disposal facilities in Nevada can more evenly compete for wastes in these categories.

The proposed regulations will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. These regulations are more stringent than the federal regulation in that the federal regulations do not provide for, or establish, fees for the disposal of waste. The proposed regulations are less stringent than current state regulations defining a hazardous waste, but are at least as stringent as the federal definition of hazardous waste.

All fees collected pursuant to NAC 444.8452 regardless of the impact of the proposed change to the state's definition of hazardous waste, will continue to be deposited in the hazardous waste management fund and used for the purposes established by NRS 459.535. Although the Public Service Commission and Division of Emergency Management will not receive funds from fees paid on the new proposed waste subcategories, these changes should prolong the expected life and productive capacity of hazardous waste disposal facilities in Nevada. Additionally, continued operation of these facilities is a benefit to businesses that are located in Nevada and generate hazardous waste requiring disposal.

**4) Petition 2003-09 LCB File No. R- 226-03:** This petition addresses proposed changes to the water quality standards for the Class Waters contained in the Nevada Administrative Code (NAC) 445A.124 through 445A.127. Under section 303 of the Clean Water Act and 40 CFR 131, States have responsibility for setting, reviewing and revising water quality standards. Proposed revisions include changes to existing formats for listing water quality standards in the NAC's. Proposed changes will make the tables contained in the NAC's easier to read and understand. NDEP is also proposing a revision of the existing pH criteria, and total phosphorus

criteria for various Class Waters throughout the state. Other revisions include corrections for names and locations of certain water bodies including clarification of the extent of the "reaches" as well as revisions based on the need to clarify the appropriate trout or nontrout standards for various water bodies.

**5) Petition 2003-10 LCB File No. R- 227-03:** This Petition is an amendment to the State Environmental Commission's (SEC's) Rules of Practice; NAC 445B.875 to 445B.899. The new amendments allow the following provisions. The SEC can order briefs to be filed before or after a hearing; it can allow a party to intervene in a proceeding by filing a written petition, along with specifying time periods and minimum content of such petitions. The SEC can further allow interveners to appear in proceedings and/or be dismissed from proceedings, where no substantial direct interest or public interest is apparent. The amendments also allow the SEC to consolidate a proceeding, where issues are substantially the same and rights of parties are not prejudice; in such proceeding, moreover, the SEC may determine the order in which the parties introduce evidence and present testimony as well as limit redundant testimony. The amendments further allow the SEC to take any action to maintain order during a hearing, require hearings to be recorded electronically, and where a court reporter is requested by a party, the cost for such services are paid for by the requesting party.

The proposed regulations (Petition 2003-09 & -10) will not have an economic impacts, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**6) Petition 2003-11 LCB File No. R-232-03:** This Petition proposes changes to NAC 486A: Fleets Use of Alternative Fuels. The amendment reflects changes made to NRS 486A made during the 2003 legislative session (AB 237). The changes include removal of low-sulfur diesel fuel from the list of designated alternative fuels and replacement with three diesel fuel variants; at the end of 2006 ultra low-sulfur diesel and California diesel sunset. Also, the petition removes the definition of "certified vehicle" and all references to certified vehicles in NAC 486A. The definition of "dedicated alternative fuel motor vehicle" was amended in statute to include vehicles certified by the EPA as being in compliance with ultra low-emission vehicle standards regardless of the type of fuel they use. By reference to the amended NRS (486A.060), a "certified vehicle" is now included in the NAC definition of "alternative fuel vehicle," making a separate definition of "certified vehicle" in the NAC unnecessary.

While regulated business and industry are unaffected by these changes, the proposed amendments will have a small economic effect (related to fuel costs) on State and local government fleets that acquire diesel fueled vehicles to comply with this regulation beginning with State Fiscal Year 2004. The regulations will otherwise not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**7) Petition 2003-12 LCB File No. R-233-03:** This Petition proposes changes to the permitting provisions of NAC 445B – Air Pollution Control. The amendments will require public notification of certain minor revisions to Class I operating permits as well as certain Class II operating permit applications and revisions to allow public comment pursuant to Clean Air Act Title I. The amendment will increase fees for processing Class I and II operating permits revisions and renewals; fees will cover the costs of implementing the public notification requirements. The amendment will also increase timelines for issuance of such permits and revisions. Federal regulation requires public notice of permitting actions for minor sources of air pollutants and minor revisions to Class I operating permits. The amendments will better align the NAC with the Applicable State Implementation Plan (ASIP) and thus allow EPA to approve an updated ASIP.

While the proposed amendments will have no measurable economic effects on the public, the proposed changes will affect both major and minor stationary sources of air pollution. Since there will be additional costs to the agency for implementing these public notification requirements, fees will increase by \$500 if the public notice includes publication in statewide newspapers and mailing to interested parties and \$350 if the public notice can be sent electronically. The amendments being proposed will not restrict the formation, operation, or expansion of the regulated industry, nor does it overlap or duplicate any regulations of other state or government agencies; the amendment is also no more stringent than what is established by federal law.

**8) Petition 2003-13 LCB File No. R- 237-03:** This Petition proposes changes to NAC 445B.22067, Open Burning. The amendments would prohibit the burning of household trash at single-family residences within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. Open burning of yard waste and untreated wood waste would continue to be allowed in these areas. The amendments would also prohibit the burning of rubbish by agricultural operations within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. The amendments would further prohibit residents of certain towns and cities from obtaining a variance from the NDEP to burn waste, if local authorities do not authorize it. Burning of yard waste and untreated wood waste is allowed in these areas if authorized by an officer of the state or its political subdivisions and concurred with by the director. The amendments are necessary to protect human health from the harmful effects of toxic pollutants such as dioxin that are produced when household waste or rubbish is burned. Removing NDEP's authority to issue open burning variances is necessary to ensure consistency with open burning decisions made by local authorities.

These amendments will have an economic impact on agricultural operations that use open burning to dispose of waste. Costs will vary depending on the volume of trash created by individual operations and the rates charged by the local collection and disposal service. Cost impacts will be similar for single-family residences. There will be no additional costs to the agency for enforcement of these amendments, the regulations do not overlap or duplicate other state requirements, and the amendments do not address fees.

**9) Petition 2003-14 LCB File No. R- 238-03:** This Petition proposes changes to permitting provisions of NAC 445B dealing with Class II and Class III operating permit renewal timelines. The amendments will require Class II sources to submit an application for renewal of an

operating permit at least 70 to 140 days before the permit expires, depending on the public notification timeline. It will also require Class III sources to submit an application for renewal of an operating permit at least 40 days before the permit expires. These amendments are necessary to make the renewal timeline for Class II operating permits consistent with revisions to NAC 445B.3457. The proposed changes will also ensure that Class III renewals are submitted with sufficient time for processing before they expire.

These proposed regulations will have no economic effects on the regulated industry or the public; there will be no additional costs to the agency for implementation, and the amended regulations do not overlap or duplicate any regulations of other state or government agencies. The regulations are no more stringent than what is established by federal law and they do not address fees.

### **Public Hearing Process & Information:**

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption."

Persons wishing to comment on the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library and Archives, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 1771 E. Flamingo, Suite 121-A, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notices have been deposited electronically at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition, the State Environmental Commission maintains an Internet site at <http://www.sec.nv.gov/index.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 p.m. on February 19, 2004.

This public notice has been posted at the following locations: the Department of Wildlife and the Washoe County Library in Reno, the Clark County Public Library and Grant Sawyer Office

Building in Las Vegas, and the Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. (These notice requirements comply with NRS 233B.0603 and NRS 233B.064.)

**STATE ENVIRONMENTAL COMMISSION (SEC)**  
**Meeting of February 26, 2004**  
Nevada Department of Wildlife  
Reno, Nevada

**MEMBERS PRESENT:**

Melvin Close, Chairman  
Alan Coyner, Vice Chairman  
Terry Crawford  
Demar Dahl  
Don Henderson  
Ira Rackley  
Richard Reavis  
Steve Robinson

**MEMBERS ABSENT:**

Mark Doppe  
Hugh Ricci  
Joey Villaflor

**Staff Present:**

William Frey, Deputy Attorney General  
Susan Gray, Deputy Attorney General  
John Walker, Executive Secretary  
Sheri Gregory, Recording Secretary

Chairman Close called the meeting to order. He noted that the agenda had been properly noticed in compliance with the Nevada Open Meeting Law and that there was a quorum.

**I. Approval of Minutes from the September 18, 2003 SEC Meeting**

On motion of Vice Chairman Coyner the Commission unanimously voted to approve the minutes.

**II. Regulatory Petitions**

Following the meeting agenda, Chairman Close requested that a representative from the Nevada Division of Environmental Protection (NDEP) present the "first" regulatory petition; Mr. Mike Elges, Bureau of Air Pollution Control (BAPC) responded and made the presentation for Petition 2003-07.

**Air Pollution Control Petitions**

**Background for Petition 2003-07 (LCB File R198-03).** This regulation changes the permitting provisions of NAC 445B - Air Pollution Control. The regulation provides a sunset provision for

the exception to visible emission rules that is currently allowed for boiler lancing or soot blowing at fossil fuel or wood fired steam generating units. It removes the state visibility standard; make violations of the fugitive dust regulations a major violation after the first offense; and revises the procedures for determining when an application for a Class I/PSD operating permit is considered complete. The regulation requires public notification of certain minor revisions to Class I operating permits, as well as public notification of certain Class II operating permit applications and revisions to allow public comment pursuant to the Clean Air Act, Title I. The regulation increases timelines for processing Class I and II operating permit revisions and renewals, depending on the new public notification requirements; and makes several clarifications and technical corrections.

### Staff Discussion

Mr. Elges introduced the Petition to the SEC members along with Exhibit 1. Exhibit 1A address certain changes to the Petition that were identified through public workshops conducted by the BAPC.

### **Section 4 NAC 445B.22097 – Proposing clarification to minimum standards of air quality.**

Staff reported Section 4 proposes clarification to minimum standards of air quality. The discussion centered around the fact that there is an existing hydrogen sulfide standard in Nevada, but not a national standard and how that relates to determinations of attainment or non attainment for facilities. Because there is no federal standard for hydrogen sulfide, there would not be any declaration by EPA that any areas of the State would be in attainment or non attainment. It was also noted that the visibility standard struck in Exhibit 1A is being replaced by a federal rule, the regional haze rule that was adopted in 1997 by EPA. Staff is currently in the process of developing a State Implementation Plan for that rule that's required by EPA to be submitted to them at the end of 2007. Adoption of the petition would remove the state standard, but the federal standard would remain.

### **Section 6 - Changes in penalties – fugitive dust violations. After first offense – becomes major subject to bureau's penalty matrix.**

Staff reported section 6 reflects changes in penalties for fugitive dust violations. After the first offense it becomes a major violation subject to the Bureau of Air Pollution Control's penalty matrix. Any non-administrative penalty can go up to \$10,000 per day per violation. Realistically, a penalty under the current penalty matrix, the maximum staff felt that would be calculated for a very egregious dust violation was on the order of about \$6,000. The average major violation through the penalty matrix for a fugitive dust offense would be right around \$1,000.

Staff reported there was a very broad cross-section of input, including the regulated community, industry, and concerned residents that may be impacted by land disturbance. Also the agricultural community voiced concerns that this may be a change in the way staff have worked with them in the past. SEC Commissioner Don Henderson stated he recognized that agriculture has an exemption on fugitive dust and he wanted to go on record saying that a protocol with

agricultural situations has been worked out where the appropriate agencies can come in and look to see if “Best Management Practices” have been applied and that protocol is not replaced by any current changes being proposed. Staff concurred with Commissioner Henderson. Staff pointed out that all violation penalties come to the Commission for ratification.

## **Public Comments / SEC Discussions & Staff Responses**

Alan Kalt, Acting Churchill County Manager expressed concern related to fugitive dust in agricultural practices. He wanted to confirm that this in fact does not affect farming community relative to fugitive dust as long as they are following the Best Management Practices in the agricultural way of farming.

Commissioner Henderson stated that was his concern too, but with the comments heard and working with staff he feels comfortable with the situation.

Andrew List, Nevada Association of Counties expressed concerns about the fines for fugitive dust control that would be levied upon a second violation, changing it to a major violation and subject counties to \$10,000 per day fine. He was concerned about the impact of that upon the counties, particularly Humboldt County which has many miles of public roads which would have a potential for a lot of fugitive dust problems. He felt the fines simply shifts tax revenue from local county governments to state government.

Allen Biaggi, NDEP Administrator explained that it is a maximum fine of \$10,000 per day. Very rarely is the maximum fine applied. The range of fines for a major category is \$0 to \$10,000. NDEP tries to work with the facilities and counties and with the industries to resolve the issues. At past meetings, the Commission told the Division that the penalties are not substantial enough, and not getting the attention of the regulated community in controlling dust. This would move it forward from a three-strike provision to a one-strike provision. Maximum fines would not be applied in those instances, but the provisions of NDEP’s enforcement policies would be applied.

Allen Biaggi continued, noting that NDEP has always worked with the counties, local governments and agencies before fines are levied. Fines are not shifted from counties to the state – under air quality provisions, fines that are levied as a result of air quality go back to the county where those fines occurred. It would go back to the school district of Humboldt County if those fines were levied in Humboldt County. Mr. Biaggi noted that the intent is not to be punitive, but to get attention of the necessary county officials or private industry officials to address the dust issues so that they don’t present a health problem. The State Environmental Commission has the final say over levying fines with regard to air quality.

Russ Fields, Nevada Mining Association (NMA) stated that the NMA supports the changes with one exception, Exhibit 1 page 15, Exhibit 1C – public notice regarding minor revisions to Class I Operating Permits. NMA agrees with such modifications, when they attain the level that the Director (DCNR) has determined, requires public notice. NMA agrees with having only one public notice for minor revisions. Mr. Fields noted that what the proposed changes has the

potential of doing is stacking up to three public comment periods one upon the other, 30, 60, 90 days. The recommendation from the NMA with regard to these sections on page 15 and 16, 3(h), remove (h), which is the second public comment period and remove 5( c), which is on page 16 of the exhibit, which sets the stage for a third public comment period.

Allen Biaggi, NDEP Administrator committed to Mr. Fields that if he will agree to allowing the petition to move forward as is, NDEP will work with NMA in the intervening time between now and the next Commission meeting and come forward with suggested regulation changes that are satisfactory to the NDEP, EPA, NMA and the SEC.

Mr. Fields agreed to allow the petition to go forward with NMA support with the understanding that NMA will go back with the staff and look at possible revisions to those minor revisions and come back to a future SEC meeting.

## **SEC ACTION**

On motion of Commissioner Coyner, the Commission unanimously voted to adopt Exhibit No. 1 as amended.

On motion of Commissioner Henderson, the Commission unanimously voted to adopt Petition 2003-07 as amended by Exhibit 1.

***Further action was taken on Petition 2003-07. Please see discussion and SEC action after 2003-06.***

## **Air Quality Planning Petitions**

Next -- Chairman Close requested that a representative from NDEP present the "second" regulatory petition; Mr. Sig Jaunarajs, Bureau of Air Quality Planning (BAQP) responded and made the presentation for Petition 2003-11.

**Background for Petition 2003-11 (LCB File R232-03)** This Petition is a permanent amendment to NAC 486A: Fleets Use of Alternative Fuels, The amendment reflects changes made to NRS 486A made during the 2003 legislative session (AB 237). The changes include removal of low-sulfur diesel fuel from the list of designated alternative fuels and replacement with three diesel fuel variants; at the end of 2006 ultra low-sulfur diesel and California diesel sunset. Also, the petition removes the definition of "certified vehicle" and all references to certified vehicles in NAC 486A. The definition of "dedicated alternative fuel motor vehicle" was amended in statute to include vehicles certified by the EPA as being in compliance with ultra low-emission vehicle standards regardless of the type of fuel they use. By reference to the amended NRS (486A.060), a "certified vehicle" is now included in the NAC definition of "alternative fuel vehicle," making a separate definition of "certified vehicle" in the NAC unnecessary.

## **Staff Discussion**



Mr. Jaunarajs introduced the Petition to the SEC members. Staff recommended the definition of an alternative fuel include any fuel which is listed in NRS 486A.030. This is the portion of the statute which was amended to include three diesel fuel variants as well reformulated gasoline. Staff also recommended the definition of a certified vehicle be stricken from the regulations.

Public workshops were held. Members of the public and the regulated fleets were included. Comments were received from the regulated fleets. Those comments focused on how the regulated fleets would be able to comply with this statutory change. NDEP staff has determined that they will be able to assist all those fleets with their compliance issues and at the same time maintaining complete consistency with the new statutory requirements.

### **Public Comments / SEC Discussions & Staff Responses**

There were no further comments.

### **SEC ACTION**

On motion of Commissioner Reavis, the Commission unanimously voted to adopt Petition 2003-11.

### **Air Quality Planning Petitions (Continued)**

Next -- Chairman Close requested that a representative from NDEP present the "third" regulatory petition; Mr. Sam Jackson, Bureau of Air Quality Planning (BAQP) responded and made the presentation for Petition 2003-13.

### **Background for Petition 2003-13 (LCB File R237-03)**

This petition is a permanent amendment to NAC 445B.22067. This regulation prohibits open burning of any combustible refuse, waste, garbage, oil, or burning for any salvage operations. The regulation does allow open burning for the purpose of weed abatement, conservation, disease control, game or forest management, the elimination of hazards, or for open burning of yard waste and other untreated wood waste. Such actions must be approved in advance by the Director of the Department of Conservation and Natural Resources. The regulation also allows opening burning for agricultural purposes and management except where prohibited by local ordinances or regulations. As well, it allows open burning at single-family residences in all areas of the state except in and within 1 mile of the boundaries of selected towns and cities named in the regulation. Moreover, in these areas, open burning is allowed only if authorized by the State of Nevada or its political subdivisions and concurred with by the Director and not specifically prohibited by local ordinances or regulations. The regulation allows small wood fires for recreational, educational, ceremonial, heating or cooking purposes, and it requires that open burning be attended and controlled at all times to eliminate fire hazards. Except as otherwise provided, open burning in any incinerator (NAC 445b.2207) other than the multiple chamber type is prohibited by this regulation.

## Staff Discussion

Mr. Jackson introduced the Petition to the SEC members along with Exhibit 2. Exhibit 2 addresses certain changes to the Petition that were identified through public workshops conducted by the BAQP.

Staff reported the proposed amendments include four main changes. The first change is the burning of household trash and agricultural rubbish within 10 miles of landfills, transfer stations, waste bins and in areas with household trash pickup availability. The second change limits the Director's discretion in approving an open burn variance. The third change disallows the Director from approving an open burn variance when prohibited by local authority. The fourth change eliminates the Director's discretion in approval of incinerator types. The fourth change is in 445B.2207 and is the change that Mike Elges asked to have stricken from Petition 2003-07.

Staff believes the proposal is good public policy and would benefit human health throughout Nevada. Burning household trash is the number 1 source of dioxin in the nation. Risks associated with exposure to dioxin levels were explained. The potential financial impact of the proposal was recognized and staff sought to minimize economic hardship. Staff limited the proposed burning ban to a 10 mile radius, rather than the statewide ban imposed in nearby states, thus avoiding the hardship in hauling trash long distances. The proposal was limited to garbage burning which produces significant amounts of dioxin and other toxins. The proposal did not effect the burning of weeds or other vegetation which are recognized as a very valuable tool to farmers and landowners throughout the state.

Public workshops were held in various locations. Workshop notices were sent to county commissioners and fire protection districts and local newspapers were notified. Additionally, NDEP staff held a workshop with the Department of Agriculture's Environmental Action Committee. A number of issues were raised. Staff also received several phone calls and written comments, which were made part of the record. Several individuals and groups were opposed to the trash burning portion of the proposal and cited economic impacts as their primary concern. There were concerns that disallowing trash burning would increase in landfill and transfer station costs to be passed on as a tax increase, increased trash collection and disposal fees and the cost of extra trips to the disposal site. Environmental impacts were also a common concern, including an increase in illegal dumping and litter. Another concern was the cost and logistics involved in the enforcement of the proposed regulation. It was noted that physically disabled people might have difficulty complying with the regulation as it may have resulted in additional loading and unloading of trash. The over-regulation of rural areas by state government was also a frequent concern. There was some feeling that the health effects data were exaggerated. Some people spoke in favor of the proposal citing acute respiratory effects as a result of nearby trash burning as well as odors infiltrating their homes and properties. Many fire protection districts cited fire safety concerns and nuisance complaints as primary reasons they supported the regulation change.

Based on the public comments, staff requested removal of the proposed amendments to limit trash burning. Several individuals and organizations as well as local newspapers throughout the state were notified of NDEP's decision to remove the amendment. Nevertheless, NDEP

believes that the burning of household trash poses a significant health hazard. NDEP will continue to research the issue, hold more workshops, conduct additional public outreach and work with Nevada communities to address these issues in coordination with the Bureau of Waste Management.

Staff requested that the remaining three changes outlined in Exhibit 2 be adopted. These three changes are unrelated to the trash burning proposal.

## **Public Comments / SEC Discussions & Staff Responses**

Commissioner Dahl asked questions regarding the proposed changes and how those changes would be applied.

Colleen Cripps, Bureau Chief, Bureau of Air Quality Planning explained the proposed petition doesn't really change the current regulations. The list that contains communities that require concurrence by the local entity or approval by the local entity and concurrence by the Division is the way it is currently working. The local fire protection districts in these areas call NDEP, NDEP provides a variance for that community, and that's NDEP's concurrence, and then local entities have their own ordinances under which they allow the burning to actually occur. Burn barrels are still allowed but they are regulated by the local fire protection districts. This is not a change to what NDEP has been doing all along.

Vice Chairman Coyner asked how a town is added to or deleted from the list.

Sam Jackson explained these were the original towns/cities and areas that were on the list, with the exception of Douglas County. A town can request to be on this list if they wish to be.

Commissioner Dahl asked what changes staff was proposing.

Ms. Cripps outlined the changes as follows and noted that the changes don't affect the way burning is done within a local community.

1. Modifying the language to clarify when burning is allowed. The way the language currently reads it's in the negative so it provides a lot of exceptions and when the exceptions don't apply. The language is very confusing making it very difficult for NDEP, as well as the regulated community, to interpret.

2. NDEP is required by EPA to eliminate the Director's discretion. EPA is requiring the NDEP set some sort of boundaries on that discretion. Section 2(a) reflects that change.

3. Political subdivisions - NDEP was seeing cases where individuals were requesting variances for open burning that were in direct conflict with local ordinances. NDEP wanted to make it clear in regulations that it could not supercede decisions made by local entities with regard to open burning in those communities. Provisions for Douglas County have been modified in that list of communities, based on requests NDEP received from the local fire

protection district. In order to be consistent with the local ordinances, they requested that NDEP include the previous list of Minden, Gardnerville, Johnson Lane, etc. as Douglas County overall.

Alan Kalt, acting Churchill County manager, stated Churchill County supports the modified petition (Exhibit 2) and believes the vast majority members of citizens would as well. He commented that Commissioner Dahl had brought up an interesting point in Churchill County. In Churchill County, outside the city limits, open burning in burn barrels is allowed. The one-mile rule has not been enforced. Churchill County had a lot of concerns with regard to the original petition. Churchill County appreciates and understands the environmental concerns that are raised by open burning. That needs to be addressed. One of the overriding factors was cost implication, the economic impacts in the effort to try and clean up the desert. Churchill County has a problem with illegal dumping. Churchill County feels that had mandatory trash pickup de facto been imposed, which is what the first petition would have required, there would have been an increase in the amount of illegal dumping. Churchill County is trying to minimize illegal dumping and clean up the desert and the public lands. Staff is recommending public education. Churchill County would be more than willing to work with NDEP in that effort. Perhaps we could get a group through cooperative extension to work on the issue of open burning. Several eyes have been opened as to the problem associated with toxins relative to open burning. Perhaps there are other solutions that could be worked at a local level with the county commission. If those problems can't be resolved, then look to the state or federal government.

Glen Miller, professor of Environmental Resource Science at the University of Nevada Reno, stated that the issue of incomplete burning products is really non-trivial. And all the other things that come out of burning inefficiently are non-trivial. There are some odor problems, but there is a health impact that needs to be realized. It isn't the same as 80 years ago – paper, maybe some petroleum products. Now there are drugs, chlorinated materials incinerated that could accelerate dioxin formation. There are all the other materials that just come off when you burn inefficiently. Incinerators are well run if the incinerator completely destroys these materials. Hopefully the Commission will revisit this issue. There are different kinds of chemicals now that come in products and the kinds of materials that are generated. We know about those now and they're not very healthy. The NDEP's work on this really very, very good in that the burn prohibition was something that Nevada has come up towards. He understands the difficult issue in rural communities, but wants to suggest this issue should come up again and at the very least there needs to be a very strong public education saying that burn barrels are not a good idea. It's time to deal with waste in a way that modern society requires.

Commissioner Henderson stated the approach he would like to see in addressing this issue on some of the points is to do some monitoring and find out where we have specific problems instead of just band-aided restrictions that apply to everybody.

Mr. Miller stated this is one of the ones where the cost to run a dioxin analysis, for example is \$1,000 to \$2,000. It's incredibly difficult to get any kind of data on site-specific areas. Cost is prohibitive. It's a question of how you regulate these things when there is a group of houses together when wind blows one way or another, depending on what the materials are that are burned in there. But they do represent some risk that is non-trivial. It's one of the regulatory

issues that is hard to get a good quantitative handle on because it is so site-specific and so specific on what people are burning.

## **SEC ACTION**

On motion of Commissioner Henderson, the Commission unanimously voted to adopt Petition 2003-13 as amended by Exhibit No. 2.

## **Hazardous Waste Petitions**

Next -- Chairman Close requested that a representative from NDEP present the "fourth" regulatory petition; Mr. Jim Trent, Bureau of Waste Management responded and made the presentation for Petition 2003-06.

## **Background for Petition 2003-06 (LCB File R104-02)**

This petition is a permanent amendment to NAC 444 and NAC 445, Hazardous Waste Regulations. The State of Nevada is authorized by the United States Environmental Protection Agency (US EPA) to enforce federal hazardous waste regulations. Between July 1, 2002 and July 1, 2003, the EPA approved revisions to existing federal hazardous waste regulations and published them in the Federal Register. The State of Nevada is required to modify its state regulations accordingly. The Nevada Division of Environmental Protection (NDEP) is proposing to incorporate these federal revisions into state regulations by adopting the applicable sections of the Federal Register as it existed on July 1, 2003. This regulatory petition affects NAC 444 and 445. Updating these regulations will allow NDEP to continue to implement the RCRA program in lieu of the federal government.

## **Staff Discussion**

Mr. Trent introduced the Petition to the SEC members. Staff reported the Bureau of Waste Management is proposing to update the adoption by reference of Federal Hazardous Waste Regulations and make minor updates and corrections to existing state regulations. A workshop to solicit public comment on the proposed regulations was held. No comments were received. Nevada adopts by reference the federal hazardous waste regulations. Since changes are continually made at the federal level, it is necessary to periodically update the reference to federal regulations in the NAC to remain authorized to enforce the federal regulations in lieu of the U.S. EPA. NDEP updates annually.

The new federal amendments include more consistent regulations for zinc, fertilizer products made from recycled hazardous waste secondary materials. Designation of a more appropriate treatment standard for radioactively contaminated batteries and technical corrections to existing hazardous air pollution regulations. The State has also initiated changes including clarifying language revisions (grammatical). Updated information regarding hazardous waste

identification numbers is proposed. Delete obsolete date references and the state antifreeze regulations. Finally, the spill reporting phone number is corrected.

### **Public Comments / SEC Discussions & Staff Responses**

Commissioner Henderson asked about the public hearing process and if there were any comments.

Mr. Trent stated there were no comments received.

### **SEC ACTION**

On motion of Vice Chairman Coyner, the Commission unanimously voted to adopt Petition 2003-06.

Lunch Break

### **Petition 2003-07(LCB File R198-03) - Revisited**

Next -- Chairman Close called the meeting back to order and requested that Petition 2003-07 be revisited. Ms. Jolaine Johnson, NDEP Deputy Administrator, stated that when the Commission adopted Petition 2003-07 with the provisions or changes that were presented in Exhibit 1, what was not addressed then was some proposals that Mike Elges had made to also make some other revisions to the actual petition. Those revisions included deleting Section 3 from the provision. The Commission has since adopted the open burning rules that address this issue. It would be appropriate to delete this. It doesn't do any harm either way at this point. Section 8 of the petition provided for revised fees for different scenarios, different types of applications that might require public notice. NDEP's proposal had been to delete that section also from the adopted regulation. Those fee increases would not be necessary with the other amendments that the Commission made to the petition through Exhibit 1. The third change to the petition was a suggestion under Section 16 that at this point, after further discussion with EPA, that this provision of the NAC did not need to be repealed. Staff is suggesting that we also delete Section 16 from the considerations that the Commission was making. Staff was asking the Commission to reconsider the petition and include those additional provisions.

### **Public Comments / SEC Discussions & Staff Responses**

There were no further comments.

### **SEC ACTION**

Chairman Close called for a motion to further amend Petition 2003-07 by deleting Sections 3, 8 and 16.

On motion of Commissioner Henderson, the Commission unanimously voted to amend Petition 2003-07 as stated above.

### **Hazardous Waste Petitions - Continued**

Next -- Chairman Close requested that a representative from NDEP present the "fifth" regulatory petition; Mr. Jim Trent, Bureau of Waste Management responded and made the presentation for Petition 2003-08.

### **Background for Petition 2003-08 (LCB File R208-03)**

This petition is a permanent amendment to NAC Chapter 444, Hazardous Waste Regulations. The Division is seeking specific limited changes to the state's definition of hazardous waste as defined at NAC 444.843. These changes establish and define two (2) subcategories of waste that are generated outside the state and will provide for more uniform regulatory treatment and equitable assignment of fees when such wastes are managed in Nevada. The two subcategories identified are remediation wastes and federally delisted wastes. The proposed amendments pertain to NAC 444.842 to 444.960, inclusive. The proposed amendments are needed to mitigate the effects of unequal regulatory treatment of some types of "hazardous waste" as currently defined and regulated by other states (namely, California) when compared to Nevada. The proposed regulatory action will allow Nevada to adjust (i.e., reduce) or amend the current fee structure, as it applies to wastes that are no longer hazardous wastes, such that hazardous waste disposal facilities in Nevada can more evenly compete for wastes in these categories.

### **Staff Discussion**

Mr. Trent introduced the Petition to the SEC members. Staff reported this petition concerns Nevada's definition of hazardous waste as it applies to certain out-of-state waste disposed at a hazardous waste management facility located in Nevada. If the Commission approves this petition, the result will be a reduction in the fees charged by Nevada for the disposal of these specific wastes. The wastes in question have been designated as hazardous in their state of origin, other than Nevada, but would not be considered hazardous waste if generated in Nevada. With respect to the management and disposal of these wastes, nothing is changing. The waste will still be managed and disposed with the same level of protection they currently receive. The reason for this fee reduction is identical to the reason of other fee reductions and changes that have been approved by this Commission and that is to make the fees charged at Nevada waste disposal facilities competitive with the fees charged in surrounding states, thus assuring Nevada businesses will have a viable in-state location to dispose of hazardous waste.

A workshop to solicit public comment on the proposed regulations was held. Written comments were received from Waste Management of West Sacramento, California, the Department of Energy in Las Vegas, the Toxic Assessment Group of Stewart's Point, California and Professor Glenn Miller of the University of Nevada. NDEP responded to all four parties. Letters supporting the proposed change have been received from Joni Eastley, Vice Chairman, Nye County Board of Commissioners, State Senators Mike McGinness and Dean A. Rhodes, State

Assemblyman Rod Sherer, Ray Bacon, Executive Director of the Nevada Manufacturer's Association and ten waste generating businesses. The resolution from the Nye County Board of Commissioners supporting the proposed regulation change was also received. Copies of all correspondence are included as an exhibit to this petition (Exhibit 4).

Note, the current version of the petition is marked "revised proposed." This is because the original language of the proposed regulation was revised in response to specific DOE comments. DOE was concerned the wording of the original version might be subject to unintended interpretations. NDEP worked with DOE to prepare the revised proposed version and they now have no objections to the change.

Specifics of the petition include defining the terms delisted waste and remediation waste, respectively, by referring to existing federal regulations. Delisted wastes are wastes from a specific facility or process typically industrial or manufacturing where the operators have demonstrated to the satisfaction of EPA that the waste stream does not pose sufficient hazard to warrant RCRA regulation as a hazardous waste. Remediation wastes are solid and/or hazardous wastes that are managed for implementing a voluntary or state-directed cleanup. Soil, rubble and debris from a gas station or old factory clean up are examples of remediation waste.

Current state regulations define all waste designated as hazardous by another state as hazardous when brought into Nevada. The proposed petition modifies the existing state regulation to provide a conditional exclusion for out-of-state remediation and delisted wastes from designation as a hazardous waste in Nevada provided they are not RCRA hazardous wastes. That means they would not be considered hazardous waste if generated in Nevada.

All three conditions in paragraph 3 must be met for the waste to qualify for the conditional exclusion. They must be delisted or remediation waste, they must not be federal hazardous waste, and they must be disposed at a facility for the management of hazardous waste.

Nevada's manifest requirements will not change as a result of this proposed revision. While the waste when disposed may qualify for the conditional exemption from the State definition of hazardous waste at NAC 444.843, for the purposes of assessing disposal fees, the State definition of hazardous waste covering generation and transportation at NAC 44.8565 remains unchanged. Thus, since the waste in question has been designated as hazardous waste by another state, they would still need to be manifesting during transport to a hazardous waste management facility in Nevada.

The intent of the change is to modify the fee charged for disposal of certain wastes. The wastes in question are presently charged a rate of \$17.64 per ton by the State of Nevada. If this proposed change is approved, a \$3 per ton charge will be assessed through the lease agreement with US Ecology. The \$3 charge compares favorably with California's currently \$5.72 per ton charge. The proposed change in no way lessens requirements for waste characterization, pre-acceptance criteria or broaden the types of waste that the Beatty hazardous waste facility is currently permitted to manage. These changes will help the Beatty



facility maintain a competitive presence in the region and support ongoing hazardous waste disposal capacity in the State.

## **Public Comments / SEC Discussions & Staff Responses**

Joni Eastley, member of the Nye County Board of Commissioners stated within the last 90 day period the Nye County Board of Commissioners took formal actions to demonstrate its commitment to US Ecology and its support of the proposed change to NAC Chapter 444. The first thing the Nye County Commissioners did was amend Nye County's ordinance (No. 279) which became effective January 26, 2004 which amended US Ecology's load fees from \$55 a truck to \$.80 per ton. The second formal action that the Nye County Commission took in support of this was passing Resolution No. 2003-41 which became effective on January 6, 2004. This was a resolution supporting NDEP's modification of existing state regulations to establish and define two subcategories of waste that are generated outside the State of Nevada.

Nye County supports what US Ecology is doing in Beatty. They have proven themselves over the last 40 years to be a very good corporate neighbor. They provide many services and benefits, not only to the residents of Beatty, but also to Nye County. The Nye County Commission believes that approval of this amendment to the NAC will create a level playing field with other states and will allow US Ecology to compete thereby strengthening an already shaky local economy.

Stephen Romano, president of US Ecology and president and CEO of American Ecology, gave a Power Point presentation. There are 18 RCRA hazardous waste sites in the nation presently, three of these sites are operated by their company, Idaho, Texas and the Nye County facility at Beatty. There are several reasons we believe the Beatty facility benefits Nevadans. It is a safe cost-effective disposal facility for hazardous and industrial wastes that are generated in this state. It is a source of well-paying jobs in a rural area that has been damaged by declines in the mining industry locally. It is an important source of revenue for the NDEP for regulatory programs in the hazardous waste area that go beyond the regulation of this facility. In 2002 these fees totaled \$1.5 million approximately, and in 2003 these fees totaled \$1.4 million to the NDEP. In addition, we contribute about \$5 million a year to the Nevada economy through payroll, the state fee, local fees, and also the purchase of goods and services.

The Beatty operation is losing money under the current fee structure, the facility is not economically viable. Hazardous waste volumes are declining nationally. This is the intention of the Resource Conservation and Recovery Act. As a nation we are producing less hazardous waste. The Beatty site is disadvantaged by both higher state fees and also a major transportation cost disadvantage in terms of distance from waste within the region in which US Ecology has to compete. The Beatty site lost money in 2003 and also in 2002. The company as a whole, is healthy economically, but this facility has not been healthy economically for some time. As a publicly-traded company we have an obligation to maintain profitable operations for our shareholders as we face the future. As we fill out the existing disposal space, as we look to the investment in building the next disposal area in accordance with the strict requirements for containing the waste, this would be about a \$4 million investment. It is not an investment that our Board of Directors is in a position to support if the site continues to lose money.

There have been fee adjustments in the past, the last adjustment was in 1998. In order for this facility to be economically viable, it's a rather simple matter, we must be able to compete for a larger portion of the California waste stream. It is the largest source of hazardous and industrial waste in the west and currently we are at a significant disadvantage.

Transportation cost differences within the three California markets, Sacramento, Oakland, the Los Angeles basin area, we are disadvantaged by a minimum of \$25 per ton. There are also US Department of Transportation regulations affecting hours of service for truck drivers that will make a one-day turnaround more difficult to accomplish and provides another disadvantage to us in competing.

The lion's share of the regional hazardous and non hazardous waste that we compete for along with our competitors in California and Utah and in Arizona, the lion's share is clearly California. Even if you take Utah and Nevada and combine them, there would not be sufficient waste for this facility to be economically viable. As mentioned with hazardous waste volumes being reduced nationally there is also much more competition for what waste there is out there.

Disposal facility tonnages from 2001 – the site in California is by far the largest capacity facility in terms of tonnage accepted and the Beatty, Nevada facility is one of the smallest. I particularly want to draw the Commission's attention to the information on ECDC, a facility in Utah. This is the waste in question, it's California remediation waste and it is again waste which would not be hazardous if produced in Nevada. It is hazardous if produced in California. Currently, a quarter of a million tons of this waste in 2001 crossed the State of Nevada from California on its way to disposal to Utah with no benefit to Nevada whatsoever. It makes sense for some portion of that material to have an opportunity to not travel all the way across Nevada to go to the Beatty facility where the benefits can be achieved by disposing of that waste and maintaining this site's economic viability.

The goal is to restore Beatty's profitability for a very targeted fee reduction. Rather than some broad across-the-board reduction, which we thought would be difficult to project, we wanted to meet several goals. First, that this would be revenue positive to the State of Nevada. We would target very specific, very narrow waste categories where we really do not get much of that waste today, so we would look to earn new business and therefore generate new fees. Second, we thought it was important that there be absolutely no relaxation to the existing requirements to protect public health and the environment. As testified by NDEP there is no change whatsoever in the way this waste will be handled. Also there will be no change in the types of waste produced. And finally, one of the two categories, the delisting category is to reward the Beatty facility for using an EPA approved delisting technology or a specifically approved technology to take hazardous waste and treat it so that it is non hazardous and therefore be delisted and no longer considered hazardous be used. Our company has access to a Bethlehem Steel patent which we use at our Idaho facility to treat steel mill waste and delist it. It's a proven technology. We would like to adopt that technology here in Beatty in order to compete for some of the steel mill waste we currently cannot compete for.

Specifics of the petition – the definitions would affect remediation and delisted waste. It would go to a \$3 per ton fee for the delisted category and again this is making it non hazardous waste per the EPA and the second category in the remediation waste category would be the reduction mentioned from \$17.64 to \$3 a ton. If the same waste, if produced in Nevada, would carry a fee of \$1.50 a ton. This is in the competitive range of what is in other states while facing a transportation disadvantage.

Impact on the amount of waste in addition that we bring in and also on the amount of extra fees we believe may result from this. This does require some judgments in projections. We project turning first to the remediation waste, out of the 900,000 ton a year market, we would be able to compete and win perhaps 7 to 12 percent. The transportation disadvantage of \$25 a ton or more is the reason we do not project a larger amount. We're looking here at anywhere from an additional 63,000 to 108,000 tons of waste which would translate to somewhere between \$125,000 and \$260,000 in additional revenue to the State of Nevada. The second category is a much smaller market, the steel mill waste. We believe that we may be able to compete for about 5,000 tons of this waste, this would produce about \$15,000 a year in revenue.

A variety of Nevada businesses are in favor. Two California businesses have written asking for the opportunity to see more of a level playing field from a competitive standpoint.

In conclusion, we believe a fee reduction is needed to restore Beatty to profitability. Large amounts of California waste are crossing Nevada to Utah with no benefits currently. The transportation disadvantage will place a practical limit on how much additional waste will really be received. There is support for this fee reduction by Nevada businesses that produce the waste to maintain what essentially is basic business infrastructure for the manufacturing economy and other industrial activities. We do project a net increase in State revenue.

A discussion ensued between a few of the Commissioners and the representatives of US Ecology regarding the current tonnage currently received per year, the separate fee categories and the fact that only two fee categories would be changed by the proposed petition, the remediation waste and the steel mill waste categories. The current gross revenue and projected revenue if the proposed petition was adopted were discussed.

Glen Miller, professor of Environmental Resource Science at the University of Nevada Reno, stated there has been a regional plan to manage hazardous waste that is appropriate, cooperation with the Western Governor's Association which has been strongly supportive of having waste management not based on fees, but on Best Management Practices. This changes that in a dramatic way. We would be getting into the position now as a State of competing for the bottom. Are we going to compete based on price? Appropriate waste management always is going to consider price, but with this fee structure that's being proposed and the changes we're going to make Nevada an attractive place to bring hazardous waste and we're going to do it by reducing the amount of money that we generate.

One of the concepts that I think a lot of us agreed with is that the state of origin gets to define what that waste is. Certainly California has an extensive number of scientists in their environmental protection organization in California understands what the risks are of these

wastes. Perhaps it goes without saying that their staff is substantially greater than what we have in Nevada. They continue to define this as a hazardous waste. I would agree that particularly remediation wastes generally are not particularly problematic, but California defines it as hazardous waste and the argument is should we change our definitions? Are we smarter than they are so that we can change our definitions so that will be imported in the State of Nevada?

Second issue is the fee change. This is mostly about money. We now all of us are involved in hazardous waste generation, look to ways to minimize that because it costs a lot of money. It is a triumph, so the amount of hazardous waste being generated is actually going down because it's a smarter processes, changing things around to minimize the amount of hazardous waste generated. For us in Nevada to say that we're losing our hazardous waste business and we need to drop our prices is going to get into a bidding war with the other states. It simply doesn't make any sense for us to propose regulation that is going to drop the waste fee so that we're going to get more than our share of hazardous waste. It is not an issue of appropriate hazardous waste management in Nevada. It is a business issue. I'm very concerned about that. What's to keep the other states from dropping their fees even further?

Nevada's fee of \$17.50 probably is high, some argument for changing that number down to \$3 a ton with the expectation there's going to be sufficiently more waste that's going to make up for that. That is speculation. Usually remediation waste, the differential between \$5.72 and \$3 may not make a huge amount of difference of where that waste is going to be delivered. I think the speculation of how much additional waste we're going to get is something that may or may not come to pass. At any rate it may change the amount of money that we have to operate hazardous waste in the Division and I think that should be a fairly substantial concern.

Benefit to the people of the State of Nevada – going concern, Beatty site is a very good site. Politicians have been elected on keeping bad things out of the State of Nevada. Current newspaper contains article where officials question radioactive waste plant for low-level radioactive waste again. It's not very problematic waste, but to keep it from going from a site in Ohio this morning in the newspaper. At the same time the Environmental Commission is looking at changing regulations to allow a dramatically increased amount of hazardous materials coming into the State of Nevada. Would this be the will of the people of Nevada?

Fourth point – Increasingly difficult time for anyone to take us seriously. To go into a price war to get more hazardous waste delivered into your state doesn't suggest that you're really serious about maintaining waste practices that are based on best management. It just says we want that waste because it makes us money. It's going to be hard to argue on some of the other issues if we do this.

Suggestions – sees no inherent reason why the fee structure couldn't be changed without redefining the waste. If the manifests are all going to be there, perhaps there's another way of looking at it so it's still defined as hazardous waste, the fee structure comes down into a more reasonable area. Making it lower than California doesn't make any sense, because again we should always look to this issue of best management of that particular waste. It should not be based on the fee structure. Why not redefine these wastes the same way California does? Call

them hazardous waste, but call them remediation waste, delisted waste and do the same thing California does, so there's an across the board and use the same fee structure as that they have so that there would be an even playing field.

But redefining a hazardous waste or changing our regulation in such a fundamental way that says we'll take stuff that California calls hazardous waste bringing it into Nevada and say we're smarter than they are we don't care about that I think is a major policy change that I think everyone should think twice about.

Mr. Trent reiterated the fee, \$17.64 is composed of five different parts. Only two parts of that is the Commission at liberty to change. Other parts are in statute and a third part has a statutory minimum that is set by the lease. In terms of looking at this we thought the simplest way was to refine the definition. A change in the regulation versus statute, if economic conditions should change we can respond and revise regulations accordingly. Though California has designated these wastes as hazardous they do not meet the federal criteria. I think that's an important point to drive home that in Nevada they would not be hazardous wastes if generated here.

Chairman Close asked how are we changing remediation waste definition?

Mr. Trent stated we're not changing the definition. I think what we're doing is defining it so that we can exclude it from the definition of hazardous wastes that is imported from another state. Our state designation, the definition of hazardous waste which appears in several places in our state regulations includes the provision that if it's designated as hazardous in another state its hazardous waste when it gets to Nevada. So what we're proposing here is to provide an exclusion for these narrowly defined wastes and before we could provide the exclusion we had to provide a definition for them in our State regulations. We've chosen 40 CFR which is the federal regulations that we adopt by reference. Those would be the working definitions that we use in NDEP for those wastes. If these same wastes were generated in Nevada they would not be deemed hazardous, only if they're imported.

The question was asked about how much waste that would normally be going to Beatty from Nevada producers is going out of state. The answer was about 50 percent of Nevada's waste is going to the Beatty facility. This is primarily from Las Vegas, with Reno's waste going to Utah and California because geographically, the economics of the transportation plays a large role.

A discussion ensued between Mr. Miller and members of the Commission regarding whether or not it is the correct forum for the discussion, the SEC's authority and maintaining consistency with the US EPA. Mr. Miller was suggesting perhaps it would be better to be heard by the legislature and make it consistent with California. He also expressed concern about importing a lot more into State of Nevada and how people will perceive it.

Allen Biaggi, NDEP Administrator stated it's not unusual for SEC, fees have been raised and lowered for the Beatty facility and waste imported and exported in Nevada for many years since the Beatty operation has been in operation. The SEC is not really charting any new ground. You're responding to the market conditions like you have before and modifying the fees appropriately to make this operation a continued going concern. These materials are still going

to be managed as a hazardous waste at this facility. It's a RCRA facility. It's double lined. It's got all of the appropriate monitoring and proper requirements to ensure these wastes are managed properly and don't present a risk to human health and the environment. If that wasn't the case we wouldn't be supporting this and we wouldn't be coming forward with it. The regulation that makes importation of out-of-state waste hazardous waste is a regulation of this body and of this commission of a decision that was made some time ago. The SEC also has that ability to modify that regulation and that is what is before you today certainly within your statutory and regulatory authorities for the State of Nevada.

Joe Johnson, former SEC member, reminded the Commission that they were being asked to change a definition and not to set a fee. The fee will be established in a contractual basis and will not come to the SEC. The SEC is deciding to make a change in the definition of what the established fees cover. This will be a negotiated fee. The SEC wouldn't have opportunity to change fee. Whatever they agree to under contract that would be the basis of the revenue of the new type of material. He believes the definition and change relates to the Western Governor's agreement about interstate actions. He agrees material it's a definitional and conceptual thing. Point of reference that SEC won't really have the option to come back in next year on the fee structure, if indeed they don't get the additional revenue. It's a valuable site. And this effort to see it stay there is laudable, it's just how it's structured could be problematic.

Mr. Biaggi pointed out that California periodically modifies their fees, and they don't consult Nevada when they do that. We haven't consulted Utah and California in our fee adjustments either.

Mr. Trent stated the Western Governor's Association (WGA) resolution is mentioned in correspondence. He spoke to people at WGA and found out that there was a resolution that had been passed some years back and the gist of it was that states should try and provide for the instate disposal of their hazardous waste. We think this act is consistent with that because we're trying to keep Nevada's one commercial hazardous waste facility open and viable. Some of the amendments regarding this resolution had expired and not been renewed.

Commissioner Crawford stated governors agree we ought to take care of our own waste instate as much as possible. The Beatty site will not be kept open on just what's produced in Nevada.

Mr. Trent stated NDEP believes it's important that Nevada has a viable instate option for hazardous waste disposal.

Gordon Puckett, speaking as citizen, expressed concern about the agenda containing a statement that there was no economic impact. He felt that the whole discussion is about economic impact. He is also concerned about future impact of change in regulation. He wanted the Commission to make sure the proposed change doesn't have any adverse effect on the future disposal of our waste in Nevada.

Commissioner Reavis stated his understanding of the proposed petition would establish two new classifications that are consistent with EPA's classification of waste. The SEC is not being asked to deal with the fees. Even with the establishment of delisted and demolition waste,

they're going to be handled in exactly the same way when they were classified as hazardous waste. If that's correct, he has no problem with petition.

Chairman Close stated we're not changing fees that are charged for hazardous waste, but we're delisting these two categories from hazardous waste and it falls into a lesser price range for that material.

## **SEC ACTION**

On motion of Commissioner Henderson, the Commission unanimously voted to adopt Petition 2003-08.

### **Water Quality Petition**

Next -- Chairman Close requested that a representative from NDEP present the "sixth" regulatory petition; Mr. Tom Porta, Bureau of Water Quality Planning responded and made the presentation for Petition 2003-09.

### **Background for Petition 2003-09 (LCB File R226-03)**

This petition is a permanent amendment to NAC 445A.124 through 445A.127, Water Quality Standards. Under section 303 of the Clean Water Act and 40 CFR 131, States have responsibility for setting, reviewing and revising water quality standards. Proposed revisions include changes to existing formats for listing water quality standards in the NAC's.

Proposed changes will make the tables contained in the NAC's easier to read and understand. NDEP is also proposing a revision of the existing pH criteria, and total phosphorus criteria for various Class Waters throughout the state.

Other revisions include corrections for names and locations of certain water bodies including clarification of the extent of the "reaches" as well as revisions based on the need to clarify the appropriate trout or nontrout standards for various water bodies.

### **Staff Discussion**

Mr. Porta presented the petition to the SEC members. Staff reported the petition concerns some clean up of existing water quality regulations, specifically Class waters. Staff showed a Power Point presentation. Staff presented a brief review of the water quality standards in Nevada. There are four different types of standards. First is a narrative-type standard. Those are basically descriptors, what staff calls "free-from" standards. There are no numeric values associated with those standards. The second type of water quality standard is Class waters. These are groups of waters that have similar characteristics that staff has adopted similar water quality standards for. The fourth type is the toxic standards. Those are standards such as metals, and other toxic substances. The last of which is designated waters which are specific to reaches, stream reaches, specific to individual lakes, and individual water quality standards for those individual water bodies. Staff will only be addressing the Class waters section. In review

of the Class waters, there were a number of corrections that needed to be made to these standards. A number of organizations were consulted including the Nevada Department of Wildlife (NDOW), Moapa County Valley stakeholders, etc. In addition to contacting those agencies, staff also conducted three workshops. All comments received were positive.

Staff is trying to clarify the regulations to enable people to open the NAC, look in the Class water section and have a better understanding of what the water quality standards are. There is one change to a standard and that change is with pH. The pH range used to be 6.5 to 8.5. Staff is requesting that it be expanded to 6.5 to 9 and that reflects the most recent science from EPA. The SEC also adopted that 6.5 to 9 in designated waters in past years.

## **Public Comments / SEC Discussions & Staff Responses**

John Heggeness, Water Quality Planning, stated staff was updating Total Phosphate, changing it to Total Phosphorus. Staff is proposing corrections to errors that are currently in the regulations. Currently under the actual standards, the numbers themselves, there are two different numbers for trout, one for temperature and one for dissolved oxygen. There are two temperatures, one for trout and one for non trout and one for dissolved oxygen for trout and then for non trout. Which streams are trout streams and which ones are not are not currently identified. Staff is proposing adding something to the NAC to identify that. A lot of the reaches are defined by the point of first diversion. Staff is proposing adding words to be able to identify approximately where that point is as well as reformatting it into a table format to make it easier to understand. The other changes being proposed by staff include updates to the NAC for Class A, B and C regarding the pH standard. The proposal includes changing the pH standard range from 6.5 to 8.5, to 6.5 to 9 as well as changing "total phosphate" to "total phosphorus."

The corrections being proposed include correcting the NAC to show reaches in the counties where the reach exists, name corrections, some of the reach descriptions and removal of two reaches. Hydrographic basin corrections are also being proposed.

Currently, the regulations do not identify which waters are trout waters and which are not. To help stakeholders and the public understand which standards apply, and to help permit holders understand which one of these apply, staff is proposing identifying trout waters. The changes suggested by the Legislative Counsel Bureau are reflected in Exhibit 3. Staff had originally included both trout and non trout. The Legislative Counsel Bureau requested staff break the reaches up again according to the Nevada Department of Wildlife.

A discussion ensued between staff and the Commission. The main points of the discussion centered around designating trout waters. It was explained that designation as trout water provides staff a simpler vehicle to apply the standards to certain reaches. The difficulty of managing non-perennial trout streams, including the Lahontan Cutthroat Trout, was discussed. It's a question throughout the west and there are a number of court cases that will probably be heard by the US Supreme Court as to what waters are actually affected by the Clean Water Act. One of the cases involves perennial streams, intermittent streams, and whether or not the Clean Water Act actually covers these waters. Staff hopes that the cases go forward and there will be a ruling by sometime next year. Right now all surface waters are covered under statute.



Another issue raised was what would be designated as beneficial use, if in fact they have potential for the particular beneficial use of fishers. It was explained that when water is flowing the answer is yes. When water is not flowing the answer is no. Staff has made that quite clear in a number of impaired waters determinations listings. When it's not running, conditions of flooding, or conditions of drought, standards don't have to be met. This will not cause any of the waters to change to be added to the impaired list and with the proposed pH standard changes, it will take some of the waters off of the impaired list.

Commissioner Henderson stated he would abstain from the vote because he was unclear of the basis of what we are calling a trout stream. He would like to see more information regarding the criteria that established that. He has nothing to draw a conclusion of whether it's a valid designation or if it's optimistic.

Mr. Porta stated staff was undergoing a pretty extensive review of all of the standards. One of the issues is -- are class waters truly appropriate and what we're finding by consulting with BLM and other agencies such as NDOW is that maybe the Class waters aren't truly the way to go when looking at water quality standards. In the future the SEC may see petitions that will begin to remove Class waters into the Designated water. In other words, for that specific water body for that specific reach you'll have the uses and specific water quality standards for that. That will help in the future to clarify some of these questions. He went on to clarify that Class A waters typically start up in the headwaters and are trout or cold waters. As you move down through the stream into the alluvium, Class B, down into the valley, Class C and then typically your valley bottom waters are Class D.

## **SEC ACTION**

On motion of Commissioner Reavis, the Commission voted to adopt Petition 2003-09. Commissioner Henderson abstained from voting.

## **SEC Rules of Practice**

Next -- Chairman Close requested that the SEC Deputy Attorney General, Susan Gray, present the "seventh" regulatory petition; Ms. Gray responded and made the presentation for Petition 2003-10.

## **Background for Petition 2003-10 (LCB File R227-03)**

Permanent amendments to the State Environmental Commission's (SEC's) Rules of Practice; NAC 445B.875 to 445B.899. The new amendments allow the following provisions. The SEC can order briefs to be filed before or after a hearing; it can allow a party to intervene in a proceeding by filing a written petition, along with specifying time periods and minimum content of such petitions. The SEC can further allow interveners to appear in proceedings and/or be dismissed from proceedings, where no substantial direct interest or public interest is apparent. The amendments also allow the SEC to consolidate a proceeding, where issues are substantially the same and rights of parties are not prejudice; in such proceeding, moreover, the

SEC may determine the order in which the parties introduce evidence and present testimony as well as limit redundant testimony. The amendments further allow the SEC to take any action to maintain order during a hearing, require hearings to be recorded electronically, and where a court reporter is requested by a party, the cost for such services are paid for by the requesting party.

### DAG Discussion

Susan Gray, SEC Deputy Attorney General stated the petition had been before the Commission in the past as a temporary regulation. It is being presented as a permanent regulation. There have been substantial changes made since it was heard as a temporary regulation. In the past year the SEC has had about three or four different contested case hearings and from those experiences we've learned a lot and that's the purpose here is to try to add a little more flexibility to put in the SEC's rules some of the things that are codified in other places so it's clear to the parties the procedures, the way the hearings are going to be conducted, etc.

Section 1(2) deals with the behavior of parties and participants in a hearing. Essentially it's to maintain decorum. Section 2 gives the Commission the authority to exclude a party, his attorney, but it also allows the SEC to exclude a witness at a party's request. It also limits the taking of testimony, to limit it if it is repetitive. Section 3 deals with the ability to consolidate two or more proceedings. Part of that rule would also give the SEC the ability to set the order of that hearing. Section 4 gives the SEC the ability to order briefs at the request of the parties or by its own initiative. Section 5 deals with the ability for a party to intervene. Part 2 of Section 5 has changes. This sets out the time frame for doing so. On line 13, add "calendar" before "10 days." That would be the same on line 16 after "5" in between "days." On line 13 the section that says, "Department issues its notice of action pursuant to NRS 445B.330." Delete that and insert the language, ". . .notice of appeal is filed with the Commission." Section 6 is a technical change. Section 7 is clarifying that the SEC has jurisdiction over all actions taken by the Division, not just under 445B. Section 8 gives complete flexibility to the Commission panel to determine the order of presentation. Section 9 deals with the decision itself being in writing. Section 10 deals with how the hearing would be recorded. If a party wants to request a court reporter and a transcript the SEC can allow them to do that and they will bear those costs. This also applies to copies of the tapes.

### **Public Comments / SEC Discussions & Staff Responses**

Commissioner Crawford asked if there was another technical change in Section 6.

DAG Gray stated it was just a technical change made by the Legislative Counsel Bureau.

Chairman Close confirmed with DAG Gray that these Rules of Practice apply to the SEC panels as well as to the Commission itself.

There was no public comment.

### **SEC ACTION**

On motion of Vice Chairman Coyner, the Commission unanimously voted to adopt Petition 2003-10 subject to the three amendments made by DAG Gray on page 2.

### **Settlement Agreements on Air Quality Violations \*ACTION – Consent Calendar**

Chairman Close opened discussion regarding treating the settlement agreements on air quality violations as a consent calendar agenda item. All Commissioners agreed current and future settlement agreements will be treated as a consent calendar agenda item. If a person wants to be heard apart from the consent calendar, they will be heard separately.

- R. American Borate Company; Notice of Alleged Violation Nos. 1805, 1806, 1807, 1808, 1809, 1810 and 1811
- S. American Cement and Aggregate; Notice of Alleged Violation Nos. 1814, 1815, 1816 and 1817
- T. Steve Brown Construction; Notice of Alleged Violation No. 1771
- U. Brown Brothers Construction; Notice of Alleged Violation No. 1788
- V. Canyon Construction; Notice of Alleged Violation No. 1802
- W. Capitol City Concrete; Notice of Alleged Violation No. 1789
- X. Chemetall Foote Corporation; Notice of Alleged Violation Nos. 1800 and 1801
- Y. Fisher Sand & Gravel Company; Notice of Alleged Violation No. 1776
- Z. Fisher Sand & Gravel Company; Notice of Alleged Violation No. 1803
- AA. High Sierra Concrete; Notice of Alleged Violation No. 1777
- BB. Johnson Development, LLC; Notice of Alleged Violation No. 1787
- CC. Ron Murphy Construction; Notice of Alleged Violation No. 1818
- DD. Newmont Mining Corporation – Lone Tree Mine; Notice of Alleged Violation No. 1779
- EE. Newmont Mining Corporation – Twin Creeks Mine; Notice of Alleged Violation Nos. 1785, 1786 and 1793
- FF. Northeastern Nevada Regional Hospital; Notice of Alleged Violation Nos. 1790 and 1791
- GG. Specialty Clays Corporation; Notice of Alleged Violation No. 1798
- HH. Wulfenstein Construction; Notice of Alleged Violation No. 1796

### **SEC ACTION**

On motion of Commissioner Rackley, the Commission unanimously voted to accept Settlement Agreement Agenda Items A through P. On motion of Commissioner Reavis, the Commission voted to accept Settlement Agreement Agenda Item Q.

Note: Commissioner Henderson disclosed that his brother-in-law is involved with Agenda Item G, Chemetall Foote Corporation, NOAV Nos. 1800 and 1801, but upon advise from SEC counsel, it wouldn't prevent him from voting on the settlement agreement. Also, Chairman Close abstained from voting on Agenda Item Q, Wulfenstein Construction, NOAV No. 1796.

There was no public comment.

The meeting adjourned at 3:10 p.m.