

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF: November 30, 2004

HELD AT: Reno

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 - SEC
Meeting Agenda
November 30, 2004

The State Environmental Commission (SEC) will hold a public hearing at 9:30 am on Tuesday, November 30, 2004, at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada.

This agenda has been posted at the Nevada Department of Wildlife building in Reno, the Washoe County Library in Reno, the Clark County Public Library, and the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Public Notice for this hearing was published on November 8, 15 and 22nd in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

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. Acknowledgement of newly appointed Commissioner**
- II. Approval of minutes from the August 19 hearing * ACTION**
- III. Settlement Agreements on Air Quality Violations *ACTION by Consent Calendar**
 - A. Bolling Construction – Notice of Alleged Violation No. 1820**
 - B. Hafen Ranch Estates – Notice of Alleged Violation Nos. 1848 - 1849**
 - C. Mountain Falls Operations – Notice of Alleged Violation No. 1783**
 - D. Newmont Mining – Lone Tree Mine – Notice of Alleged Violation No. 1847**
 - E. Sierra Pacific Power Co. – Notice of Alleged Violation Nos. 1842-1845**
 - F. Stateline Hotel and Gambling Hall – Notice of Alleged Violation No. 1821**
 - G. Terry Group – Notice of Alleged Violation No. 1856**
- IV. Regulatory Petitions & Information Items * ACTION**

Air Pollution Control & Air Quality Planning

(1) Petition 2004-27 - Vehicle Emission Testing - Inspection & Maintenance Program: The proposed regulation will clarify and update the Inspection & Maintenance (I/M) provisions of NAC 445B and bring them into alignment with the NRS. The amendments will bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It will also align the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan as well as clarify which areas are included in the Washoe County I/M program and which are exempt.

This regulation will have an economic effect on selected diesel vehicle owners and fleets. In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR

noted above will require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004, it was \$39.00 in Clark and \$36.00 in Washoe Counties respectively.

There will be no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830.

(2) Petition 2004-29 - Adoption By Reference of Federal Regulations: The Nevada Division of Environmental Protection (NDEP) is proposing to update Nevada Administrative Code (NAC) 445B.221, "Adoption by reference of provisions of federal law and regulations." NDEP is proposing to adopt into State regulation sections of Title 40 of the Code of Federal Regulations (CFR) Part 60, New Source Performance Standards (NSPS), and Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPs), that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register since July 1, 2003.

The NDEP is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada, however, it is necessary to keep the State's "adoption by reference" regulation up to date so that EPA can continue to delegate the implementation of new rules to the State. NAC 445B.221 currently adopts the appropriate sections of 40 CFR Parts 60 and 63, as they existed on July 1, 2003. These proposed amendments are necessary so that Nevada can request delegation for the implementation of federal NSPS and NESHAPs rules promulgated after July 1, 2003.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state or local agencies, however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 63 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(3) Petition 2004-28 - Visible Emissions - Technical Correction: This regulation proposes certain technical corrections to eliminate cross-references in the Air Pollution Control regulations, i.e., NAC 445B.22017 and 445B.2202 to NAC 445B.22023. These technical corrections will have no substantive effect on the regulated community. The technical changes are needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the preparation for submitting an updated ASIP to the U.S. EPA by December 31, 2004.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local

agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(4) Information Item -- State Implementation Plan (ASIP): Under the federal Clean Air Act of 1970, each state was required to develop an Applicable State Implementation Plan (ASIP) which contained the state regulations necessary to ensure that the National Ambient Air Quality Standards are attained and maintained. The Nevada ASIP was last updated in 1984. The NDEP is proposing to update the existing Nevada ASIP by replacing the outdated state regulations in that ASIP with current state regulations, bringing the ASIP into alignment with Nevada's current air pollution control program. The update will be submitted to the U.S. Environmental Protection Agency for approval and adoption into Nevada's ASIP. Although no formal action is needed by the SEC, we will take public comment during this meeting.

Water Quality Planning

(5) Petition 2004-24 – LCB File No. R136-04: Water Quality Standards, Change in Sampling Locations – Lake Mead & Las Vegas Bay: This proposed regulation will revise NAC445A.195 through NAC445A.197 by redefining the sample station locations and adjusting the reach description for the inner Las Vegas Bay. The proposed regulation would also update the ammonia standards for Lake Mead and the inner Las Vegas Bay.

The current water quality sampling locations for Las Vegas Bay and Lake Mead put station 2 and 3 at a specified depth. Hence, the station moves out when the lake level falls and in when the lake level rises. However, stations LM4 and LM5 are at fixed locations. Because the lake level has dropped substantially, station 3 has moved out past station LM4 and is approaching LM5. As a result, stations LM4 and LM5 are no longer representative of the part of the lake they were intended to characterize. The relative positions of the stations are best defined by locating them a fixed distance from the confluence between Las Vegas Wash and Lake Mead. The proposed regulation will allow for this adjustment.

In addition, this regulatory revision addresses ammonia criteria. In 1999, USEPA updated the ammonia freshwater aquatic life criteria. The new criteria reflect new research and changes the criteria from unionized ammonia to total ammonia. This regulation will update the ammonia standard to conform with the recommended EPA criteria.

This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Water Pollution Control

(6) Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC): This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed

to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition, the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

While the proposed regulation generates new fees and increases existing fees, these fee increases will have little significant economic impact, either immediate or long term, on the regulated industry and/or the small businesses sector. There will be no additional costs to the agency for enforcement of these regulations, they are not more stringent than federal regulations, nor do they overlap or duplicate any regulations of other state or government agencies.

(7) Petition 2004-23 – LCB File No. R128-04: Drinking Water State Revolving Fund (DWSRF) - Transfer of Authority. The 2003 Nevada State Legislature transferred the Drinking Water State Revolving Fund from the Health Division to the Division of Environmental Protection (NDEP). This proposed regulation addresses regulatory changes needed to reflect administration of the program by the NDEP. The proposed regulation also includes minor changes that streamline administration of the program.

This regulation will not have an immediate or long-term adverse effect on business or the public. The proposed changes may well result in some minor cost savings to business and the public through streamlining the loan application process. There will be no additional cost to the agency for enforcement of the proposed regulation and it does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(8) Petition 2004-26 – LCB File No. R092-04: Wastewater Pretreatment Program - Publicly Owned Treatment Works: This regulation amends NAC 445A.257. The regulation address's the control of water pollution by making it optional, rather than mandatory, for the Division of Environmental Protection (Division) to administer a pretreatment program for a publicly owned treatment works that does not have a pretreatment program in place. Specifically, the regulation would strike the requirement for the Division to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program, and the revision would allow NDEP the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program. At this time, the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide

the Division the flexibility to administer a pretreatment program in the future on a case-by-case basis.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Waste Management

(9) Petition 2004-25 – LCB File No. R137-04: Chemical Accident Prevention (CAPP): This regulation proposes amendments to the section of Chapter 459 of the Nevada Administrative Code related to the Regulation of Highly Hazardous Substances and Explosives. These regulatory amendments are being proposed primarily to enact amendments made to the program's enabling statute by the 2003 Legislature (i.e., NRS 459.380 to 459.3874, as amended by Senate Bill 127). Substantive changes include identifying in the regulation, as opposed to in the statute, the list of highly hazardous substances; this will allow flexibility for adopting newly recognized hazards and developing specific lists of regulated explosives. The proposed regulation will specify the procedure for issuing cease and desist orders in cases where danger to employees or the public is imminent. The proposed regulation will also allow NDEP to conduct investigations of accidents. Additionally, program structure will be significantly revised to enable more thorough and efficient implementation of accident prevention program requirements.

The proposed CAPP regulation will have an overall positive economic effect on regulated businesses. There is no anticipated economic impact on the public. Businesses will see an increase in program fees; however, this increase will enable continued oversight by NDEP thereby providing continued incentive for program compliance. Having compliant accident prevention programs will reduce risks of catastrophic accidents, and help better structure business operation. In essence, the immediate effect of increased fees will increase operating cost, however, the long-term effects will manifest in improved employee and public safety by way of lower accident rates. Better safety performance will lower overall operating costs to the regulated community.

The CAPP regulation is somewhat similar to the federal OSHA regulations administered by the State Division of Industrial Relations and federal EPA. However, the CAPP regulations and permitting requirements are unique to the State and are the only regulations that mandate in-plant inspections and provide a funding mechanism for such inspections.

As noted, the regulation will increase fees to support program oversight activities. Fee increases are necessary to offset salary adjustment to the engineering series as enacted by the Nevada legislature; fee increases will also cover some program supervisory oversight. Fees will be collected from 45 facilities annually, starting in July 2005. The estimated cost to the agency for enforcement of the proposed regulation will be covered by the revised fee structure.

V. Public Comments

Meeting Information: Copies of the proposed regulations may be obtained by calling the Executive Secretary, John Walker at (775) 687-9308. The public 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 http://www.leg.state.nv.us/Register/indexes/2004_NAC_REGISTER_KEYWORD.htm .

In addition the State Environmental Commission maintains an Internet site at <http://www.sec.nv.gov/main/hearing081904.htm>.

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 November 23, 2004.

Notice Of Intent To Act Upon Regulations

Notice of Hearing for the Adoption of Regulations of the State Environmental Commission

The State Environmental Commission (SEC) will hold a public hearing at 9:30 am. on Tuesday, November 30, 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 the following regulatory petitions and related SEC business. If a person that may be directly affected by a proposed action does not appear and request time to make an oral presentation at the above referenced hearing, the SEC may proceed immediately to act upon any of the following regulatory petitions or other written submissions described in this notice.

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.

Air Pollution Control & Air Quality Planning

(1) Petition 2004-27 - Vehicle Emission Testing - Inspection & Maintenance Program: The proposed regulation will clarify and update the Inspection & Maintenance (I/M) provisions of NAC 445B and bring them into alignment with the NRS. The amendments will bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000

pounds into the I/M program as per AB 36. It will also align the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan as well as clarify which areas are included in the Washoe County I/M program and which are exempt.

This regulation will have an economic effect on selected diesel vehicle owners and fleets.

In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR noted above will require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004, it was \$39.00 in Clark and \$36.00 in Washoe Counties respectively.

There will be no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830.

(2) Petition 2004-29 - Adoption By Reference of Federal Regulations: The Nevada Division of Environmental Protection (NDEP) is proposing to update Nevada Administrative Code (NAC) 445B.221, "Adoption by reference of provisions of federal law and regulations." NDEP is proposing to adopt into State regulation sections of Title 40 of the Code of Federal Regulations (CFR) Part 60, New Source Performance Standards (NSPS), and Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPs), that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register since July 1, 2003.

The NDEP is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada, however, it is necessary to keep the State's "adoption by reference" regulation up to date so that EPA can continue to delegate the implementation of new rules to the State. NAC 445B.221 currently adopts the appropriate sections of 40 CFR Parts 60 and 63, as they existed on July 1, 2003. These proposed amendments are necessary so that Nevada can request delegation for the implementation of federal NSPS and NESHAPs rules promulgated after July 1, 2003.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state or local agencies, however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 63 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(3) Petition 2004-28 - Visible Emissions - Technical Correction: This regulation proposes certain technical corrections to eliminate cross-references in the Air Pollution Control regulations, i.e., NAC 445B.22017 and 445B.2202 to NAC 445B.22023. These technical corrections will have no substantive effect on the regulated community. The technical changes are needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and

maintained. This amended regulation is necessary as part of the preparation for submitting an updated ASIP to the U.S. EPA by December 31, 2004.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(4) Information Item -- State Implementation Plan (ASIP): Under the federal Clean Air Act of 1970, each state was required to develop an Applicable State Implementation Plan (ASIP) which contained the state regulations necessary to ensure that the National Ambient Air Quality Standards are attained and maintained. The Nevada ASIP was last updated in 1984. The NDEP is proposing to update the existing Nevada ASIP by replacing the outdated state regulations in that ASIP with current state regulations, bringing the ASIP into alignment with Nevada's current air pollution control program. The update will be submitted to the U.S. Environmental Protection Agency for approval and adoption into Nevada's ASIP. Although no formal action is needed by the SEC, we will take public comment during this meeting.

Water Quality Planning

(5) Petition 2004-24 – LCB File No. R136-04: Water Quality Standards, Change in Sampling Locations – Lake Mead & Las Vegas Bay: This proposed regulation will revise NAC445A.195 through NAC445A.197 by redefining the sample station locations and adjusting the reach description for the inner Las Vegas Bay. The proposed regulation would also update the ammonia standards for Lake Mead and the inner Las Vegas Bay.

The current water quality sampling locations for Las Vegas Bay and Lake Mead put station 2 and 3 at a specified depth. Hence, the station moves out when the lake level falls and in when the lake level rises. However, stations LM4 and LM5 are at fixed locations. Because the lake level has dropped substantially, station 3 has moved out past station LM4 and is approaching LM5. As a result, stations LM4 and LM5 are no longer representative of the part of the lake they were intended to characterize. The relative positions of the stations are best defined by locating them a fixed distance from the confluence between Las Vegas Wash and Lake Mead. The proposed regulation will allow for this adjustment.

In addition, this regulatory revision addresses ammonia criteria. In 1999, USEPA updated the ammonia freshwater aquatic life criteria. The new criteria reflect new research and changes the criteria from unionized ammonia to total ammonia. This regulation will update the ammonia standard to conform with the recommended EPA criteria.

This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Water Pollution Control

(6) Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC): This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition, the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

While the proposed regulation generates new fees and increases existing fees, these fee increases will have little significant economic impact, either immediate or long term, on the regulated industry and/or the small businesses sector. There will be no additional costs to the agency for enforcement of these regulations, they are not more stringent than federal regulations, nor do they overlap or duplicate any regulations of other state or government agencies.

(7) Petition 2004-23 – LCB File No. R128-04: Drinking Water State Revolving Fund (DWSRF) - Transfer of Authority. The 2003 Nevada State Legislature transferred the Drinking Water State Revolving Fund from the Health Division to the Division of Environmental Protection (NDEP). This proposed regulation addresses regulatory changes needed to reflect administration of the program by the NDEP. The proposed regulation also includes minor changes that streamline administration of the program.

This regulation will not have an immediate or long-term adverse effect on business or the public. The proposed changes may well result in some minor cost savings to business and the public through streamlining the loan application process. There will be no additional cost to the agency for enforcement of the proposed regulation and it does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

(8) Petition 2004-26 – LCB File No. R092-04: Wastewater Pretreatment Program - Publicly Owned Treatment Works: This regulation amends NAC 445A.257. The regulation address's the control of water pollution by making it optional, rather than mandatory, for the Division of Environmental Protection (Division) to administer a pretreatment program for a publicly owned treatment works that does not have a pretreatment program in place. Specifically, the regulation would strike the requirement for the Division to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program, and the

revision would allow NDEP the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program. At this time, the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case-by-case basis.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Waste Management

(9) Petition 3004-25 – LCB File No. R137-04: Chemical Action Prevention (CAPP): This regulation proposes amendments to the section of Chapter 459 of the Nevada Administrative Code related to the Regulation of Highly Hazardous Substances and Explosives. These regulatory amendments are being proposed primarily to enact amendments made to the program's enabling statute by the 2003 Legislature (i.e., NRS 459.380 to 459.3874, as amended by Senate Bill 127). Substantive changes include identifying in the regulation, as opposed to in the statute, the list of highly hazardous substances; this will allow flexibility for adopting newly recognized hazards and developing specific lists of regulated explosives. The proposed regulation will specify the procedure for issuing cease and desist orders in cases where danger to employees or the public is imminent. The proposed regulation will also allow NDEP to conduct investigations of accidents. Additionally, program structure will be significantly revised to enable more thorough and efficient implementation of accident prevention program requirements.

The proposed CAPP regulation will have an overall positive economic effect on regulated businesses. There is no anticipated economic impact on the public. Businesses will see an increase in program fees, however, this increase will enable continued oversight by NDEP thereby providing continued incentive for program compliance. Having compliant accident prevention programs will reduce risks of catastrophic accidents, and help better structure business operation. In essence, the immediate effect of increased fees will increase operating cost, however, the long-term effects will manifest in improved employee and public safety by way of lower accident rates. Better safety performance will lower overall operating costs to the regulated community.

The CAPP regulation is somewhat similar to the federal OSHA regulations administered by the State Division of Industrial Relations and federal EPA. However, the CAPP regulations and permitting requirements are unique to the State and are the only regulations that mandate in-plant inspections and provide a funding mechanism for such inspections.

As noted, the regulation will increase fees to support program oversight activities. Fee increases are necessary to offset salary adjustment to the engineering series as enacted by the Nevada legislature; fee increases will also cover some program supervisory oversight. Fees will be collected from 45 facilities annually, starting in July 2005. The estimated cost to the agency for enforcement of the proposed regulation will be covered by the revised fee structure.

Public Comment & Additional Information:

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to: State Environmental Commission 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851. Written submissions must be received by the SEC at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

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 texts of the proposed regulations are 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](#). Also, the [State Environmental Commission](#) maintains a website ([SEC.nv.gov](#)) that contains this public notice, the meeting agenda and the proposed regulations pending before the SEC.

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 November 23, 2004.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this public notice has been posted at the following locations: The Nevada Department of Wildlife building in Reno, 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 in Carson City. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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

STATE ENVIRONMENTAL COMMISSION (SEC)
Meeting of November 30, 2004
Division of Wildlife
Reno, Nevada

MEMBERS PRESENT:

Melvin Close, Chairman
Alan Coyner, Vice Chairman
Pete Anderson
Terry Crawford
Don Henderson
Ira Rackley
Hugh Ricci
Harry Shull
Lewis Dodgion

MEMBERS ABSENT:

Demar Dahl
Joey Villaflor

Staff Present:

Susan Gray, Deputy Attorney General
John Walker, Executive Secretary
Nan Paulson, Recording Secretary

Chairman Close called the meeting to order at 10:00 a.m.

READER's NOTE: These are summary minutes of the above references meeting of the State Environmental Commission (SEC). Please contact the SEC [Recording Secretary](#) for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).

Chairman Close introduced new Commissioner Harry Shull from Las Vegas and asked him to tell everyone a little about himself. Commissioner Shull said he is a principal of a real estate development company and they are planning on building about 300 new homes. He has been a Planning Commissioner for the City of Las Vegas for eight years, and has served as a member of the Board of Director's for the Southern Nevada Home Builders for the last ten years. He's been in the home building business for approximately 35 years.

I. Approval of Minutes from the August 19, 2004 SEC Meeting

On the motion of Commissioner Coyner and a second motion from Commissioner Dodgion, the Commission unanimously voted to approve the minutes, with one exception. The name of the Laxalt Building, in which the meeting was held, was misspelled.

II. SETTLEMENT AGREEMENTS ON AIR QUALITY VIOLATIONS

Mike Yamada, Enforcement Supervisor for the Nevada Division of Environmental Protection's (NDEP) Bureau of Air Quality (BAQ) approached the podium. Mr. Yamada spoke about the settlement agreements for Air Pollution Control violations by the following seven companies:

- A. Bolling Construction – Notice of Alleged Violation No. 1820**
- B. Hafen Ranch Estates – Notice of Alleged Violation Nos. 1848 - 1849**
- C. Mountain Falls Operations – Notice of Alleged Violation No. 1783**
- D. Newmont Mining – Lone Tree Mine – Notice of Alleged Violation No. 1847**
- E. Sierra Pacific Power Co. – Notice of Alleged Violation Nos. 1842-1845**
- F. Stateline Hotel and Gambling Hall – Notice of Alleged Violation No. 1821**
- G. Terry Group – Notice of Alleged Violation No. 1856**

Commissioner Ricci asked why Bolling Ranch's fine is \$1380.00 and Hafen Ranch Estates' fine is \$2450.00, when they have similar histories. Mike Yamada explained that while they both had three prior violations, Hafen Ranch Estates was operating without a permit.

Commissioner Henderson noted that four of the seven violations were related to violations near Pahrump and wanted to know what the cause might be. Mr. Yamada stated that prior to February 2004 when the fine amounts were raised, it was cheaper for companies to violate than to hire a water truck to avoid dust violations. Now, with the higher fines, they are seeing less dust violations than they did in the past.

Commissioner Henderson asked if the BAQ expected the violations to decrease. Mike Yamada added that during their enforcement conferences, they advised builders that fines could go as high as \$10,000.00 per day, which makes it more cost effective to control the dust.

Colleen Cripps, Bureau Chief for the Bureau of Air Quality Planning (BAQP). She confirmed that there is a large dust problem due to non-attainment issues. The local government in Pahrump has just adopted new dust control ordinances that go into effect the end of December. The BAQP has been working with the public on this issue to get the word out so the public can understand why this is a problem.

Colleen Cripps added that the BAQP gives Fugitive Dust workshops annually or twice a year for all the developers, people in construction, and realtors in the area. The growth is at such an incredible rate that this has not been worked on before. There has been a position approved for an employee to begin working in Pahrump in January. This position will assist the County with the enforcement of their ordinance.

There were no public comments regarding the above settlements. Chairman Close closed the public meeting at 9:20 a.m. A motion was made to approve the settlement agreements, Commissioner Dodgion seconded the motion, and the Commission members unanimously approved.

Air Pollution Control & Air Quality Planning

(1) Petition 2004-27 - Vehicle Emission Testing - Inspection & Maintenance Program:

The proposed regulation will clarify and update the Inspection & Maintenance (I/M) provisions of NAC 445B and bring them into alignment with the NRS. The amendments will bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It will also align the Clark

County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan as well as clarify which areas are included in the Washoe County I/M program and which are exempt.

This regulation will have an economic effect on selected diesel vehicle owners and fleets. In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR noted above will require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004 it was \$39.00 in Clark and \$36.00 in Washoe Counties respectively.

There will be no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830.

Discussion:

Sig Jaunarajs, Environmental Scientist with BAQ, explained this petition proposes two changes to this portion of the regulation concerning vehicle emission testing (I/M Program). The first change under section one is to keep regulations consistent with the amended statutes – AB 36, which requires that diesel powered vehicles in the 8,500-10,000 pound range be emission tested. Prior to this passage, only vehicles up to 8,500 pounds were required to be tested. This will keep the regulations consistent with the DMV, as they have been testing these vehicles for a year.

The second change is an effort to clarify the geographic stint of the I/M program and bring that regulatory definition closer to the definition found in the State Implementation Plans (SIP), which are the driving documents that require there to be an emission testing program to improve air quality in Washoe County and Clark County. This measure was requested by DMV, the implementing agency.

NOTE: A copy of the outline for Sig Jaunarajs' talk is added as appendix #1 at the end of this document.

Public Comments / SEC Discussions & Staff Responses

Commissioner Henderson asked for clarification of the amendment. Sig explained the definition of "heavy duty motor vehicle" was being changed according to weight, from 8,500 to 10,000 pounds. The 8,500 pound weight is according to statute and is a federal definition. Also, the DMV has a dynamometer machine that is used for the emissions testing verification but it is not made for vehicles over with dual wheels, which are around 10,000 pounds.

Chairman Close asked if there were plans for larger dynamometer to be purchased in the future. Lloyd Nelson, Nevada DMV Services Manager, explained that purchasing a

new dynamometer and raising the weight of vehicles to be tested would not be cost effective at this time.

Commissioner Crawford asked about fleet vehicles and the financial impact this might result in. Sig explained that there would be an impact, as many businesses (including governmental) have diesel vehicles within the testing weight range. They are not budgeted for this test, and it would mean the vehicle and an employee would be out of service to have the test performed.

SEC ACTION

Chairman Close asked if there were any comments from the public. There were none so he closed the public meeting. Commissioner Close asked for comments from the members. After no comments, Chairman Close asked for a motion, a motion was made and all were in favor of adopting LCB R125-04.

(2) Petition 2004-29 - Adoption By Reference of Federal Regulations: The Nevada Division of Environmental Protection (NDEP) is proposing to update Nevada Administrative Code (NAC) 445B.221, "Adoption by reference of provisions of federal law and regulations." NDEP is proposing to adopt into State regulation sections of Title 40 of the Code of Federal Regulations (CFR) Part 60, New Source Performance Standards (NSPS), and Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPs), that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register since July 1, 2003.

The NDEP is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada, however, it is necessary to keep the State's "adoption by reference" regulation up to date so that EPA can continue to delegate the implementation of new rules to the State. NAC 445B.221 currently adopts the appropriate sections of 40 CFR Parts 60 and 63, as they existed on July 1, 2003. These proposed amendments are necessary so that Nevada can request delegation for the implementation of federal NSPS and NESHAPs rules promulgated after July 1, 2003.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state or local agencies, however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 63 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussions

Greg Remer, Staff Engineer with the NDEP BAQP, explained the proposed changes to the air quality regulations in Petition 2004-29 (Item IV [2] on the Commission's Agenda).

NOTE: A copy of the outline for Mr. Remer's talk is added as appendix #2 at the end of this document.

SEC Discussions & Staff Responses

Chairman Close asked for staff responses, there were none.

Chairman Close opened the meeting for public comments and called Johnathan Brown to the podium.

PUBLIC COMMENTS

Mr. Johnathan Brown, Director of Environmental and Regulatory Affairs for the Nevada Mining Association, and on behalf of the Mining Association and its members, he stated they wish to express their support for the adoption of the temporary regulation.

SEC ACTION

There were no other public comments so Chairman Close closed the public meeting and asked for comments from members. After no comments, Chairman Close asked for a motion. Commissioner Crawford made a motion to adopt Petition 2004-29; Commissioner Shull seconded the motion; all were in favor.

(3) Petition 2004-28 - Visible Emissions - Technical Correction: This regulation proposes certain technical corrections to eliminate cross-references in the Air Pollution Control regulations, i.e., NAC 445B.22017 and 445B.2202 to NAC 445B.22023. These technical corrections will have no substantive effect on the regulated community. The technical changes are needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the preparation for submitting an updated ASIP to the U.S. EPA by December 31, 2004.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Greg Remer, Staff Engineer with the NDEP BAQP explained this petition, also.

NOTE: A copy of Mr. Remer's talk is added as appendix #3 at the end of this document.

Chairman Close asked what uncombined water is. Mr. Remer explained it is steam. Commissioner Dodgion asked how uncombined water would be separated out when doing a

visibility opacity check. Greg Remer said one would have to wait for the steam to dissipate if doing an eyeball reading if not using an opacity monitor, which is not effective when looking at steam.

Public Comments

Chairman Close asked for public comments. Johnathan Brown from the Nevada Mining Association expressed his and the Association's support of this petition. There were no other public comments so Chairman Close closed the public meeting and asked for comments from the Commission members.

SEC ACTION

Chairman Close asked for a motion. Commissioner Ricci made the motion to approve temporary regulation, Petition 2004-28, and Commissioner Rackley seconded the motion. All were in favor.

(4) Information Item -- State Implementation Plan (ASIP): Under the federal Clean Air Act of 1970, each state was required to develop an Applicable State Implementation Plan (ASIP) which contained the state regulations necessary to ensure that the National Ambient Air Quality Standards are attained and maintained. The Nevada ASIP was last updated in 1984. The NDEP Meeting Agenda – State Environmental Commission – 11/30/04 is proposing to update the existing Nevada ASIP by replacing the outdated state regulations in that ASIP with current state regulations, bringing the ASIP into alignment with Nevada's current air pollution control program. The update will be submitted to the U.S. Environmental Protection Agency for approval and adoption into Nevada's ASIP. Although no formal action is needed by the SEC, we will take public comment during this meeting.

Discussion:

Commissioner Dodgion said the EPA has been negligent for years on approving and acting on the ASIP submittals, and he wondered if they were any better. Adele Malone said the EPA is very much on board with the ASIP and would like to be able to put an electronic version on their website. The EPA wants it to be the update ASIP.

Commissioner Dodgion wondered about some regulations that were going to the EPA prior to being approved by the Commission. Mrs. Malone explained there are some provisions that are going to be kept that are not in the NAC, and those are going to the EPA. These have been in the ASIP for a long time, but not in the NAC. There aren't many but they include: excess emissions, and about five that pertain to specific sources, and they cannot be removed from the ASIP because they would relax the SIP and the State is not allowed to relax them.

Commissioner Ricci asked for clarification re: going to the EPA then returning to the Commission. Adele Malone explained a little more, and then gave the podium over to Mike Elges, Bureau Chief of the BAPC for more in-depth details.

Mike Elges added that the BAPC is not certain that these previously adopted provisions, which many have been superceded and/or removed, are absolutely going to be retained in the SIP or not. The BAPC, in an attempt to avoid trying to out-guess the outcome of what the EPA may or may not approve, they felt it was more appropriate to let them make their decisions on those that are already in the approved SIP. If needed at a later date, the BAPC could propose to bring the regulations back into the NAC that may apply. This is an alignment of the documents that should put consistency between the SIP and NAC.

Commissioner Henderson asked what staff's perception is regarding how industry is viewing this plan. Adele Malone said the BAPC has been working closely with industry. They have created The ASIP Working Group, which has representatives of industry. This group meets when there are particular issues to be worked out for mutual agreement. Mrs. Malone said she believes industry is supportive of this document.

Commissioner Crawford asked if Washoe and Clark Counties are involved in this process. Adele Malone said they've been given information items and their comments were requested, but they have not been part of the working group since this does not touch their counties. Commissioner Crawford asked if there is any thought that other counties might come along in the future and assume their own program. Colleen Cripps, Bureau Chief of the BAQP, stepped up to the podium and said they have not heard anything from other counties about that.

Commissioner Dodgion wanted to know about the relationship Washoe and Clark Counties have to the SIP, as he always thought their regulations had to be submitted through the State to EPA so they could become a part of the SIP, otherwise they would not be enforceable by EPA. He wanted clarification that the BAPC was updating the ASIP, not including Washoe and Clark Counties. Adele Malone confirmed this, adding that those two counties have separate SIPs dealing with specific criteria pollutants that they are not in attainment for. She said they are updating the NAC portion that applies to the attainment areas outside of Washoe and Clark Counties.

Commissioner Ricci asked if the dark gray areas are the only areas might be removed. Adele Malone said those dark areas plus article 254 on page 32 are the only areas that may be removed.

NOTE: A copy of Adele Malone's outline is added as appendix #4 at the end of this document.

PUBLIC COMMENTS:

Chairman Close asked if there were any public comments. There were none.

SEC COMMENTS

Chairman Close said that this item does not need Commission vote for adoption so item #4 did not have a vote taken.

(5) Petition 2004-24 – LCB File No. R136-04: Water Quality Standards, Change in Sampling Locations – Lake Mead & Las Vegas Bay: This proposed regulation will revise NAC445A.195 through NAC445A.197 by redefining the sample station locations and adjusting the reach description for the inner Las Vegas Bay. The proposed regulation would also update the ammonia standards for Lake Mead and the inner Las Vegas Bay. The current water quality sampling locations for Las Vegas Bay and Lake Mead put station 2 and 3 at a specified depth. Hence, the station moves out when the lake level falls and in when the lake level rises. However, stations LM4 and LM5 are at fixed locations. Because the lake level has dropped substantially, station 3 has moved out past station LM4 and is approaching LM5. As a result, stations LM4 and LM5 are no longer representative of the part of the lake they were intended to characterize. The relative positions of the stations are best defined by locating them a fixed distance from the confluence between Las Vegas Wash and Lake Mead. The proposed regulation will allow for this adjustment. In addition, this regulatory revision addresses ammonia criteria. In 1999, USEPA updated the ammonia freshwater aquatic life criteria. The new criteria reflect new research and changes the criteria from unionized ammonia to total ammonia. This regulation will update the ammonia standard to conform with the recommended EPA criteria. This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Sam Stegeman, Water Quality Standards Supervisor in the BWQP, briefly described this petition and the changes in Lake Mead that make this petition approval important. He added that Lake Mead has had dramatic elevation loss in the last 10 years.

Sam Stegeman introduced John Heggeness, Environmental Scientist in the BWQP, who had been working with conducting workshop presentation and updating the NAC language, and coordinated directly with the dischargers of the effected area.

John Heggeness conducted a PowerPoint presentation for the Commission. Mr. Heggeness discussed a technical correction to the petition, which is that originally they called the sites LMLVB, but they will now refer to them as LWLVB to comply with the Sampler's Naming Convention down in Las Vegas. LWLVB 1.2 is equivalent to LM2. This designation is because of the approximate distance from the confluence and this site at the time the site was set up.

The second change they requested is the reach designation for Inner Las Vegas Bay. Originally, the designation went from the western boundary of the Las Vegas Bay campground to the confluence of Las Vegas Wash with Lake Mead. The BWQP would like to change the boundary from the confluence of Las Vegas Wash with Lake Mead to 1.2 miles into Las Vegas Bay from that confluence.

Chairman Close asked where the intake tower is located and if there were any testing stations by the tower. John Heggeness said NDEP does not have testing stations there but he was certain that SNWA does.

Commissioner Henderson wondered about the redesignation of the inner bay being between the first two sample points after they are redesignated. He asked if, when the lake level drops or rises, the inner bay would move in and out between the two sample points. Mr. Heggeness said it would be at the confluence and the first sample point.

Commissioner Ricci asked how points 1.2 and 1.85 are set, if visually or by GPS coordinates. John Heggeness stated that he believed those that were set by position were set by GPS coordinates and were actually buoys at one point. He added that those set by depth were not set until they went back and found out what the depth was at the location.

Commissioner Coyner asked about the depths that were listed on the charts, wanted to know if they are charted by meters, and if the sample points for ammonia were depth dependant. John Heggeness said that originally the tests were at certain depths but with the new criteria, tests can be taken anywhere they choose. Commissioner Coyner confirmed the delta is being eroded and wanted to know if that was contributing to the pollution in the lake. John Heggeness said he was certain it was adding sediment and turbidity to it but they have not evaluated that component.

Tom Porta, Bureau Chief for the BWQP, approached the podium and added that they had consulted with the Las Vegas Wash Coordination Committee who reviews the data that the City and the County collect on the lake. An artifact on the lake's decline is that the clarity of the lake has never been greater. The lake in the Boulder Basin is much clearer than in years, possibly because there are less nutrients coming down from the Colorado system out of Lake Powell.

Chairman Close mentioned an EPA letter that states there had been two severe drought periods before this current drought. He wondered when those previous droughts were and what level the lake dropped to. Mr. Heggeness said he had seen the information but did not know the answers at that time.

NOTE: A PDF file containing maps and diagrams of John Heggeness's talk is added as appendix #5 at the end of this document.

Public Comments:

Chairman Close asked for public comments, there were none, so he called the public meeting closed.

SEC ACTION

Commissioner Rackley made a motion to adopt the resolution as presented with the change of LMLVB to LWLVB as stated by staff. Commissioner Dodgion seconded the motion; all were in favor.

(6) Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC): This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition, the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

While the proposed regulation generates new fees and increases existing fees, these fee increases will have little significant economic impact, either immediate or long term, on the regulated industry and/or the small businesses sector. There will be no additional costs to the agency for enforcement of these regulations, they are not more stringent than federal regulations, nor do they overlap or duplicate any regulations of other state or government agencies.

Discussion:

Russ Land, BWPC, explained Petition 2004-17.

Chairman Close wanted to know why the BWPC was putting absolute dates for increases into this petition, as they may need less or more in the future than they are proposing. And, he wanted to know what they would do if they needed more money.

Russ Land stated that they believe the proposed increases will be pretty accurate, however if they need more, then they will have to come back and speak with the Commission.

Leo Drozdoff, Administrator for NDEP, approached the podium and spoke to the Commission. Mr. Drozdoff explained that there are several programs that have similar built in fee increases, and that because the last increase was a decade and a half ago, then the increase is a large amount and that is difficult for the public.

Chairman Close discussed the amount of one of the fees and said he would prefer to see it as \$688 as opposed to \$687.50 because it may cause a lot of problems with the public sending in a check for \$687 and neglecting the Fifty cents. Russ Land agreed with the Chairman and shared that the LCB (Legislative Counsel Bureau) made changes to his proposal for sections eight and ten, and when they did the math, they added the fifty cents.

Russ Land advised the Commission of a change that was not in their materials. It is a change to page 5, section 4, subsection 6, in which he would like to have the word “protection” added after the words “ground water” so it would read ground water protection area pursuant to subsection 5.

NOTE: A copy of Russ Land’s outline is added as appendix #4 at the end of this document.

STAFF AND PUBLIC COMMENTS:

Bill Quinn, a Hydrologist with the Southern Nevada Water Authority and a representative for the Las Vegas Valley Water District approached the podium to say they support this petition.

Christy Morris from Ormatt NV Inc., a geothermal power company, approached the podium and voiced their support for the concept of a fee increase. She added that they would like to see this increase go toward staffing for processing applications and revisions for the UIC program. She voiced a concern for several of Ormatt’s applications for renewal of permits that had been submitted a long time ago, two of which have been in for 19 months, one for 14 months, and another for 10 months. Ms. Morris said the staff is very accommodating for them but Ormatt would like to see the applications turned around in a more timely fashion and they hope the fee increases would help with this.

Commissioner Ricci asked Ms. Ricci what her feelings are on the proposed future fee increases being scheduled now. She responded that she would prefer the increase requests be brought to the Commission at the time the increase is wanted, as opposed to prescheduling them.

Commissioner Ricci asked Mr. Quinn what his feelings are regarding future increase scheduling. Mr. Quinn responded that he believed the fee increases are fair and reasonable. They do not see a significant impact from these increases.

Johnathan Brown from the Nevada Mining Association approached the podium again and expressed his support for this petition. He also thanked the BWPC and Administrator Drozdoff for their roles in resolving these issues. He also concurred with the previous gentleman, as knowing what their fee increases will be in the future will assist them with determining their budget.

When there were no more public comments, Chairman Close called the meeting to a close and asked the Commission members for their comments.

SEC COMMENTS:

Commissioner Coyner stated that both the Division of Mineral’s Geothermal Commissioner Fagan and the Oil & Gas Commissioner Kozlowski have met individually with BWPC and they are in favor of the proposed regulation. Commissioner Coyner wanted to add that with all of the fees within the Division of Mineral, none of them have future fee increase dates.

Commissioner Ricci, referring to Mr. Brown's comments of wanting some lead-time for their budgeting purposes, wanted to know if it could be possible to have a shorter time period, such as two years notice. Chairman Close said the BWPC could come to the Commission requesting fee increases two years from the request. This way the Commission would still have the right of overview and oversight without approaching something in the future, and they may want more or less of an increase than is being proposed right now.

NDEP Administrator Drozdoff approached the podium and shared his view on this fee change. He added that this is a stable and predictable program, that costs rarely go down, and have a more than likely increase in costs. Mr. Drozdoff added that he is familiar with this program and with this knowledge, the BWPC is anticipating the inherent costs/increases that they do experience year to year. They are trying to not bog down this process and provide some certainty.

Commissioner Henderson asked if this program had gone through the review committee. Deputy Attorney General Susan Gray interjected that this program has gone through the LCB but it will not go to the review committee until after the Commission has adopted it.

There were no more comments, Chairman Close asked for a motion.

SEC ACTION

Commissioner Henderson made a motion to adopt petition 2004-17 with the deletion of sections 8 and 10 in their entirety, and adding the word protection between the words ground and water on the first line of page 5 of the petition. Commissioner Dodgion seconded the motion, and all were in favor. The motion was carried.

Item taken out of order

Chairman Close announced that Item 8 would be next.

(8) Petition 2004-26 – LCB File No. R092-04: Wastewater Pretreatment Program - Publicly Owned Treatment Works: This regulation amends NAC 445A.257. The regulation address's the control of water pollution by making it optional, rather than mandatory, for the Division of Environmental Protection (Division) to administer a pretreatment program for a publicly owned treatment works that does not have a pretreatment program in place. Specifically, the regulation would strike the requirement for the Division to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program, and the revision would allow NDEP the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program. At this time, the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case-by-case basis.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Joe Maez, BWPC, very briefly explained the change requested.

STAFF AND PUBLIC COMMENT:

There were no public comments so Chairman Close closed the public meeting.

SEC COMMENTS:

Chairman Close asked for discussion from the members, there were no comments.

SEC ACTION

Chairman Close asked for a motion. Commissioner Henderson made a motion to accept petition 2004-26 as presented, Commissioner Rackley seconded the motion and all were in favor. The motion was carried.

(7) Petition 2004-23 – LCB File No. R128-04: Drinking Water State Revolving Fund (DWSRF) - Transfer of Authority. The 2003 Nevada State Legislature transferred the Drinking Water State Revolving Fund from the Health Division to the Division of Environmental Protection (NDEP). This proposed regulation addresses regulatory changes needed to reflect administration of the program by the NDEP. The proposed regulation also includes minor changes that streamline administration of the program.

This regulation will not have an immediate or long-term adverse effect on business or the public. The proposed changes may well result in some minor cost savings to business and the public through streamlining the loan application process. There will be no additional cost to the agency for enforcement of the proposed regulation and it does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Adele Basham gave a brief overview of this program and this petition.

Chairman Close asked Ms. Basham about the ranking of contaminants in order of importance. Adele Basham stated that the contaminants are rated equally, as a health problem for one person from a contaminant is as serious to them as it is for another person who is ill from a different contaminant. Ms. Basham added that she did speak with the Health Division, as they

have the background in this, and they agreed that contaminants should be considered equally ranked.

NOTE: A copy of Adele Basham's outline is added as appendix #7 at the end of this document.

STAFF AND PUBLIC COMMENTS:

Chairman Close asked for comments. There were none so he closed the public meeting and asked for a motion.

SEC ACTION

Commissioner Shull made a motion to approve petition 2004-23, Commissioner Ricci seconded the motion, and all were in favor. The motion was carried.

(9) Petition 2004-25 – LCB File No. R137-04: Chemical Accident Prevention (CAPP):

This regulation proposes amendments to the section of Chapter 459 of the Nevada Administrative Code related to the Regulation of Highly Hazardous Substances and Explosives. These regulatory amendments are being proposed primarily to enact amendments made to the program's enabling statute by the 2003 Legislature (i.e., NRS 459.380 to 459.3874, as amended by Senate Bill 127). Substantive changes include identifying in the regulation, as opposed to in the statute, the list of highly hazardous substances; this will allow flexibility for adopting newly recognized hazards and developing specific lists of regulated explosives. The proposed regulation will specify the procedure for issuing cease and desist orders in cases where danger to employees or the public is imminent. The proposed regulation will also allow NDEP to conduct investigations of accidents. Additionally, program structure will be significantly revised to enable more thorough and efficient implementation of accident prevention program requirements.

The proposed CAPP regulation will have an overall positive economic effect on regulated businesses. There is no anticipated economic impact on the public. Businesses will see an increase in program fees; however, this increase will enable continued oversight by NDEP thereby providing continued incentive for program compliance. Having compliant accident prevention programs will reduce risks of catastrophic accidents, and help better structure business operation. In essence, the immediate effect of increased fees will increase operating cost, however, the long-term effects will manifest in improved employee and public safety by way of lower accident rates. Better safety performance will lower overall operating costs to the regulated community.

The CAPP regulation is somewhat similar to the federal OSHA regulations administered by the State Division of Industrial Relations and federal EPA. However, the CAPP regulations and permitting requirements are unique to the State and are the only regulations that mandate in-plant inspections and provide a funding mechanism for such inspections.

As noted, the regulation will increase fees to support program oversight activities. Fee increases are necessary to offset salary adjustment to the engineering series as enacted by the Nevada legislature; fee increases will also cover some program supervisory oversight. Fees will

be collected from 45 facilities annually, starting in July 2005. The estimated cost to the agency for enforcement of the proposed regulation will be covered by the revised fee structure.

Discussion:

Mark Zusy, Supervisor of NDEP's CAPP Program, gave a brief overview of the program.

One thing Mr. Zusy noted that was not in the presentation was that they have put in a fee cap for their larger facilities. The fee cap is \$35,000.00 and once a facility has reached that amount, they will not pay any more than that.

Commissioner Ricci asked about training for responders at these sites. Mr. Zusy explained that responders will go look at the sites, learn about the chemicals, and how to dress if they had to respond.

Commissioner Anderson was concerned about training for the many volunteers who would need direct training, and that equipment may be limited. Mark Zusy replied that they have dealt with responders, one example would be the City of Carlin, and they have responders from mines and other cities who have training. He added that volunteer firefighter would not be able to provide HazMat responses.

Commissioner Crawforth asked if Homeland Security would get involved with the CAPP Program. Mark Zusy replied they would not.

NOTE: A copy of Mark Zusy's powerpoint presentation is added as appendix #9 at the end of this document.

STAFF AND PUBLIC COMMENTS:

Chairman Close opened the meeting for public comments.

Christy Morris from Ormat Nevada, Inc. approached the podium. Ms. Morris asked the Commission to consider the following suggestions:

- 1) NDEP should retain the two-tiered CAPP program or revise the program in such a way that remote facilities which cannot impact the public or sensitive environments with accidental releases are not subject to the level of regulation required for urban center facilities.
- 2) The table of threshold quantities in NAC 459.9533 should adhere to the federal CAA Section 112(r) thresholds so as not to unnecessarily broaden the regulated community under CAPP with small quantity chemical users.
- 3) Small quantity and remote facilities which could not impact the public or sensitive environments with accidental releases should not be subject to the same fees as urban area facilities.

The last paragraph of Ms. Morris's outline read:

It is understood that much of the proposed changes are geared toward greater control of processes which use explosives. We understand and support the need for this regulation which was the focus of Senate Bill 127. One possible way of handling this area of hazardous materials would be to separate its regulation, much as is done with radioactive materials and equipment, within the NAC 459 chapter, allowing for greater regulation, fee adjustments and lower thresholds where justified without the comprehensive program changes as proposed.

NOTE: A copy of her outline is added as appendix #10 at the end of this document.

Lorne Clark from DynoNoble spoke and gave their support for the CAPP Program. He said the CAPP Program staff have expertise and are very diligent.

There were no more public comments; Chairman Close called the Public Meeting to a close.

STAFF AND PUBLIC COMMENTS:

Mark Zusy added that CAPP has a Legislative declaration to protect employees, citizens, and the environment. CAPP does duplicate OSHA inspections. Mr. Zusy stated that Ormat has Butane and Pentane in their remote geo thermal facilities so they must have an emergency response plan.

SEC COMMENTS:

Commissioner Crawford, based on his knowledge of the CAPP Program and its staff, made a motion to accept petition 2004-25. Commissioner Ricci seconded the motion. Chairman Close and Commissioner Coyner both opposed the petition. After further discussion, the Commission approved the petition with the following changes:

The Commission did not concur with the fee increases that were scheduled to become effective on July 1, 2007 and July 1, 2009. In order to appropriately reflect the adopted regulatory language, the Commission approved the regulation with the following amendment; the sections related to fee increases in the years referenced above are to be deleted from the petition as drafted by LCB.

Chairman Close called the meeting to a close at approximately 3:00 p.m..

APPENDIX

- 1) **Petition 2004-27 - Vehicle Emission Testing - Inspection & Maintenance Program, Page 15**
- 2) **Petition 2004-29 - Adoption By Reference of Federal Regulations, Page**
- 3) **Petition 2004-28 - Visible Emissions – Technical Correction, Page**

- 4) **Information Item -- State Implementation Plan (ASIP), Page**
- 5) **Petition 2004-24 – LCB File No. R136-04: Water Quality Standards, Change in Sampling Locations – Lake Mead & Las Vegas Bay**
- 6) **Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC)**
- 7) **Petition 2004-23 – LCB File No. R128-04: Drinking Water State Revolving Fund (DWSRF) - Transfer of Authority**
- 8) **no document**
- 9) **Petition 2004-25 – LCB File No. R137-04: Chemical Accident Prevention (CAPP)**
- 10) **Ormat's Comments regarding Petition 2004-25**