

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF January 20, 1994

HELD AT: Las Vegas, NEVADA

TYPE OF HEARING:

YES REGULATORY

APPEAL

FIELD TRIP

ENFORCEMENT

VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES AGENDA

YES PUBLIC NOTICE

YES MINUTES OF THE HEARING

LISTING OF EXHIBITS

AGENDA

NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing commencing at **9:30 a.m.**, on **Thursday January 20, 1994**, at the Clark County Sanitation District Conference Room A located at 5857 East Flamingo Rd, Las Vegas, Nevada.

This agenda has been posted at the Clark County Sanitation District and Division of Environmental Protection Office in Las Vegas, Nevada, the Washoe County Library in Reno, Nevada, the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this hearing was published on December 22, 1993, December 29, 1993 and January 12, 1994 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. Approval of minutes from the November 3, 1993 and November 4, 1993, meeting. * ACTION

II. Regulatory Petitions - * ACTION

- A. Petition 94004 permanently amends NAC 444.842 to 444.960. The proposed amendments modify NAC 444.8632 to adopt by reference 40 CFR Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Part 279 as those parts existed on July 1, 1993 and to reflect the current costs for purchasing those parts of the federal regulations. Part 279 contains the new federal used oil management regulations. This petition proposes to add new state regulations that would restrict the mixing of used oil with other products and wastes.
- B. Petition 94005 permanently amends NAC 444.842 to 444.846. The petition proposes new sections defining hazardous waste recycling facilities and mobile recycling units. The petition expands the definition of management of hazardous waste; and it exempts generator owned recycling units from written determinations. The proposed amendment requires mobile recycling operators to have written determinations, and it provides for a mobile recycling fee schedule.
- C. Petition 94006 is a permanent amendment to solid waste regulations previously adopted by the Environmental Commission on September 22, 1993. The petition makes technical corrections and other minor amendments to LCB File No. R-051-93 (NAC 444.570 to 444.748). Proposed sections to be amended include; 39, 43, 54, 63, 69, 70, 85, 86, 87, 86.5, 87, 94, 96, 112, 116, 134.5. The major amendments includes the clarification of environmental health risk guidelines, requirements for final cover notice for closed Class II and Class I facilities, and new class II facility groundwater monitoring requirements.
- D. Petition 94007 permanently amends NAC 445.1835(3) by increasing the sewage treatment plant operator certification fees 20 to 25 dollars for initial and reciprocity applications and by including additional fees for related certification documents, such as duplicate certificates, late fee and returned check. The additional fees range from 20 to 30 dollars. The petition repeals the provisional certification fee.

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III. Settlement Agreements on Air Quality Violations - ACTION *

- A. A & K Earth Movers, Inc. ; Notice of Alleged Violation # 1065
- B. Concrete Products Co.; Notice of Alleged Violation # 1063
- C. T.E. Bertagnolli & Assoc.; Notice of Alleged Violation # 1066
- D. Pacific Coast Building Products; Notice of Alleged Violation # 1064
- E. Bob's Texaco; Notice of Alleged Violation # 1068
- F. Western States Gypsum; Notice of Alleged Violation # 1071

IV. Discussion Items

- A. Update on Petition 94002 (Clean Air Act Operating Permit Program)
- B. Status of Division of Environmental Protection's Programs and Policies
- C. Past & Future Meetings of the Environmental Commission
- D. General Commission or Public Comment

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 extension 3118 no later than 5:00 p.m. Friday January 14, 1994.

NEVADA STATE ENVIRONMENTAL COMMISSION NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:30 a.m. on January 20, 1994**, at the Clark County Sanitation District, Conference Room A, located at 5857 East Flamingo Rd, Las Vegas, 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 94004 permanently amends NAC 444.842 to 444.960. The proposed amendments modify NAC 444.8632 to adopt by reference 40 CFR Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Part 279 as those parts existed on July 1, 1993 and to reflect the current costs for purchasing those parts of the federal regulations. Part 279 contains the new federal used oil management regulations. This petition proposes to add new state regulations that would restrict the mixing of used oil with other products and wastes.
2. Petition 94005 permanently amends NAC 444.842 to 444.846. The petition proposes new sections defining hazardous waste recycling facilities and mobile recycling units. The petition expands the definition of management of hazardous waste; and it exempts generator owned recycling units from written determinations. The proposed amendment requires mobile recycling operators to have written determinations, and it provides for a mobile recycling fee schedule.
3. Petition 94006 is a permanent amendment to solid waste regulations previously adopted by the Environmental Commission on September 22, 1993. The petition makes technical corrections and other minor amendments to LCB File No. R-051-93 (NAC 444.570 to 444.748). Proposed sections to be amended include; 39, 43, 54, 63, 69, 70, 85, 86, 87, 86.5, 87, 94, 96, 112, 116, 134.5. The major amendments includes the clarification of environmental health risk guidelines, requirements for final cover notice for closed Class II and Class I facilities, and new class II facility groundwater monitoring requirements.
4. Petition 94007 permanently amends NAC 445.1835(3) by increasing the sewage treatment plant operator certification fees from 20 to 25 dollar and by including additional fees for related certification documents, such as duplicate certificates, late fee and returned check. The additional fees range from 20 to 30 dollars. The petition repeals the provisional certification fee.

Persons wishing to comment upon 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. Written submissions must be received at least 5 days before the scheduled public hearing.

A copy of the regulations to be adopted and amended will be on file at the Office of the Secretary of State, Capitol Complex, State Library, 100 Stewart Street, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada, Division of Environmental Protection, 1515 East Tropicana, Suite 395, Las Vegas, Nevada for inspection by members of the public during business hours.

Additional copies of the regulations to be adopted or amended will be available at the Division of Environmental Protection for inspection and copying by members of the public during business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 ex. 3118 no later than Friday January 14, 1994.

This public notice has been posted at the Clark County Sanitation District Office in Las Vegas, Nevada, Division of Environmental Protection, Clark County Public Library and Clark County Commission Chambers in Las Vegas, Reno City Council Chambers and Washoe County Library in Reno, Division of Environmental Protection, and State Library in Carson City, Nevada.

STATE ENVIRONMENTAL COMMISSION
Meeting of January 20, 1994
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:

Vice chairman William Molini
Tom Ballow
Joseph Tangredi
Roy Trenoweth
Russell Fields
Mike Turnipseed
Marla Griswold
Harold Ober
William Bentley
Fred Gifford

Jean Mischel - Deputy Attorney General
David Cowperthwaite - Executive Secretary
LuElla Rogers- Recording Secretary

Meeting convened at 9:50 a.m. at the Clark County Sanitation District, 5857 East Flamingo Road, Las Vegas, Nevada, Conference Room.

Vice chairman William Molini read the public noticing as defined in the agenda for January 20, 1994.

Item I. Approval of Minutes

Vice chairman Molini opened the meeting with a request for a motion to approve the minutes of the November 3, 1993 and the November 4, 1993 hearings as presented by staff. Commissioner Bentley made a motion to approve the minutes, Commissioner Fields seconded and the motion was unanimously approved.

Item II. Petition 94004

Vice chairman Molini read Agenda Item II: Regulatory Petition 94004 will permanently amend NAC 444.842-960. The proposed amendments modify NAC 444.8632 to adopt by reference 40 § Part 2, Subpart A; Part 124, Subparts A & B; Parts 260 to 270 inclusive and Part 279 as those parts existed on July 1, 1993 and reflect the current cost for purchasing those parts of those regulations. Part 279 contains the new Federal Used Oil Management regulations. This petition

proposes to add new state regulations that would restrict the mixing of used oil with other products and waste.

Vice chairman Molini called upon Colleen Cripps with the Division of Environmental Protection, Bureau of Waste Management to discuss Petition 94004.

Colleen Cripps explained that the proposed regulations will:

Up-date the current regulations and maintain consistent dealing with the federal RCRA (Recourse Conservation and Recovery Act) program by adopting those federal regulations promulgated within the past year by reference;

Include the revised treatment standards for certain hazardous waste and debris;

Include amendments to the financial insurance requirements for the provisions of claims reporting and obtaining a letter of credit related to third party liability coverage;

Include a case by case extension of the land disposal restriction effective date for certain hazardous soils contaminated with radioactive mixed waste or those that require incineration retorting or vivification;

Include a prohibition on the disposal of hazardous waste landfills of liquids that have been sorbed to materials that will either biodegrade or that release liquids when compressed;

Include modifications to the technical standards for drip pads used at wood preservers, amendments to the treatment standards for waste explain the characteristics of ignitibility and crustivity.

Ms. Cripps explained that the amendments propose to:

Adopt EPA's final listing decision for used oils that are recycled and the standards for the management of those used oils;

Modify the federal regulations to only allow, under very specific circumstances, the mixing of waste oil with hazardous waste and other materials provided that the mixture no longer exhibits the characteristics of ignitibility;

Allow the mixture of used oil with diesel fuel provided that those mixtures are being used for mining activities related to extractions and those activities have received the express written approval of the Division;

Allow mixtures of used oil and sorbent and the mixture of used oil with other fuels that will be used for energy recovery; and to

Allow the mixing of used oil with characteristic hazardous waste, if its characteristic is solely that of ignitibility, allowing this to be done by conditionally exempt small quantity generators

who generate and mix less than 5 gallons of ignitable waste per month. Ms. Cripps explained that this specific mixing provision was created to allow businesses that generate a small amount of spent solvents to be able to handle that waste in a cost effective manner and that any conditionally exempt small quantity generator that qualifies and takes advantage of this exemption is required to maintain, for a minimum of 3 years, written records of that mixing that will include the quantity and description of the waste being added to used oil, the amount of used oil that was present when the mixing occurred and the date the mixing took place.

Commissioner Ballow asked how they could possibly mix gasoline and oil without it being ignitable. Ms. Cripps replied that it has to be below the C.F.R flash of 140 degrees.

Ms. Cripps explained that the intent of drafting more restrictive regulations is to encourage generators, transporters and energy recovery facilities to manage used oil in an environmentally sound manner, to reduce the liability for used oil to generator's and transporters and to hold all generators of used oil to the same standards. She noted that some generators of used oil have voiced concerns that during pickup their used oil would be co-mingled with other generators whose used oil has not been properly segregated. Transporters have expressed similar concerns. From the regulatory standpoint there is a concern that there are a number of generators that may be improperly disposing of their waste through this mixing exclusion. Ms. Cripps explained that these specific exemptions were developed in conjunction with recommendations from the regulated community, the waste oil haulers and the Nevada Mining Association.

Ms. Cripps noted that during the public comment period, three written comments plus several phone comments were received and, based on those comments the Division recommends the following 5 changes to the regulations before you:

Page 2, Section 4, Subsection 2c - Line 6. Strike "of less than 25 gallons of used oil or three cubic yards of contaminated sorb materials" and in line 7 "any used sorbent materials, or any other materials, to dilute used oil before disposal is prohibited".

Vice chairman Molini asked Ms. Cripps why she wanted those passages deleted. Ms. Cripps replied that comments received from Nevada Power stated that there are some instances where they may have spills that are larger than this volume and they would still be using sorbent materials to contain the spills. Vice chairman Molini asked if that would pose a problem with

federal regulations or RCRA and Ms. Cripps replied no? She explained, referring to the change in line 7, that there was concern that it was inconsistent with the first sentence, that the original intent of the second sentence was to insure that people were not going to be using sorbent materials just to solidify used oil and the Division wanted to make certain it was used for leaks and spills. To alleviate any confusion the Division decided that eliminating that sentence would not pose a problem.

Subsection 3 of Section 4 - line 14. The Division proposed that the language be changed to read "solvents that upon disposal would meet the definition of ignitibility under 40 C.F.R. Part 261 for a minimum of 3 years".

Section 6. Delete on line 9 "Generators who mix wastes that are not hazardous with their used oil shall maintain records of the mixing. The records must include the quantity and description of the waste added to the used oil, the amount of used oil to which the waste was added and the date the mixing took place."

Section 8, line 29. After requirements of, to add in parenthesis "(and may rely upon applicable exclusion or exemption under)".

Strike lines 30 and 31 in Section 9, Subsection 2(n) which reads "Section 279.21 (a) is adopted except § "279.10(b)(2)(ii) and (iii)" is deleted and replaced with "Section 4 of this regulation.". Ms. Cripps explained that the federal language has changed since these regulations were written and this language is no longer needed. Ms. Cripps noted that the changes requested address the comments submitted by Nevada Power, Barrick Mines and the Nevada Mining Association.

Deputy Attorney General Jean Mischel commented on the requested change in Section 8, Subsection 1. She stated she understood why the regulated community does not want that language but since it is already in the regulations LCB would not look kindly on the change.

Ms. Cripps asked Attorney Craig Galli, representing Barrick Mines, to comment on the language change.

Mr. Galli, addressing Jean Mischel's comment, stated that he defended the language change, that the term "requirements" generally indicate an affirmative duty or obligation, it does not

necessarily incorporate exemptions and exclusions, so the parenthetical would clarify that. Jean Mischel asked if, rather than using the term "requirements" could the language following "provisions of C.F.R. Part 2" be stricken.

Mr. Galli replied that the term "comply" intimates that there is an affirmative duty and exclusion and "exemption" means you don't have to comply, that there is no affirmative duty. By inserting the parenthetical it is clear that all of the RCRA for subtitle C exclusions and exemptions would apply to generators of hazardous waste and generators of used oil even though, if you look at the language of the exclusion itself, it relates only to generators of hazardous waste.

Chairman Molini stated that he understood the testimony and would be of the disposition to let LCB figure out how it fits.

Vice chairman Molini called upon Mr. Bodily from Barrick Goldstrike Mines for testimony. Mr. Bodily set aside his comments.

Vice chairman Molini called upon Allison Urbom from Nevada Power Company.

Allison Urbom stated that Colleen Cripps had addressed the three objections of Nevada Power. She explained Nevada Power's objections:

(1) In respect to the 25 gallons or three cubic yards: Quite often we have a transformer that is found leaking that contains more than 25 gallons. For the purpose of protecting the environment and to keep the leak from going into a storm drain or a waterway, our method of containment is to use some kind of sorbent, the best and most efficient method of containment.

(2) In Section 4, subsection 3: We requested the requirement of maintaining records of all solvents be removed. Colleen addressed it by specifying what the solvents would refer to, the ignitibility. Our concern was that solvents can be so all encompassing and trying to maintain records of that could be very burdensome.

(3) With respect to Section 6: On the sentences that were removed, it appeared to us that companies would make sure that they were not mixing hazardous waste in with the oil. Once they identified that it was not hazardous waste, maintaining records would be burdensome, recording every single addition to the used oil shipment. By removing that restriction we are still required to identify the product but we consider maintaining records for every single addition prohibitive.

Commission Ober noted that Ms. Urbom had asked to remove the language saying "less than 25 gallons" because it often happens to be more than 25 gallons and asked how much more? Ms.

Urbom replied that Nevada Power's transformers hold anywhere from 5 gallons up to 5,000 gallons. Everything that is in Nevada Power's distribution system tends to be less than a couple hundred gallons, but in the substations there can be up to 5,000 gallons.

Commissioner Gifford asked Ms. Cripps where the logic for the original 25 gallons or 3 cubic yards came from. Ms. Cripps replied that the intent was never to disallow the use of sorbent materials in cleaning up leaks and spills, that in the language the Division was trying to be consistent with the solid waste regulations and how those materials could be managed. It is Division policy that volumes larger than 25 gallons cannot be managed in the landfills so the language was written using gallonage. Jean Mischel asked if the waste becomes solid when it is mixed with a sorbent and if so, once the oil is mixed with a sorbent material, would that create a different kind of waste so it would be managed differently? Ms. Cripps replied, potentially, yes.

Commissioner Turnipseed asked if a discussion between Deputy Attorney General Jean Mischel and Attorney Galli regarding the parenthetical was necessary. Craig Galli suggested that the term "provisions" as opposed to "requirements" be used and that the Commission could put a statement in the rulemaking records that nothing in Section 8 is intended to create the regulation of used oil that is more stringent than EPA's regulations with the exception of the Nevada mixture rule, and that all of the hazardous waste exclusions and exemptions would still apply to used oil where applicable. Jean Mischel deferred to Mr. Galli that his statement was a little broader than Section 8. Craig Galli stated that the statement would be "that nothing in section 8 should be construed to limit restrictions and exclusions under RCRA Subtitle C". Craig Galli explained that the parenthetical would make it clear for the regulated community and that there are numerous parentheticals used by EPA in their own RCRA Subtitle C regulations. Jean Mischel stated that she was trying to avoid having it come back before the Commission but she too, would accept the parenthetical.

Vice-chairman Molini asked for a motion for adoption of Petition 94004 as amended with the proviso that LCB work with that parenthetical language, not to change the meaning or intent. Commissioner Bentley moved that Petition 94004 (LCB File R-173-B) be approved with the changes presented including the parenthetical statement and asked that in Section 9 subsection "o" be made subsection "n". Vice-chairman Molini noted that the motion is "as amended with the addition of changing subsection "o" to "n". Commissioner Turnipseed seconded the motion. Amended Petition 94004 was adopted.

Item II. Petition 94005

Vice-chairman Molini reviewed Petition 94005 which permanently amends Nevada Administrative Code 444.842- 444.846. The petition proposes new sections defining hazardous waste recycling facilities and mobile recycling units, expands the definition of management of hazardous waste and exempts generator owned recycling units from written determinations. The proposed amendment requires mobile recycling operators to have written determinations and provides for a mobile recycling fee schedule. Vice chairman Molini called upon Jeff Denison, Supervisor of RCRA Facilities Permitting Branch of the Division of Environmental Protection for comments.

Mr. Denison explained that the changes requested in the petition constitute adding definitions used in the mobile recycling references, making them more consistent with the language addressed in other regulations. He explained that Section 8 clarifies what is meant by management of hazardous waste and Section 9 makes grammatical changes and adds mobile recycling to the fees. The major change is the provision of subsection 4.

Commissioner Gifford asked Mr. Denison to define "mobile unit". Jeff Denison defined mobile unit as a recycling apparatus that is transportable, usually a distillation or filtration process, that comes to the site where the waste is generated to filter, distill or recover part of the waste that generators generate.

Commissioner Turnipseed asked Mr. Denison if his definition of a mobile recycler was consistent with Section 8 in the definition of management of hazardous waste and if it had the meaning ascribed in NRS 459. Jeff Denison replied that NRS 459 refers to treatment, storage and incineration, that portion is included in the statute and federal regulations define hazardous waste activities to include open burning as a treatment center.

Commissioner Turnipseed asked, if the regulations are adopted, would it mean that the Commission would permit and have regulatory authority over mobile recyclers. Jeff Denison replied that the Commission would not permit them, the regulation is the written determination that states that requirement only.

Continuing to Section 10, Jeff Denison stated the regulations that require the annual fee payments language previously inferred that if you had interim status you weren't subject to the annual fee requirement and that was not the intent. The changes in Section 10 require that if you have interim status, you still pay the annual fee for the operating facility. Commissioner Gifford asked if, under Section 10, the mobile units are included in that list. Jeff Denison replied that as a recycler the mobile units are not subject to the annual fee.

Continuing to Section 11, Jeff Denison stated that the language which previously included incineration for energy has been changed to make reference to the recovery of energy in boilers or industrial furnaces consistent with the federal regulations and that the grammatical structure changes in this section made the meaning of Section 11 more clear.

Jeff Denison explained that Section 12 clarifies duplicability of the written determination of mobile units for the treatment of hazardous waste and clarifies the written determination for recycling. Commissioner Trenoweth noted that in Section 12, number 4, line 3, there was a wrong word, that "where" should be "which". Attorney General Jean Mischel stated that the word "where" should be "which" or to take "at" out. Vice chairman Molini stated that "at" would be stricken from Section 12, Subsection 4, line 3.

Jeff Denison explained that language changes in Section 13 add "mobile unit" everywhere "facilities" appear.

Jeff Denison explained that Section 14, subsection 2 adds beginning requirements as stated; that a stationary new or expanding facility (new or expanding is defined at the beginning in Section 5) means a facility for which a permit is required but which was not issued before March 28, 1990. He noted that these regulations were amended in May of 1992 but the Division felt that they were added on without considering the limitations of the provisions. Mr. Denison added that the same comments apply to Section 15.

Mr. Denison noted that the Division contacted all permitted facilities in the state about adoption of these regulations and received no formal comment to the contrary. He explained that the mobile recycling regulations stand to ease the burden on recycling to facilitate that activity and also limit permitting on our resources, favorable to both the regulating community and the Division.

Vice chairman Molini asked for Commission members or public comment.

Allan Gaddy stated that his company, Environmental Technologies of Nevada, has a certificate of resignation and a permit to operate a stationary hazardous waste storage facility in Nevada. He requested that Mr. Denison explain Section 15, line 2, the words "or expanding facilities", and expressed his concern over the use of "expanding". Jeff Denison replied that Section 5

defines new or expanding, that expanding is limited to expansion of existing units. Vice chairman Molini asked Mr. Denison if it would be appropriate, in Section 15, subsection 1, to take out the word "or" after "required" on line 3 making it read "A new or expanding facility for the management of hazardous waste for which a Class 3 modification of the permit is required". Jeff Denison agreed. Vice chairman Molini stated that the bold language phrase "or for which a Class 3 modification permit is required" would be stricken. Allan Gaddy replied that it would still read "an expanding facility would need to obtain a certificate of designation". Vice chairman Molini explained that, by definition, an expanding facility is one that requires a Class 3 modification, thus, if you have a minor expansion that doesn't require a Class 3 it is not necessary to go through the entire process. Allan Gaddy asked if a stationary source that is expanding would meet those criteria by having a certificate of designation. Jeff Denison explained you have your certificate of designation for your storage permit; if you were to come back and propose an additional treatment unit that would require obtaining a Class 3 modification to your existing permit, you would then be an expanding facility so you may have to re-evaluate your site in accordance with the location standards. Jeff Denison explained that the certificate of designation is now an internal process subject to the exercise of designation, unless you were permitted before this arbitrary March 28, 1990 date.

Vic Skaar, Clark County Health District Hazardous Materials Supervisor, requested clarification on the definition of the mobile unit for the recycling of hazardous waste and asked if there is an attempt to have this include the mobile technology that is brought on site for the remediation of petroleum contaminated soils and waters? Jeff Denison replied that there are mobile processes that are treatment, not recycling processes and that treatment permits are required under federal regulations. He explained that, as the delegated authority for EPA, the Division has no allowance to excuse the permit for the activity of treatment. He noted that certain allowances are given in a corrective action or an emergency basis where an emergency permit can be issued to address those issues, but given the federal regulations on treatment permits, they do not distinguish mobile treatment from stationary facility.

Vice chairman Molini asked for additional public testimony or questions from the Commissioners. No questions were raised. Commissioner Fields moved to adopt Petition 94005 with the amendment to Section 12, subsection 4, changing the word "where" to "which" and with the amendment to Section 15, striking "or for which a class 3 modification of the permit is required" on line 3 and 4". Commissioner Gifford seconded the motion. The motion

unanimously passed and Petition 94005 was adopted with the amendments noted.

Item II - C: Petition 94006

Vice chairman Molini reviewed Petition 94006 which proposes a permanent amendment to the solid waste regulations previously adopted by the Environmental Commission on September 22, 1993. The petition makes technical correction and other minor amendments. The major amendments include the clarification of environmental health risk guidelines; requirements for final cover notice for closed Class II and Class I facilities and new Class II groundwater monitoring requirements.

David Emme with the Solid Waste Branch of the Division of Environmental Protection explained that the Division has spent 2 years spent trying to upgrade Nevada's solid waste program to gain approval of the US EPA Solid Waste Program. In September of 1993 the Commission adopted extensive permanent provisions to the solid waste regulations, LCB File # R-051-93. EPA reviewed them and, in the December 30, 1993 Federal Register, published a notice indicating their intent to approve Nevada's solid waste program, conditioned on us making some technical corrections to these regulations. Thus, the Division is requesting the following changes:

1. The Division proposes to clarify the applicability of final cover standards, sites that close before these new regulations take effect and adopt the federal approach to establishing ground water protection standards.
2. At the September, 1993 meeting, the Commission adopted the repeal of Section 87. Unfortunately, that repeal was not picked up when the regulations were filed. Section 87 is the last section of the new regulations so it is cross referenced by blanket cross references over and over again. Wherever that cross reference appears in the regulations we need to change Section 87 to Section 86.5.
3. On line 14 the language "this regulation" is changed to "the regulation adopted by the state environmental commission that was filed with the secretary of state on November 8, 1993, and designated as LCB File no. R051-93". This indicates that we don't mean this current technical correction but the regulation that we adopted at the September hearing.
4. Section 20, subsections 4 and 5 clarifies the closure requirements for sites that stop receiving waste before these new regulations take effect. Mr. Emme explained if you stop receiving waste you still have to comply with the requirements to put a cap over the

landfill but you don't have to comply with the other requirements including installation of ground water monitoring wells. This change is consistent with the Federal Landfill Regulations. Subsection 5 reflects the same change, but affects the smaller Class I sites that accept less than 100 tons per day. You recall that we gave them a six month extension as to when these regulations apply, so the date is different. If they stop receiving waste before April 9, 1994 they have to apply the final cover within 180 days.

5. Section 17. The Division proposes to change the way we adopt groundwater protection standards if monitoring at a landfill site detects contaminants. In September, 1993 the Commission adopted language that stated that the administrator would establish a groundwater protection standard, either an MCL or a standard that was deemed to be protective of public health and the environment by the administrator. EPA does not think that language is specific and is not satisfied that it would protect public health and the environment. EPA insists we adopt the federal language for establishing groundwater protection standards. That means that carcinogens be within an acceptable risk range of 1×10^{-4} to 1×10^{-6} excess cancer level, plus a reference to systemic toxicants. This change is in response to EPA comments, to make this conform with the federal regulations.

Commissioner Turnipseed stated that on page 10, line 28 "continuous lifetime exposure which is within a range of 1×10^{-4} to 1×10^{-6} " should tell what that really is. David Emme explained that it is basically one chance of 10,000 to one chance in 1,000,000 above what is the normal risk of getting cancer.

David Emme reported that the Division had received no public comment on these regulations but that Silver State Disposal expressed concern today that construction and demolition waste should go to a municipal landfill. Mr. Emme explained the intent of what these regulations are trying to accomplish. Disposal sites are classified using three classes, Classes I and II describe sites that basically accept household garbage and municipal solid waste and the Division created this new class, Class III, for sites that accept industrial waste. The Division designed the regulations for the Class III sites to be flexible so that we could apply the standards to a site based on the nature of the waste and the risk hazard posed by the type of waste. The regulations for Class III sites require permits, however there is also an opportunity for the solid waste management regulatory authority to adopt lesser standards for sites that accept waste that is relatively inert or unlikely to pose environmental problems. The provision was intended to apply to sites that accept

construction and demolition waste so that we can set lesser standards for sites that are accepting broken concrete or rubble and waste that is not likely to cause any environmental problems. The Division wanted to abolish Section 87 because that would have applied a whole list of standards immediately upon adoption, taking away the flexibility that we are trying to offer for Class III sites. Mr. Emme expressed a desire that the Division work with the disposal industry and the solid waste management authorities within the state to make clear how construction and demolition sites should be regulated and to bring back those findings to a future Commission hearing.

Commissioner Turnipseed asked if, when the Division addresses the issue, will you have any problem with concrete chunks being used as rip-rap in flood or erosion control activities provided that the re-bar is not left exposed which would cause a safety hazard. He continued that he understands that under present regulations that type of site has to be permitted to accept that kind of waste and asked if Silver State Disposal preferred all that going to a municipal landfill. David Emme replied it is common practice to use that material as clean fill or as erosion control material, it has never been regulated and is not defined in the regulations. He explained that a number of states define "clean fill" and "inert waste". Nevada does not define it and we need to do that.

Tom Isola, Vice President of Silver State Disposal, stated that he was a member of the committee that put together the solid waste plan for the State of Nevada. He explained that committee attempted to devise the solid waste plan to coincide with federal regulations which attempt to limit landfills, to create regional landfills, thus eliminating disposal sites all over the desert. He explained that when the solid waste plan was written there were three classifications, Class I, Class II and Class III. Class III was for industrial waste. The committee tried to diversify or break down the solid waste, take the things that were not harmful and place them in the Class I and Class II sites, depending on the size of the community. A Class III site was for materials that had more harmful potential like asbestos and solids contaminated with materials, such as diesel or hydrocarbons that are under 100 parts per million, or have PCV waste within them. These were defined wastes that should go to an industrial waste landfill. The committee decided that the industrial waste landfills would have three classifications; the greater being a double lined facility that could handle waste that in the future, when it was classified as hazardous waste, would be handled properly to protect the groundwater and the environment. Subsequently, Silver State Disposal, one of the two Class I landfills in the state, designed and

built a Class I Landfill at Apex which meets all federal criteria, as well as a Class III industrial landfill which far exceeds federal criteria. It is a double lined facility to handle these types of waste. Silver State Disposal does not believe "construction demolition" should be placed in the Class III category because it is a very wide category. If we want to break it down and take inert products such as rock, concrete or dirt that is clean dirt, using it as fill material, we have no problem with that. If it is dirt that is contaminated it has to be checked and monitored. Many open pit landfills located in the middle of the desert do not have monitoring capability. Asbestos is in wallboard, roof trusses and ceiling tile and this type waste must be monitored. Mr. Isola continued that Silver State Disposal would like to address the issue and work with the state to try to find a term better than "construction demolition" that can go into just any landfill. We must redefine it and keep construction demolition waste in the Class I and Class II landfills, industrial waste in a Class III landfill, and if it is just a fill material, that can go into a construction demolition landfill.

Vice-chairman Molini asked Mr. Isola if he would work with Mr. Emme on a better definition of these landfill classifications and the type waste that could be accepted into those landfills.

Mr. Isola replied, absolutely.

Reno Disposal noted they would like to work with Mr. Emme and Silver State Disposal also.

David Emme asked to make it clear that the Division still wanted to repeal Section 87.

Vice-chairman Molini stated "with the understanding that you will work on the definition of types of landfills and products acceptable to those". Mr. Emme replied yes and requested 4 - 6 months to make the changes.

Commissioner Turnipseed moved that Petition 94006 be adopted as presented. Fred Gifford seconded the motion. Petition 94006 was unanimously adopted.

Item II-D: Petition 94007

Vice-chairman Molini reviewed Petition 94007 which permanently amends NAC 444.18353 by increasing the sewage treatment plant operator certification fee from \$20 to \$25 initial and reciprocity application and by including additional fees for related certification documents such as duplicate certificates, late fee and returned checks. He noted that the additional fees range from \$20 to \$30.

Leo Drozdoff, Water Permits Branch Supervisor, Bureau of Water Pollution Control and the Division representative to the Nevada Water Pollution Control Association Certification Board explained the three changes taking place in this proposed regulation:

1. New application fees would go from \$40 to \$60 and the reciprocity fees from \$50 to \$75.
2. Add new fees that would routinely not be experienced by operators, are punitive in nature but necessary to cover costs. These include lost check fees, late fees and duplicate certification fees.
3. Remove the provisional certification which was put in place when the regulations were adopted in 1992 so as not to penalize anyone that was in a position for a long period of time.

Mr. Drozdoff explained that since 1992 those who needed provisional certification have received them and that is no longer necessary. He noted that it is important to know that the certification board is operated by volunteers on a break-even basis, under an agreement between the Commission and the NWPCA.

Vice-chairman Molini asked Mr. Drozdoff if the essential purpose for the proposed increase is to provide sufficient revenue for the Nevada Water Pollution Control Association to deal with these applications. Leo Drozdoff replied yes, they must cover costs.

Commissioner Gifford stated that Section 5, items A and B infer that people are not serious about renewing their certificates and asked if the division was inferring this is not very important or that people are not paying attention to it. Leo Drozdoff replied it is not a common problem but the procedures of the board take one year and after a year, without any action, the board decertifies. Commissioner Gifford asked if a person is more than a year late, is he/she decertified. Leo Drozdoff replied that after a year, as soon as the board meets, they will decertify this person. Commissioner Gifford asked about the importance of having a certificate and if \$20 or \$30 would make a difference in terms of an impetus to renew. Leo Drozdoff replied that a certificate is mandatory.

Steve Cottrell, Chairman of the Nevada Board of Wastewater Plant Treatment Operators, stated that the certificate expires on the expiration date and is not valid from that date on. Mr. Cottrell explained if you are using that certificate to hold a job position under regulatory requirements, it is not valid, just like a driver's license, however, \$30 plus a penalty of \$20 allows you to renew the certificate without taking an examine. Once a year has lapsed, formal action is taken that

actually decertifies that person which eliminates any chance of ever renewing that certificate. Mr. Cottrell explained the procedure: the Board meets, we review a list of operators to be decertified, and we approve decertification after their names are published in the Silver State Wastewater News newsletter. There is a window of approximately two months, so if somebody hears they are being decertified they can pay the extra fee and have their certificate renewed without taking the exam . The certificate is not valid from the point it expires.

Vice-chairman Molini asked if the process worked. Steve Cottrell replied we have never had the fee so we are hoping this will alleviate all the administrative requirements associated with the late fee. Previously there was no penalty, the Board paid the penalty by having to write the letters and take action. The Board hopes this will be a deterrent rather than a punishment.

Vice-chairman Molini asked for additional public or commission comment. No comments were offered. Commissioner Bentley moved that petition 94007 be approved. Commissioner Ober seconded and the motion was unanimously approved.

Item III: Air Quality Settlements

Vice-chairman Molini moved to agenda Item III; Air Quality Settlements

Tom Fronapfel, Bureau Chief, Bureau of Air Quality, Division of Environmental Protection discussed the A & K Earth Movers, operators of an aggregate crushing plant south of Fallon, Notice of Alleged Violation #1065 settlement. Mr. Fronapfel stated that the settlement called for a fine of \$1,000.00 for failing to operate necessary controls to suppress fugitive dust.

A & K Earth Movers are now in compliance with all the applicable air quality regulations.

Commissioner Turnipseed noted that A & K Earth Movers have been fined twice before for the exact same violation, five times before for other violations and that they were once fined \$3300 for corrective actions. Commissioner Turnipseed asked if we are seeing a pattern of habitual abuse. Tom Fronapfel stated that it would appear, by the list presented, that we are seeing abuse but not knowing the specifics of the violations that appeared in 1990 and 1991 there may have been some additional circumstances that warranted the higher penalty. A & K Earth Movers and the Bureau agreed upon the \$1,000 fine and when they were informed that they had a problem they immediately corrected it. Commissioner Ballow moved that the settlement be approved with the stipulation that written notification be sent to A & K Earth Movers that any subsequent violations will be substantially higher. Tom Fronapfel stated that the Bureau would notify A & K Earth Movers of that decision. Commissioner Gifford seconded the motion. The motion was

adopted by the Commission.

Mr. Fronapfel discussed Concrete Products Company, who operate a portable crushing and screening system at the Big Springs Mine located in Northern Elko County, Notice of Alleged Violation #1063 settlement. Mr. Fronapfel stated that the settlement called for a regulatory violation for operating a screening plant above the restricted amount of production which is specified in their permits. As soon as they learned that they were exceeding their permit production they immediately dropped to their permitted production levels. A fine of \$1,500.00 was agreed upon for the violation. At present they are operating in compliance.

Commissioner Ballow moved that the settlement be approved. Commissioner Turnipseed seconded the motion. The motion was adopted by the Commission.

Mr. Fronapfel discussed T.E. Bertagnolli and Associates, Notice of Alleged Violation #1066 was issued for violation of NAC 445.704, permit to construct and operating permits required. They started construction of a crushing and screening plant located at Lockwood, Nevada without the proper air quality permits. The company stated they were unaware that they were required to have permits for construction of a plant to operate at this site and thought no permits were required until the plant was operational. They have now obtained all necessary permits to construct and operate, This action was sufficient to bring them into compliance. A fine of \$2,500.00 was agreed upon. Vice-chairman Molini asked Mr. Fronapfel if the prior two agreements had lesser fines, and this seems to be a first violation, is the intent of the larger fine to get their attention? Tom Fronapfel stated that this company has been operating in the Reno/Carson City area for quite some time and he found it hard to believe that they were unaware that proper permits were required. Commissioner Gifford asked if the reference to a crushing and screening plant in Nevada is the same plant we are talking about in terms of violation or did they have another crushing and screening plant in another location. Mr. Fronapfel replied that a T.E. Bertagnolli and Associates also operate a crushing and screening plant in Brunswick Canyon outside of Carson City. Commissioner Ballow moved that the settlement be approved. Commissioner Fields seconded the motion. The motion was adopted by the Commission.

Mr. Fronapfel discussed Pacific Coast Building Products, otherwise known as Basalite Block Corporation. They operate a crushing facility located near Dayton, Nevada and was operating without pollution controls which resulted in Notice of Alleged Violation #1064, issued for

failing to operate in accordance with their permit. Basalite did not contest the notice and indicated that there had been a break in the control lines early in the day and repairs should have been initiated immediately. Basalite has implemented corrective actions, including redesign and repair of the system, provided better instructions as to the permit restrictions and they will contact the Bureau in the future when there is a system failure. An administrative fine of \$1,000.00 was agreed upon and they are currently in compliance. Commissioner Ballow moved that the settlement be approved. Commissioner Fields seconded the motion. The motion was adopted by the Commission.

Mr. Fronapfel discussed Bob's Texaco in Carson City, operators of a soil vapor extraction system at their location in downtown Carson City. Their consultant, Steffen Robertson and Kirsten, reported that the emissions of voluble organic compounds were in excess of permitted levels. Notice of Alleged Violation #1068 was issued for violation of NAC 445.696 for exceeding their permit limitations. The consultant reported that a new catalytic oxidizer was brought onto the site but the temperature settings were not verified during the initial operation which resulted in excess emissions of voluble organics. Bob's Texaco has implemented corrective action of maintaining a thermostatic bed temperature within the extraction system. We agreed that the actions were sufficient to bring the source into compliance with regulations and agreed to an administrative fine of \$2,500.00. They are currently in compliance with their permit. Vice-chairman Molini asked about the amount of the fine in comparison with some of the others for a first violation. Mr. Fronapfel stated that the Bureau had asked the consultants if this incident could have been avoided. Steffen Robertson & Kirsten replied it could have been avoided, the the action was negligence. Commissioner Turnipseed stated that the narrative concludes that their own consultant squealed on them, and asked if the fine went to the consultant or to the service station operator. Mr. Fronapfel stated that the fine would be passed through under the contractual arrangement between Bob's Texaco and Steffen Robertson & Kirsten. The fine will be recovered from the manufacturer of the equipment for not having it set properly but the notice was issued, and the fine was assessed, to Bob's Texaco. Commissioner Ballow moved that the settlement be approved. Commissioner Fields seconded the motion. The motion was adopted by the Commission.

Mr. Fronapfel discussed Western States Gypsum, operators of a crushing system in Mound House, Nevada. An inspection conducted on October 4, 1993 documented that the controls were not adequate to control fugitive dust at that location. Notice of Alleged Violation #1071 was

issued for violation of NAC 445.664, equipment for controlling pollution essentially not adequate. They stated that material was normally pre-wetted before it was sent to the crushing system but it was not being done on the day of inspection. They agreed to correct the situation by installing a high-volume water spray on the grizzly to saturate the material before it entered the crushing circuit. They will also be installing a bag house system to control the entire crushing circuit. We agreed that these actions are sufficient to bring the source into compliance but that they must have the system installed by August 31, 1994. We are asking the Commission to ratify the August 31, 1994 date as installation date. If they should miss that date, an automatic fine of \$5,000.00 will be assessed. Commissioner Turnipseed noted that in the list of violations, two were issued in the same month and asked if the Commission had already agreed on that settlement. Lew Dodgion noted that those were minor fines that do not require ratification by the Commission. Commissioner Ober asked Mr. Fronapfel what the cost of the corrective action would be and Mr. Fronapfel replied in the range of \$5,000.00. Commissioner Bentley made a motion that the agreement be approved. Commissioner Ober seconded the motion. The motion was adopted by the Commission.

Item IV: Discussion Items

Vice-chairman Molini moved to Agenda Item IV - Discussion Items

Lew Dodgion, Administrator of the Division of Environmental Protection gave a report on the Enhanced I&M adopted by the Commission on November 4, 1994. He stated that federal EPA failed to follow through on their threat to start the sanctions clock on the states of California, Indiana, and Illinois. Those states have refused to adopt enabling legislation to set up the program. Carol Browner, Administrator of EPA, declared that EPA would pause in going forward with the sanctions on California and negotiate with California. Governor Miller therefore directed the Division of Environmental Protection and the Department of Motor Vehicles to pause with the further development of the Enhanced I&M Program. Thus, we are now in a pause mode. Mr. Dodgion stated that EPA has announced that they were going to the Federal Register with imposed sanctions on those three states. A public hearing is scheduled in March, 1994 in Los Angeles and public comment will be heard on the proposed action to apply sanctions to the State of California. California's senate has passed I&M legislation that does not meet the federal requirements and they are getting ready to battle with EPA. California is insisting on two issues that would cut the cost of testing equipment in half, benefitting the industry as well as the consumer. California is also seeking the "self certification by fleet

operators and dealers" and again, one of the problems is how we deal with test and repair. California would not separate test and repair.

Commissioner Turnipseed asked, if you test and repair at separate facilities, what type of equipment does the repairman need to insure the paying customer that his/her car has been repaired and it will now pass inspection. Lew Dodgion replied that the repair industry would keep the diagnostic equipment, the BAR 85 Analyzer, that they have now even though it is nowhere as sophisticated as the I&M 240. Because of that, that there is no way that the repair station could certify that the repairs they made on a vehicle would insure that it pass inspection. That could not be accomplished without having the identical testing equipment.

Vice-chairman Molini welcomed and introduced Dr. Joseph Tangredi, new member of the Commission.

Commissioner Tangredi reported that he has been a citizen of Nevada for 20 years and that he is a Ear, Nose and Throat doctor in Clark County. He reported that he was a syndicated columnist for 8 years, writing a column called "Your Allergies in Environment", and that he personally finds it intriguing to view the logistics in back of trying to keep a clean Nevada. He stated that he was pleased to see a good cross-section of Nevada on the Commission and was pleased with the friendly faces and interest in the quality of environmental issues in the State of Nevada.

David Cowperthwaite, Executive Secretary, reminded the Commission that along with regulatory issues the Commission is also tasked with visiting sites of environmental issue in the state. He asked if the Commission had any preference for a field trip to take place before the end of the fiscal year. Vice-chairman Molini stated the mine dewatering issue would continue to be an environmental issue of importance and expressed a desire to visit a mine site. Lew Dodgion stated that the Commission has regulatory jurisdiction over the Test Site and that Chairman Melvin Close had expressed a desire to visit the Test Site but the Newmont and Barrick Gold Mine operations would be enlightening as to what they are doing environmentally. Lew Dodgion noted that the Commission also has a commitment to return to Laughlin to view the Ash Canyon area. Commissioner Gifford stated that he favored a tour to view the mine dewatering and reclamation in Northern Nevada. The Commissioners agreed that this would be their preference. David Cowperthwaite said he would proceed with preliminary plans for this field trip to take place before the end of the fiscal year.

Vice-chairman Molini moved to Agenda Item IV-D, Public comment.

There was no public comment.

Vice-chairman Molini called for a motion to adjourn the meeting. Commissioner made a motion that the meeting adjourn, seconded by Commissioner Ballow. The meeting adjourned at 12:30 p.m.

By David Cowperthwaite, Executive Secretary.