NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF February 16, 1995

HELD AT: Reno, Nevada

TYPE OF HEARING:

YES	**REGULATORY**	
	APPEAL	
YES	**FIELD TRIP**	**(A-55 Inc in Reno)**
	ENFORCEMENT	
	VARIANCE	

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

A G E N D A

NEVADA STATE ENVIRONMENTAL COMMISSION
PUBLIC HEARING

The Nevada State Environmental Commission will conduct a hearing commencing **9:00 a.m., on Thursday, February 16, 1995** at the Division of Wildlife's Conference Room A & B located at 1100 Valley Road, Reno, Nevada.

This agenda has been posted at the 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 January 18, January 25, and February 2, 1995 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. Introduction of Commissioner Robert Jones, from the State Board of Health

II. Approval of minutes from the November 9, 1994 meeting. * ACTION

III. Regulatory Petitions * ACTION

A. **Petition 95002** is a proposed temporary regulation amending Nevada Administrative Code (NAC) 445B.327, Fees: General Requirement. The proposed regulation amends fees charged to facilities emitting air emissions that require operating permits or annual service and maintenance. The fee rates for state fiscal year 1996 and 1997 are kept at the level established for state fiscal year 1995. This petition will reduce the rates paid by stationary sources during the next biennium.

B. **Petition 95003** temporarily amends Nevada Administrative Code 486A.030 to allow the Administrator of the Division of Environmental Protection to determine whether fuels not previously adopted by Commission meet the clean alternative fuel definition. This temporary regulation also adds new language to NAC 486A that defines the standards that would be applied by the Administrator of the Division of Environmental Protection to determine whether a fuel is a clean alternative fuel.

C. **Petition 95004** temporarily amends NAC 445B.221 by the adoption by reference of the provisions of 40 C.F.R Part 72, the acid rain provisions of the Clean Air Act. The proposed temporary regulation extends the Title V Operating Permit program provisions to cover sources that could potentially be regulated by the federal acid rain program.

D. **Petition 95005** temporarily amends NAC 445B.362 and 445B.363 by changing the formula for calculating emissions of particulate matter. This petition provides regulatory relief to sources of air pollution by correcting the method used to calculate PM_{10} emissions.

IV. Settlement Agreements on Air Quality Violations * ACTION

A. Calhoon Sand & Gravel: Notice of Alleged Violation # 1120
B. The Thatcher Company: Notice of Alleged Violation # 1125
C. Ames Construction, Inc. : Notice of Alleged Violation # 1134
D. West American Membranes, Inc.: Notice of Alleged Violation # 1145

V. Adoption of Senate Bill 127 Final Report * ACTION

VI. Discussion Items

A. Status of Pending Petitions
B. Legislative Update
C. Small Business Program & Ombudsman Update
D. Status of Division of Environmental Protection's Programs and Policies
E. Future Meetings of the Environmental Commission
F. General Commission or Public Comment

VII. Field Visitation to Alternative Clean Fuels Site:

A-55 Limited Partnership North America
210 Gentry Way - Reno, Nevada

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 no later than **5:00 p.m. February 13, 1995.**

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:00 a.m. on Thursday February 16, 1995**, at the Division of Wildlife's Conference Room B, located at 1100 Valley Road, **Reno**, Nevada.

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

1. **Petition 95002** is a proposed temporary regulation amending Nevada Administrative Code (NAC) 445B.327, Fees: General Requirement. The proposed regulation amends fees charged to facilities emitting air emissions that require operating permits or annual service and maintenance. The fee rates for state fiscal year 1996 and 1997 are kept at the level established for state fiscal year 1995. This petition will reduce the rates paid by stationary sources during the next biennium.

2. **Petition 95003** temporarily amends Nevada Admistrative Code 486A.030 to allow the Administrator of the Division of Environmental Protection to determine whether fuels not previously adopted by Commission meet the clean alternative fuel definition. This temporary regulation also adds new language to NAC 486A that defines the standards that would be applied by the Administrator of the Division of Environmental Protection to determine whether a fuel is a clean alternative fuel.

3. **Petition 95004** temporarily amends NAC 445B.221 by the adoption by reference of the provisions of 40 C.F.R Part 72, the acid rain provisions of the Clean Air Act. The proposed temporary regulation extends the Title V Operating Permit program provisions to cover sources that could potentially be regulated by the federal acid rain program.

4. **Petition 95005** temporarily amends NAC 445B.362 and 445B.363 by changing the formula for calculating emissions of particulate matter. This petition provides regulatory relief to sources of air pollution by correcting the method used to calculate PM_{10} emissions.

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 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 extension 3118, no later than 5:00 p.m. on February 13, 1995.

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

STATE ENVIRONMENTAL COMMISSION
Meeting of February 16, 1995
Reno, Nevada
Adopted Minutes

MEMBERS PRESENT:

Melvin Close, Chairman
William Molini
Harold Ober
Russell Fields
Mike Turnipseed
Robert Jones
Marla Griswold
Fred Gifford
Roy Trenoweth
Jack Armstrong, Acting Member - Division of Agriculture

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

MEMBERS ABSENT:

Joseph Tangredi

The meeting convened at 9:00 a.m. in the Division of Wildlife Conference Room located at 1100 Valley Road, Reno, Nevada.

Chairman Melvin Close read the public noticing as defined in the agenda for February 16, 1995.

Item I. Introduction of Commissioner Robert Jones

Chairman Close introduced and welcomed Commission member, Robert Jones, representative from the State Board of Health who replaces Dr. William Bentley. Chairman Close also introduced Jack Armstrong, Acting Administrator of the Division of Agriculture and reported that Commissioner Tom Ballow retired from the Division of Agriculture in January.

Item II. Approval of Minutes

Chairman Close called for comments on the November 9, 1994 minutes. No comments were received. Commissioner Griswold made a motion that the November 9, 1994 minutes be approved as written. Commissioner Turnipseed seconded the motion. The motion was approved.

Item III. Regulatory Petitions

A. **Petition 95002** is a proposed temporary regulation amending Nevada Administrative Code (NAC) 445B.327, Fees: General Requirement. The proposed regulation amends fees charged to facilities emitting air emissions that require operating permits or annual service and maintenance. The fee rates for state fiscal year 1996 and 1997 are kept at the level established for state fiscal year 1995. This petition will reduce the rates paid by stationary sources during the next biennium.

Jolaine Johnson, Chief, Bureau of Air Quality of the Nevada Division of Environmental Protection explained that Nevada Revised Statutes, 445.491, reads that the Commission shall, by regulation, provide for the issuance, renewal, modifications, revocation and suspension of operating permits and charge appropriate fees in an amount sufficient to pay the expenses of administrating NRS 445.41 through NRS 445.601 inclusive, and any regulations adopted pursuant to those statutes.

Ms. Johnson reviewed regulation history:

In 1994 the Commission adopted amendments to the code which established the current fee schedule, setting fees to cover program costs for fiscal year 1995. Because NDEP had been informed by the U.S. Environmental Protection Agency that the federal grant funding to support air programs would discontinue in fiscal year 1996, the Commission then increased those fees for fiscal years 1996 and 1997 based on the Division's anticipated costs for full implementation of the Federal Clear Air Act of 1990.

Ms. Johnson continued, NDEP has now been informed that the grant funding will continue in an amount of approximately 1/2 million dollars a year. NDEP estimated the fee rate for fiscal year 1995 would generate approximately $800,000 dollars a year. Actual collections were nearly $1,000,000. The $200,000 excess will be carried forward allowing us to meet our budget needs for the next two fiscal years without fee increases.

Ms. Johnson explained the proposed changes in Petition 95002:

445B.327: Subsection 2: Delete the word "from" and add "on or after July 1, 1994".

Delete "to and including June 30, 1995 the fee will be set at $336".

Delete Subsection b through c. These sections increased the fees for the next two fiscal years.

Subsection 4: Delete "from" and add the words "on or after July 1, 1994";

delete "to and including June 30, 1995";

Delete subsection b and c, again because they increase the fees for the next two fiscal years.

Ms. Johnson stated that NDEP estimates a saving of approximately $955,000 dollars to regulated facilities in fiscal year 1996 and $1.3 million in fiscal 1997.

Mr. Johnson reported positive feedback was received from the Nevada Mining Association, Southern California Edison and Nevada Power Company. A phone call from Citizen's Alert expressed concern that if we reduced the fees there would be more incentive to pollute. I responded that the Commission only has authority to set fees that are necessary to cover the program and cannot set fees to prevent pollution.

Chairman Close asked for questions from the Commission.

Commissioner Turnipseed asked Ms. Johnson if it is correct that, because the legislature is in session, the petitions before the Commission today are temporary, meaning we will have to adopt them permanently sometime after September? Ms. Johnson replied yes, that is the only reason they are temporary because of the Legislative Counsel Bureau's inability to review the regulations during the legislative session.

Chairman Close asked for public comment. No public comment was received.

Commissioner Fields made a motion that the Commission adopt Petition 95002 amending NAC 445B.327. Commissioner Molini seconded the motion. The motion was approved. Commissioner Ober requested that, if possible, the adoption of Petition 95002 be well publicized throughout the State.

B. **Petition 95003** temporarily amends Nevada Administrative Code 486A.030 to allow the Administrator of the Division of Environmental Protection to determine whether fuels not previously adopted by Commission meet the clean alternative fuel definition. This temporary regulation also adds new language to NAC 486A that defines the standards that would be applied by the Administrator of the Division of Environmental Protection to determine whether a fuel is a clean alternative fuel.

Tom Porta, with the Nevada Bureau of Air Quality explained that by expanding the definition of clean alternative fuel, NDEP hopes to encourage innovation, promote competition and provide affected agencies with more options when purchasing new vehicles and hopefully, alternative fuel vehicles will help Washoe and Clark Counties reduce emissions and enable them to meet

their respective attainment dates. Mr. Porta explained that currently, two potential alternative fuels, Bio-Diesel and A-55, are available but because of existing definitions, they do not qualify as an alternative fuel. Mr. Porta explained one of the statutory requirements for clean alternative fuels is that we not discriminate against petroleum products. Bio-Diesel is a petroleum diesel-based product available but, under the current definition, is not considered an alternative fuel. Expanding this definition would allow the Division to include it as an alternative fuel.

Chairman Close asked Mr. Porta how long Bio-Diesel has been around and if it burned cleaner than other fuels. Mr. Porta replied Bio-Diesel has been around at least one year and reports indicate it does burn cleaner. Chairman Close asked if other states had authorized Bio-Diesel as an alternative fuel or would Nevada be the first state to authorize it. Mr. Porta reported it was his understanding that California was looking into approving it but Nevada would be the first state to authorize it as an alternative fuel. Adoption of this petition would allow the company the opportunity to apply for designation as a clean alternative fuel.

Chairman Close asked for questions from the Commission.

Chairman Close asked for comments from the floor.

John Sande, with the law firm of Vargas & Bartlett, representing the Western States Petroleum Association stated that the alternative fuel definition in these regulations basically stems from AB 812 which occurred in the 1991 legislative session. The Western States Petroleum Association was heavily involved in discussing alternative fuels and the requirements for alternative fuels. Western States Petroleum Association recommends several changes:

> Section 1, subsection 3, 4 and 5 it indicates that the administrator should decide whether or not the proposed fuel is economically practical. We recommend that you strike "economically practical" and substitute "cost effective when compared to other clean alternative fuels".
>
> Section 2, subsection 9 discusses how the administrator should consider evidence submitted by the person seeking to have a product evaluated for a determination as a clean alternative fuel.

Western States Petroleum Association would like assurance that the administrator gives notification to the fuel industry in general whenever a manufacturer requests that their product be evaluated for a determination as a clean alternative fuel. That would allow the fuel industry to submit evidence from their studies as to the viability of the proposed fuel.

Mr. Sande suggested that the wording in subsection 9 read:

> "such determination shall not be made by the Administrator until he has requested and submitted evidence submitted the fuel industry".

Dan Klaich, representative of the A-55 Company, concurred with Mr. Sande's comments. Mr. Klaich stated that certainly, the viability of any alternative fuel is appropriately measured against the other alternative fuels with which they are competing and Mr. Sande's first suggestion should be incorporated in the proposed regulation. Mr. Klaich suggested that it is appropriate to give notice to the industry and let the industry comment as it deems appropriate. It is not appropriate to impose any requirement that comments be received and considered because this would potentially hamstring the Administrator. It would be appropriate for NDEP to put notice out and solicit comments. That would assist the Administrator and place him in a better position to make an intelligent decision. We think that the expansion of this particular regulation puts Nevada in a unique position to take a leadership role in evaluating, and potentially naming, alternative clean fuels. The staff and administrator have been very careful in wording the regulation to insure that nothing would be designated as an alternative clean fuel unless it met both the spirit and letter of AB 812. One of the concerns in that statute is that the fleet operators are not burdened. I think that the definitions set forth here meet those fleet vehicle requirements. I cannot imagine the Commission being faulted for adopting a regulation which imposes those strict standards and also requires an alternative fuel to demonstrate superiority with respect to certain regulated emissions and I encourage you to act favorably on the proposed recommendation, incorporating the first suggestion of cost effectiveness with respect to other alternative fuels and in subsection 9, imposing a notice requirement.

Chairman Close asked for questions from the Commission.

Chairman Close asked for additional comments.

Tom Porta, Bureau of Air Quality, commented that the Division would have no problem with the wording "cost effective" and adding the notification requirements to the standards for determination by the Administrator.

Chairman Close asked why, in Section 3, it must be determined if it is cost effective and in Section 5 if it is economically practical. That would seem to be a matter for the marketplace to determine and shouldn't be considered so far as if it is a valid alternative fuel.

Tom Porta replied that there are a number of alternative fuels available but they are not cost

effective. Fuels such as A-55 and Bio-Diesel can reduce the burden to the people that have to comply with these regulations in making those fuels affordable.

Chairman Close stated that he understood the Commission's regulation would allow NDEP to determine whether a fuel was, or was not, a clean alternative fuel. If somebody wanted to use it was up to them so why must the state determine that a conversion is economically practical or cost effective. Mr. Porta replied, if some of these fuels back out of the market, leaving only a few available fuels, we don't want sky-rocketing alternative fuel costs that agencies must purchase. Chairman Close asked if an agency is compelled to buy an alternative fuel if it is available? Mr. Porta replied that the fleet requirements are very specific. By the year 2000, 90% of all new vehicles purchased have to be alternative fuel vehicles, a pretty stringent requirement.

Commissioner Molini agreed with Chairman Close and stated, that within our realm of jurisdiction that items 1, 2 and 6 are appropriate but I am not sure we should be delving into those that deal with the economic practicality arena. Deputy Attorney General Jean Mischel stated that law applied to government vehicles in counties with certain population requirements and this is not targeting the general market, but specifically the government market in the test period. Acting Commissioner Armstrong stated that if we have statutes requiring certain government entities to use these alternative fuels, I think it appropriate that we be concerned about the fuel costs. We could potentially force higher taxes on our constituents by forcing them to use higher-cost fuels if others drop out of the marketplace. I understand the desire to keep it private sector initiative and marketplace driven but if we have the requirement we have to consider the economical result.

Chairman Close asked Mr. Porta if this is just the beginning of the designation or are there alternative fuels that are utilized at the present time. Mr. Porta replied that the program is just getting underway. 10% of new vehicles purchased are required to convert to an alternative fuel. There are alternative fuels, CNG, natural gas, and propane being used that are fairly competitive.

Commissioner Gifford stated that he would in favor of taking out #3, #4 and #5.

John Sande, Western States Petroleum Association noted that California placed mandates on certain uses of alternative fuels for testing purposes without considering the cost effectiveness and that has had disastrous results in their alternative fuel industry. AB 812 didn't go as far as California's bill but in AB 812 you are setting up a frame-work for future mandates. You should

set up a definition that would work after change in the legislation occurred so you are not coming back every time there is a tweaking of the statutes. Under this definition you would be at least assured that it would be cost effective. I do not think, from a public policy standpoint, that you want to, we are going to allow a mandate and not be cost effective.

Commissioner Gifford asked Mr. Sande what he meant by "cost effective"? Mr. Sande replied that it is a balancing test. You must look at the benefit of a particular alternative fuel, compared to the cost and do a cost-benefit analysis. In this case, you are looking at alternative fuels and saying if we as an agency are going to declare that these are good fuels to use, should we look and see if they are comparable, at least in cost, to other alternative fuels. If they are not, then we don't think government should be using that fuel in their alternative fuel vehicles.

Dan Klaich stated that, speaking only for his company, there would be no problem of elimination of sections 3, 4 and 5. I think the Commission has hit on something interesting and that is that the State of Nevada nor the Federal Government does not sell any fuel. There are fleet requirements but after those fleet requirements have been imposed the state has stepped back and left it to private industry, in competition, to fill those requirements, assuming it would be done so on a competitive basis. We would not expect anyone to convert or purchase one vehicle burning our fuel unless they could do so on a cost effective basis. I am not sure if the Administrator is better capable of doing that or a purchasing agent for the fleet that is involved. Clearly, this Commission has a statutory requirement to reduce emissions and an interest in the public health and safety which are dealt with in Sections 1, 2 and 6. I can assure you that when you go out to fleet operators they are interested in a very complex series of questions to determine what is cost effective and economically practical. In many ways, the marketplace is appropriately geared to make those determinations, both in the public sector and private sector fleet. From our company standpoint, we expect to be competitive and if these requirements are in the statutes we expect to submit data that will demonstrate to the Commission's satisfaction that we are competitive.

Commissioner Molini asked Mr. Klaich if he had a problem if sections 3, 4 and 5 are left in the proposed temporary regulation? Mr. Klaich replied no, I would only ask that, in Section 9, you not impose a standard more stringent than that the Administrator give notice of a proposed determination. To go beyond that would be onerous.

Commissioner Turnipseed asked Mr. Klaich if conversion of a vehicle to the use of any of these alternative fuels is fairly easy and inexpensive. Dan Klaich replied that he could respond only in

respect to the fuel that he is familiar with. Conversions to the fuel that our company makes are simple and inexpensive. We believe that we will be in a position to offer cleaner emissions for lower cost. We think that separates our company from other companies and other alternative fuels.

Commissioner Jones asked if regulations in regard to fleet requirements for alternative fuels are promulgated by the federal government. Mr. Porta replied the Department of Energy mandated that by the year 2000, 90% of the federal vehicles will be on alternative fuels.

Chairman Close asked, when a company wants their fuel to be designated as a clean alternative fuel, who pays for that test? Mr. Porta replied the company is required to demonstrate and provide evidence of emission testing through their ACPA emission test method to prove to us that it is an alternative fuel and the company pays for the testing. NDEP would do the review. Economic viability is determined of the regulated sources that we permit through what is called the Best Available Control Technology (BACT) process which incorporates cost effectiveness, emission reduction for the amount of cost. Chairman Close asked, if I came to you with a fuel made from eucalyptus leaves and you thought it was a crazy idea that no one would buy, could you decline to do the testing based upon the fact that it did not appear to be economically practical? Why should I be precluded from having the test performed?

Mr. Porta replied that the Division would not have a problem if the Commission did strike the economic practicality portion of the regulation but requests that the technical feasibility portion remain. We could receive hundreds of requests for a designation of alternative fuel and we would like to cut the wheat from the chaff. Chairman Close replied that he thought that would be reasonable. There is no reason to test something that is not technically feasible but on the other hand if it is technically feasible but very expensive should not be a reason to decline to perform the testing functions.

Commissioner Griswold asked Administrator Lew Dodgion what procedure would be used and what data would be collected in making a determination if a alternative fuel is cost effective? Lew Dodgion replied that data includes the cost of the fuel; availability of the raw materials; availability to establish an infrastructure to distribute it; the cost of converting a vehicle to using the fuel; and the cost of converting the vehicle back to a standard fuel if the alternative fuel is not available. The reason that we wanted to look at the economic practicality or feasibility is that we would like the proposals that come to us to be proposals of merit. We wanted to have some

standard for the proposer to meet before we spend the time to evaluate it and we want to know if it has some practical feasibility before we spend a great deal of time evaluating the data.
Chairman Close asked for additional questions from the public.
Ken Platt, with the State Energy Office and a member of the Clean City Coalition in Reno, expressed general support for the regulation but cautioned that AB 812 conflicts with the federal mandate which is the Energy Policy Act of 1992, so some of the fuels that would be allowed through the state act would not be allowed through the federal act. At this time, only Clark County is impacted by the federal act. The Commission needs to consider that there are other, more stringent regulations out there. I also want to clarify that Bio-Diesel has been around 5 or 6 years and it is now being demonstrated in San Francisco and several other western cities. Benefits from Bio-Diesel are no conversion and less recycling because fats of different types are used. I would caution against including the economic feasibility or practicality in this regulation because there are many factors that you need to consider beside s air quality emissions. We need to provide flexibility for the fleet operators to meet our state mandate.
Deputy Attorney General Mischel stated, with respect to the notice provision, I would encourage the Commission to make it a generic notice provision or have the Administrator set up a mailing list so that you are not just saying that notice is required to industry officials. There may be others who might be interested in the application. Ms. Mischel suggested leaving off the language some of the commentaries provided which was "notice to industry" and simply say "notice" and allow the staff to set up a mailing list. Chairman Close requested clarification on the notice contents. Ms. Mischel replied the notice would be of the application.
Tom Porta replied that in a permit process we issue a notice of the intent to issue and we state facts describing why we are issuing a permit. A similar notification process could be implemented and viable comments considered. Chairman Close replied that he would like to define the kind of notice that we are going to require. Tom Porta noted that the industry people asked that industry to be notified. Ms. Mischel advises that there should be a general notification for anybody that wishes to comment, not just industry. Chairman Close asked if notice would read "we have gone through the testing process and we are going to issue a ruling that this is a satisfactory alternative fuel" and is that the point notice should be mailed. Mr. Porta agreed and stated at that time of notice the emission test results could be provided to the public for review. Chairman Close asked Ms. Mischel for appropriate language. Ms. Mischel replied

"notice of a pending action". Administrator Lew Dodgion suggested that subsection 10 require the Division to maintain a mailing list of all interested parties, to provide a 30 day notice to the mailing list and to publish that notice at least once in a newspaper of general circulation in the state.

Chairman Close asked for additional public comment or questions.

Commissioner Fields suggested taking the proposed temporary amendment in parts and made a motion that Section 1 of 486A of NAC, Standards for determination by the Administrator that a fuel is a "clean alternative fuel" be modified so that number 3 reads "the conversion or manufacture of vehicles to use the proposed fuel is technically feasible", period. I include in that motion the deletion of items 4 and 5. Commissioner Gifford seconded the motion. Chairman Close called for comments to that motion. No comments were received and Chairman Close called for a vote. Commissioner's Turnipseed and Jones voted "nay". Commissioner's Griswold, Fields, Gifford, Ober, Molini, Trenoweth, Armstrong and Close voted in favor of the motion. The motion carried.

Chairman Close asked for additional motion on Petition 95003.

Commissioner Molini moved for adoption of 486A.030 Clean alternative fuels defined with the addition of section 9 as it currently states and to add section 10 that has a general notice requirement with a 30 day tolling period. Commissioner Fields seconded the motion. The motion carried.

C. **Petition 95004** temporarily amends NAC 445B.221 by the adoption by reference of the provisions of 40 C.F.R Part 72, the acid rain provisions of the Clean Air Act. The proposed temporary regulation extends the Title V Operating Permit program provisions to cover sources that could potentially be regulated by the federal acid rain program.

Tom Porta, Nevada Bureau of Air Quality reported that NDEP received a memo from EPA in January, 1994 concerning the granting of our Title V Operating Permit authority, the main state permitting requirement of the Clean Air Act amendments of 1990. The memo stated "to retain its approval status Nevada must submit regulations implementing Title IV by January 1, 1995". Title IV is the acid rain provision for the Act and only affects Electric Utilities. EPA stated that by adopting C.F.R. Part 72 by reference the issue will be considered resolved. Part 72 regulations outline applications and permitting requirements for sources subject to the acid rain provision and state requirements for issuing permits. Permitting requirements include obtaining

acid rain permits with the national emission caps; establishing a company designated representative; and compliance plans with certain options. Part 72 also addresses implementation within the corporation of the Acid Rain Permit into the Title V Permit. All of Nevada's electric utilities have been complying with the acid rain provision and the adoption of Part 72 will allow NDEP to issue acid rain permits to utilities and remove any road block for Nevada's approval of Title V. Title V approval will be expected in May of 1995.

Chairman Close asked for questions. There were no questions.

Chairman Close asked for public comment.

Commissioner Molini moved for adoption of Petition 95004 as presented.

Commissioner Ober seconded the motion. The motion carried.

D. **Petition 95005** temporarily amends NAC 445B.362 and 445B.363 by changing the formula for calculating emissions of particulate matter. This petition provides regulatory relief to sources of air pollution by correcting the method used to calculate PM_{10} emissions.

Tom Porta, Bureau of Air Quality reported on November 18, 1991 NDEP petitioned, and the State Environmental Commission adopted the new PM_{10} particulate standards for Nevada. One of the items of that petition concerned allowable emission limits for PM_{10}. NDEP proposed taking the existing total suspended particulate emission limits and multiplying them by a .6 factor. This was assumed to be the conversion from TSP to PM_{10} and was based on ambient air quality data. During the past three years the NDEP has collected PM_{10} emission data from a number of stationary sources. Simultaneous PM_{10} and TSP stack emission testing have also been performed. In analyzing the data, it has been found that the .6 conversion factor is not accurate for stack emission from stationary sources. The stack emission test reveals that there is little or no correlation between the PM_{10} .6 factor and stack emissions PM_{10} fractions. It has been determined by the NDEP that there is no one factor that can be applied to allowable emissions to make the conversion from TSP to PM_{10} and the 1991 adopted PM_{10} allowable emission equation were a strengthening of the standard rather than a conversion. NDEP never intended for these regulations to be more stringent, therefore NDEP is requesting that the .6 factor be removed from the allowable emission limits equation.

Chairman Close asked for questions.

Commissioner Turnipseed asked if, in essence, what we are doing is tightening down the

standard by 40% Tom Porta replied that is what we did before and it was not our intent to do that. Through these past few years of various emission testing we found that the particulates are not .6 or 60%. The tests show that in some cases it is 100% of their emissions on PM_{10}. By reducing it or by strengthening it by 40% we have placed an undue burden on the sources. We have not had any sources fail to meet the PM_{10} emissions limit but their margin of compliance has gone from a safe margin to one of borderline facing violation. Again, it was never our intent to strengthen these emission limits that merely make a conversion of the PM_{10} standards. Commissioner Turnipseed asked if we are really loosening the PM regulation? Mr. Porta replied yes. From what you adopted in 1991 we are going back to PM_{10} without a conversion factor. Lew Dodgion, Administrator, reported that the ambient standard for particulates was originally set for total suspended particulates (TSP) at 150 micrograms per cubic meter. Then the Federal EPA changed the particulate standard, because they determined that it was minor particulates that were health related, to PM_{10}, particulates of 10 microns in diameter in size or smaller. EPA set the ambient standards for PM_{10} at 150 micrograms per cubic meter which is the same standard as for TSP. TSP is the whole thing, PM_{10} is part of that. So that ambient standard actually was relaxed on the federal level. Our regulations contain a formula to calculate how much total suspended particulates can come out of the stack, based on 150 total. The standard was relaxed to 150 partial. We were trying to change the formula to deal with measurement of PM_{10} as opposed to TSP, not change the amount that was allowed to come out of the stack. We have found that the conversion factor of .6 is based on ambient data, that measurement of windblown dust off the desert if the fraction of PM_{10} and TSP was .6. It has no relationship whatsoever as what comes out of the stack of a utility, a crusher, or anything else.
Mr. Dodgion continued that when we went to measuring TSP in the stack to .6 of TSP as PM_{10} we required in the measure of PM_{10} the erroneous assumption that it was 60% of what went out the stack. We have found that doesn't work and it certainly does not work from power plant to power plant. We could do a specific one for Southern California Edison, another one for the Tracy Power Plant and another one for Reid-Gardner Power Plant. Generically, we don't know what that fraction should be so we want to go back to TSP. We are not calling for PM_{10} we are calling for TSP measurement.
Commissioner Gifford asked if the term "allowable emissions" meant total TSP. Mr. Dodgion replied yes, that rule converts back to TSP. Commissioner Gifford asked if, in the previous

method, .6 took the TSP and assumed that 60% of it was PM_{10}? Lew Dodgion replied yes.
Chairman Close asked for questions.
Chairman Close asked for public comment.
Commissioner Turnipseed made the motion that Petition 95005 be adopted as written. Commissioner Griswold seconded the motion. The motion was approved.

Item IV. Settlement Agreements on Air Quality Violations

A. Calhoon Sand & Gravel: NOAV 1120

Tom Porta reported that Calhoon Sand and Gravel, permitted with the NDEP since 1982, is a crushing and screening plant in the Pahrump area. On June 7, 1995 an inspector documented that an aggregate screening plant had been constructed and operated without an air quality permit. NOAV 1120 and stop order 9104 were issued on July 20. An enforcement conference was held on October 7, at which time Calhoon admitted that they did not obtain the proper permits. A $1500 settlement was negotiated. Calhoon applied for and received their permit and are now operating in compliance. Commissioner Gifford asked how long they operated before they were cited. Tom Porta stated that according to the inspection, the screening plant had operated for approximately 3 months but that was not continuous, it could operate 2 - 3 days each week. It had been installed for a period of 3 months. Commissioner Gifford asked what the $1500 fine was in contrast to what might have been. Tom Porta replied that their potential liability could have been $5,000 per day for every day that the crushing equipment operated.
Chairman Close asked for questions.
Chairman Close called for public comment.
Commissioner Fields made a motion that the Commission accept the settlement agreement regarding Calhoon Sand and Gravel. Commissioner Gifford seconded the motion. The motion carried.

B: Thatcher Company: NOAV 1125

Tom Porta reported that Thatcher Company operates a chlorine transfer facility near Carlin, Nevada. An inspection of August 11, 1994 documented that their fence-line chlorine monitoring system had not been operating and was out of service for approximately 7 months. Thatcher Company's excuse was that they had troubles getting the monitors repaired. However, they did not notify the Division that they were having troubles. There is not a requirement to notify the Division but they should have called us immediately so that we could have worked with them.

For 7 months the chlorine transfer facility continued operating without these chlorine monitors. These monitors were required, as a result of a previous violation, for public safety. In case there was a chlorine leak the fence-line monitors would alert any potential on-site emergency team of a problem. Since the violation Thatcher has reinstalled portions of the monitoring system and it is now fully operational. Thatcher agreed to a $4,000 penalty plus an additional $2,000 penalty which would go to the Elko Emergency Response Committee to help them with their efforts. Commissioner Gifford asked Mr. Porta, you issued the violation on August 23 but do you have any idea how long it took to get the system back up and running between the August 23 and the November 4 date? Mr. Porta replied that when Thatcher Company came to the enforcement conference on November 4 they had documentation that the monitoring system had been repaired. Commissioner Gifford stated that surely Thatcher Company could have repaired the monitors in the 7 month period and I find it irritating that they did nothing until NDEP inspected them and found the violation. Mr. Porta replied that we did make that very clear to them that if they would have notified us within a few days of their monitoring system failure the Division would have been happy to work with them to set up a time schedule which was reasonable to get the system repaired. It was not until our inspection that we discovered the problem and things were fixed after that. Commissioner Gifford asked if the Division feels that the administrative fine of $4,000 and $2,000 payment to the Elko Emergency Response Committee is fair. Mr. Porta replied yes.

Commissioner Ober asked how often a site like Thatcher is inspected. Mr. Porta replied that typically an inspection would take place once every two years because it is a smaller facility. We do inspect the larger facilities every year. Commissioner Ober asked if a company that is a chronic violator is placed on a more frequent inspection process. Mr. Porta replied that the Division has a data base that lists inspections that are due for each county in that quarter. The first one on the list will be the one that had a violation in the past year. Companies such as Thatcher will be inspected next year.

Chairman Close asked for questions.

Chairman Close called for public comment.

Commissioner Ober made a motion that the Commission accept the settlement agreement regarding the Thatcher Company. Commissioner Griswold seconded the motion. The motion carried.

C: Ames Construction Inc.: NOAV 1134

Tom Porta reported that Ames Construction is small aggregate crushing and screening plant that began operations in 1994 at the Barrick Mine site north of Carlin. Review by our staff revealed that the aggregate crushing system had failed to apply for and obtain an air quality permit. NOAV 1134 was issued on October 6 for operating the plant without the operating permit. Ames Construction then applied for and received an air quality permit. They are currently in compliance. An administrative fine of $500 was agreed upon.

Chairman Close asked for questions.

Commissioner Turnipseed asked Mr. Porta if Ames Construction is crushing at Barrick Mines and using the material on site or is the material have some other use. Mr. Porta replied that the material was being used for construction projects on the Barrick Mine site, such as the tailings impoundment area, the berm, etc. Commissioner Gifford asked Mr. Porta why Ames did not have the proper air quality permit, did they know they needed a permit. Mr. Porta replied the firm blamed the front office for not submitting a proper permit application to NDEP. We informed them that was no excuse, front office, back office, whatever office, they are still responsible for submitting a permit application to NDEP and they have to receive a permit before they can start construction and operation. Chairman Close inquired how much a permit costs. Mr. Porta replied it depended upon the throughput, the material. A permit like Ames would cost in the area of $500. The lowest fee we have is $250 but a permit can cost several thousand dollars for a large, elaborate system. Commissioner Jones asked Mr. Porta how soon the permit is issued after it is requested. Mr. Porta replied that a permit such as this is usually issued within one or two days.

Chairman Close asked for public comment.

Chairman Close asked for a motion.

Commissioner Fields made a motion that the Commission accept the settlement agreement regarding Ames Construction, Inc. Commissioner Turnipseed seconded the motion. The motion carried.

D: West American Membranes, Inc.: NOAV 1145

Tom Porta, Nevada Bureau of Air Quality, reported that an inspection of this facility on November 7, 1994 revealed un-permitted asphalt mixing tanks in a talc silo. NOAV 1145 was issued as well as stop order 9405 on November 21, 1994. As a result of subsequent enforcement

conference negotiations, West American Membranes has applied for, and received, their permit. Because of previous violations for a very similar incident we sought a higher penalty. We negotiated a $5,000 penalty with the agreement that they obtain a permit. They have done that.
Chairman Close called for questions.
Commissioner Gifford asked Mr. Porta how long this un-permitted source had been operating. Mr. Porta replied that West American Membranes had not started operating but they were getting ready to throw the switch. They had put in the mixing tank in-line and they had put in the talc silo on-line so they were just finishing the construction phase of their project and would have been in operation within a few months, however they must have a permit in hand before they can set up any equipment. Commissioner Turnipseed noted that they had been cited about 19 days prior for a different violation. Mr. Porta explained that sources are required each year to submit their annual production and West America Membranes had exceeded production by a very small margin. With no intent to issue a fine, we called them in to inform them that they must stay within the allowed throughput. In that enforcement conference they admitted to us that they had started construction on this project. I decided to have an inspection conducted of the facility after which we would again meet to discuss all these issues and explain the requirements of the regulations and their need to comply with them. Commissioner Jones asked if, at that conference, did they indicate to you that they were going to come to you for the permits before they threw the switch? Mr. Porta replied that they stopped all construction activities and applied for the permit. They did not operate the mixing tank and talc silo for a period of one or two weeks until they received the permit.
Chairman Close asked for questions or public comment.
Chairman Close asked for a motion.
Commissioner Fields made a motion that the Commission accept the settlement agreement with West American Membranes, Inc. Commissioner Griswold seconded the motion. The motion carried.

Item V. Adoption of Senate Bill 127 Final Report

Allen Biaggi, Chief, Bureau of Corrective Actions with the Nevada Division of Environmental Protection handed out a revision to the cover page of the Senate Bill 127 Final Report document in the Commission packet. Mr. Biaggi explained that SB 127 mandated that the Commission coordinate fee collections, regulations and data collection with regards to underground storage tanks and the regulation thereof. SB 127 also mandates, that in cooperation with the Department of Taxation, a report on consolidation efforts be provided to the Sixty-eighth Session of the Nevada Legislature.

Mr. Biaggi explained the first task in developing the report was to form a consolidation strategy to guide us. We established two consolidation task forces, one in Northern Nevada and one in Southern Nevada. These task force members included the regulatory entities which deal with the regulation of underground storage tanks and members of the regulated community and industry. There is a listing of the names of the members and their respective affiliation in Attachment C. The next step was data gathering. We sent a questionnaire to regulatory entities asking them to outline what their activities, with regard to underground storage tanks, were. The questionnaire asked what types of fees they collected and what kind of data/computer systems they used. We assimilated that data and established some generic problem statements. From those problem statements we developed 10 findings, recommendations and an output schedule. SB 127 also requires that a subset of the task forces remain in place to act as the steering committee to oversee the outputs and schedules so this work commences in accordance with this report and in a timely fashion.

Chairman Close asked, in-so-far as consolidating these various programs, what effect would the final results of all this work have on the public. Mr. Biaggi replied that the goal was streamlining, but not lessening the regulatory requirements of the program, thus making them more efficient for both industry and the regulatory agencies. The regulated community recommended that the fees be consolidated because they would like to get one bill each year with all of the appropriate fees listed. That would be a positive step and we are going to aim for that. Also, in data collection, we hope that one form can be developed that can be used by all the agencies to collect necessary information.

Chairman Close asked if the regulated community would benefit by over-all lower fees. Mr. Biaggi replied that the public may be benefitted by lower fees through the establishment of a

memorandum of understanding, primarily in Clark County and Washoe County, where about 80% to 85% of the tank regulatory universe is located. Through the development of memorandums of understanding there will be a reduction in over-all inspections and consequently, perhaps a reduction in over-all fees. That is a positive benefit.

Chairman Close asked for questions.

Commissioner Turnipseed asked how, procedurally, does the legislature have to react to this report. Mr. Biaggi replied that if the Commission adopts the report today we will provide it to the Legislative Counsel Bureau for their dissemination to the appropriate committees and individuals. Commissioner Turnipseed asked if it would then result in a resolution or do they actually have to pass legislation to have this become effective. Mr. Biaggi replied that it is effective right now. We intend to press forward, regardless of whether the legislature gives us a resolution, we will go ahead with it. Chairman Close asked if the entities that have signed the report have agreed to all the recommendations. Mr. Biaggi replied no, explaining that the task force members have all reviewed it and one of the representatives who gave us a great deal of assistance from the Department of Taxation is in attendance here today. They have all reviewed the reports and provided us comments. Their comments, to the extent possible, have been included in this report. However, there are some local governments who may not be receptive to some of the activities outlined. We will just have to cross those barriers when we come to them. There are some turf issues in relation to the regulation of underground storage tanks that will have to be overcome.

Chairman Close asked if, other than just suggesting that the recommendations be adopted, you really have no authority to compel them to be adopted other than legislative action. Mr. Biaggi replied that SB 127 also mandates the cooperation of state and local governments in this effort so that is another hammer but we still may get some resistance.

Chairman Close stated that this is a good step forward and requested that Mr. Biaggi report back to the Commission in the future as to what success you had in obtaining the cooperation of the various governmental entities. To accomplish these goals the recommendations are noteworthy but unless they are adopted it is meaningless and a lot of work will have gone into nothing unless it is adopted.

Chairman Close asked for questions.

Chairman Close asked for public comment.

Chairman Close asked for a motion.

Commissioner Turnipseed made a motion that the Commission adopt the SB 127 Final Report.

Commissioner Jones seconded the motion. The motion carried.

Chairman Close declared that the document marked as Exhibit #1, a letter to Jolaine Johnson from the Nevada Mining Association relating to Petition 95002 be made a part of the record.

Chairman Close declared that the document marked as Exhibit #2, a letter from Nevada Power Company to the Nevada State Environmental Commission dealing with Petition 95002, Petition 95003, Petition 95004 and Petition 95005 be made a part of the record.

Item VI. Discussion Items

A. Status of Pending Petitions

David Cowperthwaite, Executive Secretary, reported that there are a variety of pending petitions before the Commission but most of the appeal requests presented to the Commission have been cleared out and settlements have been made.

Mr. Cowperthwaite distributed copies of the settlement agreement with Triton to the Commission members and asked Allen Biaggi to explain the settlement.

Allen Biaggi from the Bureau of Corrective Actions, Nevada Division of Environmental Protection reported that the Triton case involved a fuels operation located on the west side of the airport facility at McCarran International Airport in Las Vegas.

At the expense of Triton, cleanup for petroleum hydrocarbons in ground water has been ongoing at that site for quite some time. When additional contamination was found, it was Triton's position that they were not responsible for the additional contamination because it is a result of other operations at McCarran Airport. We issued a finding of alleged violation and administrative order to Triton which they appealed. The appeal resulted in 6 days of hearing by a Commission panel comprised of Fred Wright, Russ Fields and Hal Ober. The hearings were held in Las Vegas in November and December of 1993. Settlement negotiations with Triton were commenced in January, 1994 and before you today is the culmination of those settlement efforts. It is a Consent Decree which has been filed in District Court in Clark County this week. Briefly, the Consent Decree contains three main provisions:

1. Triton agrees to continue clean-up operations at the McCarran Airport for free product.
2. Triton will reimburse the Division $100,000 for the oversight cost incurred in the

activities at the site.

3. Triton agrees to install, in cooperation with the Division and McCarran International Airport, the installation of up to 15 new monitoring wells to further define the source of the contamination and the extent of the problem.

Mr. Biaggi noted that McCarran Airport is now putting a new runway and taxi-way exactly in this area which does complicate the matter but all parties are working together to try and resolve this issue as soon as possible.

Commissioner Turnipseed asked Mr. Biaggi if the petroleum product is sitting on the water table and if the plume is moving to the north. Mr. Biaggi replied the plume is moving to the north and that is why we are in such a hurry to get the new monitoring wells so we can begin remediation to halt the migration.

Commissioner's Ober and Fields, hearing panel members, stated their relief that this issue had been settled.

Executive Secretary Cowperthwaite reported that a hearing was held on February 8, 1995 regarding the issue of the Helms Pit in Sparks. Commission members serving on the panel were Russell Fields, Chairman, Commissioner's Turnipseed and Gifford.

Russell Fields reported the matter before the panel was the Helms Pit and the pumping of contaminated water from the Helms Pit into the Peoples Ditch which ultimately finds its way to the Truckee River.

Deputy Attorney General Jean Mischel stated that two of the issues on appeal involved the permitting authority since it was a clean-up action pursuant to CERCLA's dewatering type of action and whether or not the NDEP could issue, or whether they, Helms and all the other related companies were exempted, under CERCLA, from being required to get an NPDES permit from the Division. The Division won in the District Court on those issues and they were ordered to include all of the parties that were before us on appeal in the NPDES permit which included Chevron.

Commissioner Fields reported that the parties named on the permit, the appellants, included some of the very largest companies that operate in Nevada: Chevron; Union Oil Company; Southern Pacific Pipeline; and Texaco and number of attorneys were in attendance which made for an interesting hearing. We continued two matters, NDEP's authority to even issue the permit and who to put on the permit because they are now before the Supreme Court and it was outside

our purview to decide if the District Court was right or wrong. The third matter under appeal addressed the Division's authority to set pollutant criteria in an NPDES permit and that those pollutants may not have been derived from any action of the permittee. In particular we were looking at phosphates and nitrates that had come into the Helms Pit and the appellants were questioning whether the NDEP had the authority to make them hold standards for nitrates and phosphates that they did not think they added to the situation. The panel decided that NDEP does have the authority to set those pollutant criteria based on the water pollution standards that this Commission had set for the Truckee River so we upheld the Division's authority to write the permit the way it was written and also that they included the permittee's on the permit at the direction of the District Court. Deputy Attorney General Mischel stated that legally, the issue came down to one of whether or not the net credit provisions in the Clean Water Act should be applied to these appellants. That was a sub-issue because their expert could not prove that the inflowing water would be going to the same body as the effluent.

B. Legislative Update

Executive Secretary David Cowperthwaite on the legislative bills that may potentially affect the Commission and the Division.

AB 12:

Deals with Douglas County's storm sewer system. The Division will be coming before you in April in terms of water quality standards for the Tahoe Basin, on the Nevada side. This bill may potentially affect that process so we will keep a watch on it.

AB 162:

Deputy Attorney Mischel explained that AB 162 was drafted by Jean Mischel on behalf of the Commission and submitted as an Attorney General Bill. Unfortunately, it is not wrapped into an omnibus bill and the Commission needs to decide if they want to pursue it. AB 162 is a minor change in the sense that the statute may be read to include a new paragraph which essentially limits any person who is not named in an operating permit or other order of the Division. It requires them to be involved in NDEP's comment period, if there is any, before they come to the Commission. If they are not involved at the technical decision making level before the Division they should not have standing to come before the Commission because they did not exhaust their remedies below. It has not been a wide-spread problem for this Commission but it has surfaced

before in cases that settled. In response to those cases, I drafted this bill. The Commission should decide if it wants to go before the Legislature on a procedural matter.
Administrator Lew Dodgion commented that in the Federal Clean Air Act amendments of 1990 EPA has interpreted requirements that open up the public participation in regulatory matters. EPA interprets that to mean that anybody, at anytime, should have the right to appeal or protest. The State of West Virginia has a statute or regulation similar to what is being proposed here and is now in litigation with EPA because EPA contends that statute is in violation of the Clean Air Act, and the State of Virginia is precluded of getting approval of their Title V Program if they have that kind of provision. I see the value of what this amendment does but I think it has limits. The problems we have had have not been widespread and dealt with people protesting and appealing the issuance of permits to the mining industry and to the geothermal power industry. These appeals came from unions because the construction of the mining or geothermal project were not union activities. Their appeals held up the permit process, thus holding up the job. This law does not prevent anyone from doing that. All they have to do is submit a written comment during the public notice of the intent to issue a permit. I see this amendment putting us at odds with the EPA over the Clean Air Act and perhaps even leading to some criticism in hearing process that we are attempting to limit public participation. This is a poor time to stand up and receive criticism trying to exclude public participation in a regulatory permit type process.
Deputy Attorney Jean Mischel stated that the amendment does not exclude public participation at the Division level but it would exclude appeals to the Commission if they didn't participate at the first level. I agree that it does not make sense to put the Title V Program in jeopardy. Unless there is strong feeling on the part of the Commission I would withdraw AB 162 which was drafted in response to earlier discussions.
Chairman Close stated that if it jeopardizes the Title V Program I don't think the Commissions wants to get involved in that. Chairman Close asked the Commission if they would recommend the withdrawal of AB 162. Commissioner Fields asked, now that AB 162 has been introduced, how could it be withdrawn. Deputy Attorney General Mischel explained that it has not yet been introduced in Committee and she would contact the Committee Chairman and request, on advice of the State Environmental Commission, that AB 162 is tabled. The Attorney General's office made the request so we can un-do it.

SB 63:

Broadens the authority of the Department to regulate hazardous waste.
Lew Dodgion reported there are several sections in the water pollution control statute that deal with radioactive waste, radioactive toxic and other wastes. The statute reads that the Department may issue a permit for the disposal of radioactive toxic or other wastes underground in liquid or explosive form. We are concerned that might be interpreted to mean that you could dispose of radio-active toxic and other waste underground in some form other than liquid or explosive or that you could dispose of it above the ground in any form. This particular section of the statute has been inactive. It was originally enacted in 1971 or 1973 but it becomes important to us now because we are working with the Nevada Test Site and the Department of Energy on the clean-up of the site and also on their receiving radioactive and mixed radioactive hazardous wastes from other DOE facilities around the country. We see that this statute might give us some authority in regulating how that is done on the Nevada Test Site. We propose to merely take out the words "underground in liquid or explosive form". In the Senate Natural Resources Committee hearing it was suggested that toxic waste didn't mean anything and other waste was to broad a term so they amended our proposal to read "radioactive or hazardous waste". We have no objections because we only would use this in dealing with radioactive waste. Hazardous wastes and solid wastes are dealt with in other sections of the NRS.
The bill, in its amended form, has passed the Senate and has been assigned to the Assembly Committee on Natural Resources and Mining.

SB 132:

David Cowperthwaite explained that SB 132 has some provisions that may impact the Commission. SB 132 reads that you cannot hold a hearing over 8 hours and puts restrictions on the number of hours a Commission can actually operate in a particular day or over a set of days. and it affects all boards. Lew Dodgion stated, what triggered this bill is two years ago, in the settlement of a law suit of the Fair Labor Standards Act, members of the Public Service Commission and Gaming Control Board had accrued many overtime hours and reimbursement in excess of $100,000 was made.
Chairman Close asked if the intent of SB 132 is that we cannot meet more than 8 hours in one day and if so, we should oppose that, we don't want to have 2-day meetings. Mr. Dodgion replied it should not apply to this Commission because the non-State employee members receive $80 a day compensation and are not entitled to overtime.

Commissioner Turnipseed noted that the citizen Commission members are insured from the time they leave home until they return to home but Marla, for instance, could not even make it here and back to Wells if she had to limit her time to 8 hours a day.
Chairman Close stated that maybe the purpose of the bill is good but the result would significantly increase the cost of state government. Commissioner Ober asked if the bill only applied to hourly employees. Ms. Mischel replied it applies to all members of a board or commission in the executive branch with the exception of those covered by NRS 284.148. Commissioner Jones asked if this bill could be a result, because salaried staff is required to attend the board's and commission meetings, of extending their overtime to meet the needs of the commission. Lew Dodgion replied it is a result of the excessive overtime the State was forced to pay two years ago and asked if, in Deputy Attorney General Mischel's interpretation, we should attend the hearings and provide testimony to object to the bill. Ms. Mischel stated that the bill says "a member of a board or commission" and the only exemption is for the people that fall within the personnel rules. Chairman Close stated that this bill does not work for this Commission. Lew Dodgion replied that we would provide testimony.

SB 173:

Relates to the issue of the I&M Program with the Bill Draft Request coming from Ray Sparks in the Department of Motor Vehicles and Public Safety. Lew Dodgion reported the bill removes an exemption that now exists in the statute for experimental vehicles. If this bill is adopted, all experimental vehicles will be subject to the inspection under the program. David Cowperthwaite asked if that would include alternative fueled vehicles. Mr. Dodgion replied that the did not think experimental vehicles were alternative fuel vehicles. Chairman Close asked Mr. Dodgion to give an example of an experimental vehicle. Lew Dodgion replied that he was not sure what the Department of Motor Vehicles means but the definition of an experimental vehicle will probably come out in the hearing.

SJR 23:

David Cowperthwaite that this constitutional amendment will affect the legislative review of administrative regulations and it is tangibly related to the veto of SB 370. That veto was upheld in terms of the Governor being able to work out a deal with the legislature to amend the administrative process. There are a number of bill draft requests that relate to the administrative process but because they are privileged, at this point, we don't know what the content are. Lew

Dodgion reported that a number of years ago the Legislative Commission's regulation under NRS 233B allowed the Legislative Commission to review and veto executive regulations. That was challenged by the University system and found by the State Supreme Court to be unconstitutional and separation of powers. NRS 233B was modified so that the Legislative Commission can review and advise the executive agency as to whether or not they feel that the regulation exceeds the statutory authorization, or if they have a problem with it, bring it up in the next legislative session. This bill will, by amending the constitution, restore their ability to veto executive regulations.

SJR 27:

David Cowperthwaite reported that SJR 27 will be watched because many of the members of the Commission are on the Board of Public Review of Public Lands and there are attempts to modify that. SJR 27 relates to the issue of the Sagebrush Rebellion. The Board for Public Lands is a board that has oversight of the area of the statutes that relate to Sagebrush Rebellion.

C. Division Small Business Program & Ombudsman Update

Administrator Lew Dodgion reported that the Clean Air Act amendments of 1990 required states to establish a Small Business Assistance Program to consist of Ombudsman Services, Technical Assistance to Businesses and a Compliance Advisory Panel. The Compliance Advisory Panel will oversee and advise the State on the effectiveness of the Small Business Assistance Program. Mr. Dodgion introduced Mike Elges, presently in our Bureau of Air Quality permitting section, who will be fulfilling the ombudsman position which will report to David Cowperthwaite.

Mr. Dodgion continued that we encountered trouble getting the position authorized by the Interim Finance Committee. In my budget presentations to a joint Senate Finance Assembly Ways and Means Committee I answered questions about the Small Business Assistance Program, particularly, questions about the Compliance Advisory Panel. Again, these are required by the Clean Air Act. The statute says that this Compliance Advisory Panel will consist of a minimum of seven members: two representing the general public appointed by the Governor; four representing business interests; and the seventh member will be a member of the permitting staff, perhaps the Bureau Chief of the Bureau of Air Quality. Senator Raggio asked Mr. Molini, Vice-chairman of the Environmental Commission, to discuss this panel with the Division and determine whether or not the Environmental Commission could fulfill the functions of this panel I have no doubt that the Environmental Commission could fulfill the duties of the

panel, to review the things that we will do regarding affected businesses, make determinations as to whether or not the program is effective, and determine if the materials that we develop are understandable. What the Commission cannot do is fulfill the makeup as required by the Clean Air Act.

Commissioner Molini stated that he indicated to the joint money committees that we would be happy to discuss it with the Division but Lew had already testified as to what the makeup of what the panel should be. I wonder if, in spite of being at some risk with EPA, if we could try using the Commission. In reorganization, the Legislature tried to reduce the number of boards and commissions so they are obviously not excited about creating a new board or commission.

Lew Dodgion stated that he had asked Mr. Cowperthwaite to formulate a submittal to EPA for their review and approval of our proposed Small Business Assistance Program and to see what their reaction to be to the concept of using this Commission. We thought that we could look to the Environmental Commission or the Natural Resources Advisory Board as alternates although that board does not come close to fulfilling the membership requirement either. Right now EPA is very cooperative and receptive to different approaches but I am not sure that they have a lot of flexibility in this area. The flexibility that they might have is perhaps to not comment, not necessarily to approve but to not disapprove either. The disapproval might carry with it the threat of sanctions. We are going to pursue discussions with EPA to see what they say and I am also going to pursue it with representatives of the small business community, the Nevada Manufacturers Association and the Nevada Taxpayers Association whose members would be the main recipients of the service. If they want some of their members on the Compliance Advisory Panel I will ask them to make their wishes known to the legislative committee.

David Cowperthwaite stated that the issue of the Compliance Advisory Panel is clearly defined in the Clean Air Act and the way Nevada dealt with that issue was, when Nevada's Clean Air Act was amended, to include and to incorporate by reference, the Federal Act directly into State law. The problem at this point is that the panel is not statutorily defined so we are looking at an alternative method of creating it and it looks like we my be using an executive order to establish it. It is to be understood that the unique makeup of this is not only chosen by the Governor but people chosen by both houses of the legislature, both minority and majority parties, so it creates a much more complicated task to get the acquiescence of all the parties involved. It is a 7 member panel but you can expand it to however members you want so there is flexibility as long

as you meet the condition of the first seven members.

Lew Dodgion stated that the Division will keep the Commission posted of these additional duties which will undoubtedly require additional meetings.

D. Status of Division of Environmental Protection's Programs and Policies

Lew Dodgion asked to bring up one issue, Southern California Edison's Mohave Plant.

At least two hearings were held in Laughlin to consider a petition by Mohave County Arizona to monitor their opacity standards, which you did over a two year period. The direction to the Division was at the end of the second year, April of 1995, you wanted to review the status in their compliance of those opacity standards. A letter from the Commission stated that a review would take place in April. I propose that you conduct the review later in the year, perhaps after the legislative session, because the changes went into effect in April of each year and that would give us a full years data at those increments plus give us several months to evaluate the data and formulate recommendations for you.

Verne Rosse, Deputy Administrator of the Division of Environmental Protection stated that at the August, 1994 hearing the Division proposed an increase in the Chemical Catastrophe Prevention Program fees. We wish to withdraw that Petition, Petition 94020. We have reviewed our activities in the program and the success that we have had to date. We have reviewed the plans of the two major facilities in the state and we see the work load decreasing. We have did not ask for additional staff for the legislative session for 1996 and 1997 and think we can do the job adequately with the staff that we have. **Lew Dodgion reminded the Commission that their action at the August, 1994 hearing was to table, for at least 6 months, any action on Petition 94020. February is the sixth month and we are withdrawing the petition.**

Chairman Close asked for questions.

Chairman Close asked Lew Dodgion if rumors that the makeup of the Environmental Commission is going to be changed are true. Lew Dodgion replied that he had heard rumors that a bill was going to be requested but so far no such bill draft has surfaced.

E. Future Meetings of the Environmental Commission

David Cowperthwaite reported that the next Environmental Commission hearing is scheduled for April 4, 1994 in Reno. The agenda items will include the Tahoe water quality standards,

financial assurance provisions in the solid waste regulations, several water pollution control regulations and re-authorization of certain hazardous waste regulations. An additional hearing may be scheduled for June or July, towards the end of the temporary regulatory process which expires on July 1. At that time all these temporary petitions will go forward to the Legislative Counsel Bureau for drafting.

Mr. Cowperthwaite reported that a field trip survey indicated interest in several different sites. Some members want to visit a mine and some want to visit the test site and other environmental locations. Do you want to do these in terms of a subcommittee being established or as a full commission? I will solicit advice from the Commission on this issue.

Chairman Close announced that today's agenda includes a field trip to an alternative clean fuels site, A-55 Limited Partnership North America located at 210 Gentry Way in Reno and the public is invited to participate.

F. General Commission or Public Comments

Chairman Close called for additional comments. There were no additional comments.

Chairman Close dismissed for lunch and asked the Commission to reconvene at 1:15 p.m. at 210 Gentry Lane for a site inspection of the Alternative Clean Fuels A-55 Limited Partnership.

VII - Visitation to the Alternative Clean Fuels Site

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NEVADA STATE ENVIRONMENTAL COMMISSION
REGULATORY HEARING EXHIBIT LOG

HEARING DATE: February 16, 1995
LOCATION: Division of Wildlife Conference Room - Reno, Nevada

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	Fax/ Letter	Fax/Letter from Nevada Minig Association: Fax sent by Paul Scheidig: Letter signed by John Barta, Chairman, Air Quality Subcommittee	95002	YES
2	Fax/letter	Letter from Nevada Power Company: Signed by Gregory G. Sanks, Environmental & Safety Services	95002 95003 95004 95005	YES