

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF March 3, 1994**

**HELD AT: Reno, Nevada**

**TYPE OF HEARING:**

|            |                    |
|------------|--------------------|
| <b>YES</b> | <b>REGULATORY</b>  |
|            | <b>APPEAL</b>      |
|            | <b>FIELD TRIP</b>  |
|            | <b>ENFORCEMENT</b> |
|            | <b>VARIANCE</b>    |

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

|            |                               |
|------------|-------------------------------|
| <b>YES</b> | <b>AGENDA</b>                 |
| <b>YES</b> | <b>PUBLIC NOTICE</b>          |
| <b>YES</b> | <b>MINUTES OF THE HEARING</b> |
| <b>YES</b> | <b>LISTING OF EXHIBITS</b>    |

## **AGENDA**

### **NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING**

The Nevada State Environmental Commission will hold a public hearing commencing at **9:00 a.m.**, on **Thursday March 3, 1994**, at the Reno City Council Chambers, located at 490 South Center St., Reno, Nevada.

This agenda has been posted at the Reno City Council Chambers and Washoe County Library in Reno, Nevada; The Division of Environmental Protection Office, Clark County Library and Clark County Commission Chambers in Las Vegas, Nevada; and the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this hearing was published on February 1, 1994, February 2, 1994, February 16, 1994 and February 24, 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 January 20, 1994 meeting. \* ACTION**

#### **II. Regulatory Petitions - \* ACTION**

- A. Petition 94008 amends NAC 445.430 to 445.846 inclusive and regulations previously adopted by the Environmental Commission on November 3, 1993. The amendments address deficiencies in the air quality regulations concerning the review of new sources of air pollution in nonattainment areas and to incorporate comments received from the U.S. EPA concerning Nevada's newly adopted integrated New Source Review/Title V Operating Permit Program. Sections 16, 21, 31, 32, 33, 39, 42, 43, 44, 45, 46, 47, 49, 71, 73, 75, 76, of petition 94002 (LCB file R-138-93) are proposed to be amended. Section 56 of R-138-93 is proposed to be repealed. The petition adds new definitions, clarifies the public noticing process and creates the provision for shielding of applicants from the failure of the agency to act during the permitting process.

#### **III. Discussion Items**

- A. Senate Bill 127 Strategy Development Status
- 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 February 25, 1994.

## NEVADA STATE ENVIRONMENTAL COMMISSION NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at 9:00 a.m. on **Thursday March 3, 1994**, at the Reno City Council Chambers, located at 490 South Center St., 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 94008 amends NAC 445.430 to 445.846 inclusive and regulations previously adopted by the Environmental Commission on November 3, 1993. The amendments address deficiencies in the air quality regulations concerning the review of new sources of air pollution in nonattainment areas and to incorporate comments received from the U.S. EPA concerning Nevada's newly adopted integrated New Source Review/Title V Operating Permit Program. Sections 16, 21, 31, 32, 33, 39, 42, 43, 44, 45, 46, 47, 49, 71, 73, 75, 76, of petition 94002 (LCB file R-138-93) are proposed to be amended. Section 56 of R-138-93 is proposed to be repealed. The petition adds new definitions, clarifies the public noticing process and creates the provision for shielding of applicants from the failure of the agency to act during the permitting process.

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 and Archives, 100 Stewart Street and at the Division of Environmental Protection, 333 West Nye Lane in Carson City, Nevada and at the 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.

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

**STATE ENVIRONMENTAL COMMISSION**  
**Meeting of March 3, 1994**  
**Reno, Nevada**  
**Adopted Minutes**

**MEMBERS PRESENT:**

Chairman Melvin Close, Jr.  
Tom Ballow  
Joseph Tangredi  
Roy Trenoweth  
Russell Fields  
Mike Turnipseed  
Harold Ober  
William Bentley  
Fred Gifford

Jean Mischel - Deputy Attorney General  
David Cowperthwaite - Executive Secretary  
Sheri Gregory - Acting Recording Secretary

The meeting convened at 9:00 a.m. at the Reno City Council Chambers, 490 South Center Street Reno, Nevada.

Chairman Melvin Close, Jr. read the public noticing as defined in the agenda for March 3, 1994.

**Item I. Approval of Minutes**

Chairman Close opened the meeting with a request for a motion to approve the minutes of the January 20, 1994 hearing as presented by staff. Commissioner Ballow made a motion to approve the minutes, Commissioner Trenoweth seconded and the motion was unanimously approved.

**Item II. Petition 94008**

Chairman Close reviewed Agenda Item II:

Petition 94008 amends NAC 445.430 to 445.846 inclusive and regulations previously adopted by the Environmental Commission on November 3, 1993. The amendments address deficiencies in the air quality regulations concerning the review of new sources of air pollution in nonattainment

areas and to incorporate comments received from the U.S. EPA concerning Nevada's newly adopted integrated New Source Review/Title V Operating Permit Program. Sections 16, 21, 31, 32, 33, 39, 42, 43, 44, 45, 46, 47, 49, 71, 73, 75, 76, of Petition 94002 (LCB file R-138-93) are proposed to be amended. Section 56 of R-138-93 is proposed to be repealed. The petition adds new definitions that clarify the public noticing process and creates the provision for shielding of applicants from the failure of the agency to act during the permitting process.

Chairman Close called upon Mr. Tom Fronapfel, Chief of the Bureau of Air Quality in the Division of Environmental Protection. Mr. Fronapfel explained that the Legislative Counsel Bureau (LCB) had provided their version to the Commission on March 2, 1994, and this document (R-015-94) was before the Commission for action. The Commissions Deputy Attorney General Jean Mischel stated it was advisable for the Commission to act upon the LCB version. Mr. Fronapfel stated he had reviewed the initial petition 94008 and the LCB version (R-015-94) and found no substantial difference. Mr. Fronapfel presented a table (exhibit 4) showing the numbering of sections between the original petition and the LCB document to be reviewed by the Commission. He then continued with his presentation of the LCB version of proposed regulation. Mr. Fronapfel explained that the petition before the Commission is derived from U.S. EPA comments regarding a previously adopted petition (SEC 94002 R-138-93).

Mr. Fronapfel read **Section 1**. This section referenced sections 2,3 and 4 of the regulation. Mr. Fronapfel read into the record and discussed **Section 2**. This section is a new definition of offsets. Commissioner Ballow asked about the purpose of the offset provision and Mr. Fronapfel stated that this was an EPA requirement. Mr. Fronapfel read into the record and discussed **Section 3**., a new section dealing with a definition of "offset ratios" was read into the record by Mr. Fronapfel. **Section 4**., a new section defining "alternative method" to determine compliance with air quality standards. Mr. Fronapfel discussed the proposed changes in **Section 5**., NAC 445.430, the addition of language referencing LCB file R-138-93. Mr. Fronapfel discussed proposed changes in **Section 6**., NAC 445.452, clarifications to "Best Available Control Technology". Mr. Fronapfel discussed proposed changes in **Section 7**., NAC 445.500, the deletion of the term "discrete". Mr. Fronapfel discussed proposed changes in **Section 8**., NAC 445.520, an amended definition for "fugitive dust". Mr. Fronapfel discussed proposed changes in **Section 9**., NAC 445.521, an amended definition for "fugitive emissions". Mr. Fronapfel discussed proposed changes in **Section 10**., NAC 445.548 an amended definition for monitoring device.

Mr. Fronapfel discussed proposed changes in **Section 11.**, amended NAC 445.552 regarding the definition of "nitrogen oxides. Mr. Fronapfel discussed proposed changes in **Section 12.**, NAC 445.553, the definition of "non attainment area". Mr. Fronapfel discussed proposed changes in **Section 13.**, NAC 445.624 amended and removed language for the burning flared off gases. Commissioner Gifford questioned how the modeling done in the review of the permit application is validated. Mr. Fronapfel replied that as a part of the permit conditions that emission limits are specified and in certain instances that a source test is required. The source test is then compared to the modeled results.

Mr. Fronapfel discussed proposed changes in **Section 14.**, NAC 445.625 amends the definition of "standard". Mr. Fronapfel discussed proposed changes in **Section 15.**, NAC 445.628, amending the definition of "stationary source" by deleting language and providing references to federal and other state administrative language. Mr. Fronapfel discussed proposed changes in **Section 16.**, NAC 445.632 is to be amended to incorporate the "Standard Industrial Classification Manual" by reference. Mr. Fronapfel discussed proposed changes in **Section 17.**, 445.650 is to be amended to change the definition of "Volatile organic compounds" to delete language and provide reference to federal and NAC 445.6605. Mr. Fronapfel discussed proposed changes in **Section 18.**, NAC 445.6605 is to be amended to include additional 40 C.F.R. Part 51 references and to directly include the "Standard Industrial Classification Manual. Mr. Fronapfel discussed proposed changes in **Section 19.**, NAC 445.664 is to be amended to clarify language to applicable requirements of a permit.

At this point in the discussion, Chairman Close acted to review and make a part of the record the letters from the Nevada Power Company (exhibit 1), and the Nevada Mining Association (exhibit 2).

Mr. Fronapfel discussed proposed changes in **Section 20.**, NAC 445.705 is to be amended to clarify operating permit requirements of a source. The commissioners discussed possible language additions to exempt motor vehicles, special mobile equipment, residential and commercial housekeeping vacuum systems, agricultural land use and soil disturbances of less than five acres. Chairman Close asked what the term special mobile equipment meant and Mr. Fronapfel replied with an example of construction trucks or mining exploration rigs. Commissioner Turnipseed expressed concern about the agricultural exemptions and Mr. Fronapfel explained that they were exempted by statute and that most, if not all agricultural

activity occur outside of PM10 nonattainment areas. Administrator Dodgion, stated that another example was commercial food pelletizing operations, which emit fugitive emissions. Deputy Attorney General Jean Mischel asked whether the exemptions were valid and Commissioner Tangredi asked why wasn't acreage of less than five acres regulated. Chairman Close expressed that there must be a limit to regulatory activity. Commissioner Bentley stated that regulating sites of less than five acres is more a local government concern. Commissioner Ballow stated that if the site was a major source, that a permit would be required. Mr. Fronapfel replied that local governments usually regulate the disturbance of top soil of less than five acres and that the five acre limit was what could be reasonably regulated at the state level. Commissioner Ober stated that the problem is also dealt with at the punitive level, that is when a disturbance occurs and the owner doesn't take care to mitigate fugitive emissions that legal action can be taken to abate the nuisance.

Mr. Fronapfel discussed proposed changes in **Section 21.**, NAC 445.707 is to be amended to reference LCB file R-138-93 and establish a 30 day public comment period.

Mr. Fronapfel discussed proposed changes in **Section 22.**, NAC 445.708 is to be amended to reference LCB file R-138-93 and add new language to operating permit provisions and procedures and to define "Lowest achievable emission rate". Commissioner Turnipseed asked about the states ability to permit based upon the company's external (other state) air quality track record. Mr. Fronapfel stated that this was difficult to do, that in the state sources the information is available, however in out-of-state situations the data is not directly available to the state, however EPA may have data systems capable of answering that type of question. Chairman Close questioned the purpose of Section 22, part 3(e) and why it was constructed so broadly. Mr. Fronapfel replied that the text of that section was drawn verbatim from the federal regulations. The major focus, stated Mr. Fronapfel, is to deal with marginal nonattainment areas for ozone. Commissioner Gifford asked about the level of analysis necessary and Mr. Fronapfel replied that there was no prescribed analytical process to implement this provision. The Bureau, of course, would be using EPA approved air quality models in circumstances where this provision applied. Commissioner Fields also asked about subsection e, and impact of the 20 percent reduction being required by the offset provision and how credits would be applied. Mr. Fronapfel replied that this provision only affects new sources. Chairman Close asked whether EPA was mandating this provision, and Mr. Fronapfel replied yes.

Commissioner Gifford asked what would happen if somebody, other than the state, was to

perform an analysis who would make the decision about the validity of the model. Mr. Fronapfel replied that this particular circumstance was spelled out in the Clean Air Act. Mr. Fronapfel also gave the example of the Grand Canyon and how a process had been established to deal with visibility issues. Administrator Dodgion stated that in Nevada we currently have only one Class I area and that it is the Jarbidge wilderness area. Administrator Dodgion also talked about the Grand Canyon visibility problem and how this issue effects regulatory actions at the Mohave powerplant located in Laughlin, Nevada. Class I areas, stated Administrator Dodgion, have stricter requirements in order to prevent the air quality from being degraded. Commissioner Ballow inquired further about visibility issues and Administrator Dodgion replied that the issue of the Mohave powerplant related to long range transport of pollutants, and that controls on smaller sources were even tougher in Class I areas. Commissioner Field asked about the status of Washoe and Clark counties ozone problem. Mr. Fronapfel replied that Washoe county was marginal for ozone and they were in the process of requesting reclassification of the Truckee Meadows air shed.

Mr. Fronapfel discussed proposed changes in **Section 23.**, NAC 445.711 is to be amended to clarify Class II and Class I source provisions by referencing ASTM methods. Commissioner Ballow mentioned that the referenced association "American Society of Tests and Measures" should be changed to "American Society of Testing Materials". Mr. Fronapfel replied he would verify this issue after the hearing. Mr. Fronapfel discussed proposed changes in **Section 24.**, NAC 445.713 is to be amended to provisions relating to operating permit renewals, and defining permit application completeness criteria, in addition to the necessity to comply with expired permit conditions when a renewal is denied.

Mr. Fronapfel discussed proposed changes in **Section 25.**, NAC 445.7162 is to be amended by adding by reference a definition of "major modification". Chairman Close asked what the definition of major modification was and Mr. Fronapfel gave the example of a replacement combustion units at a powerplant. Mr. Fronapfel discussed proposed changes in **Section 26.**, which amends section 16 of R-138-93 by clarifying references to "federal enforceable". Mr. Fronapfel discussed proposed changes in **Section 27.**, which amends section 21 of R-138-93 by changing references to the "Standard Industrial Classification Manual". Mr. Fronapfel discussed proposed changes in **Section 28.**, which amends section 31 of R-138-93 by adding the term "administrator". Commissioner Gifford questioned why the oil and gas industry had been

exempted. Mr. Fronapfel replied that they had been successful in pleading their case to be exempted from the regulation. Commissioner Fields stated that oil and gas equipment cycles on and off on a routine basis and that may have been the rationale.

Mr. Fronapfel discussed proposed changes in **Section 29.**, which amends section 32 of R-138-93 by amending Class I-B provisions to include additional references. Mr. Fronapfel discussed proposed changes in **Section 30.**, which amends section 33 of R-138-93 by adding language to Class I sources. Commissioners reviewed and discussed possible changes to subsection 4. The commissioners discussed deletion of the term "by the" and adding clarifying language "within a reasonable". Administrator Dodgion stated that the term completeness was the key to triggering this provision of the regulation. Commissioner Tangredi asked when the analysis was initiated and Administrator Dodgion replied that upon receipt of a complete application, the Bureau could then begin the analysis of the applicants request. However, stated Administrator Dodgion, a complete application does not guarantee a permit.

Mr. Fronapfel discussed proposed changes in **Section 31.**, which amends section 39 of R-138-93 by referencing R-138-93 and adding language on federally enforceable emissions cap and approved deadlines for submittal of compliance certification. Mr. Fronapfel discussed proposed changes in **Section 32.**, which amends section 42 of R-138-93 by referencing R-138-93 and adding language to the reopening of an operating permit to comply with requirements for a new or modified permit. Mr. Fronapfel discussed proposed changes in **Section 33.**, which amends section 43 of R-138-93 by adding language to enforce the prohibition against operating with a general permit. Mr. Fronapfel stated that the Nevada Mining Association (exhibit 2) had stated some concerns, however no change was necessary. Chairman Close expressed concern about the jeopardy a company may incur and how the provisions of subsection 11 would impact a businesses investment. Mr. Fronapfel stated that the provision focuses only on general permits and it that clause was triggered than a site specific permit would be required.

Mr. Fronapfel discussed proposed changes in **Section 34.**, amends section 44 of R-138-93 by requiring copies of administrative amendments to the administrator. Mr. Fronapfel discussed proposed changes in **Section 35.**, which amends section 45 of R-138-93 by requiring the procedures for written notification. Mr. Fronapfel discussed proposed changes in **Section 36.**, which amends section 46 of R-138-93 by requiring the state to notify other states of proposed actions. Mr. Fronapfel discussed proposed changes in **Section 37.**, which amends section 47 of

R-138-93 by changing references to R-138-93.

Commissioner Tangredi returned to **Section 33** and asked if the provisions of subsection 11 would scare business away from Nevada. Mr. Fronapfel replied by referencing the comments by the Nevada Mining Association (exhibit 2) that the general permit process could be abused by potential applicants. Deputy Attorney General Jean Mischel stated that if there was a problem with the Division's action, the applicant could always appeal to the Environmental Commission for relief. Chairman Close asked whether they would have to rely upon the intent articulated in the EPA's preamble to the regulation and Mr. Fronapfel replied, yes. Mr. Fronapfel stated that each potential violator of the general permit would be dealt with on a case by case basis.

Mr. Fronapfel discussed proposed changes in **Section 38.**, which amends section 49 of R-138-93 by including the term "source reduction". Mr. Fronapfel discussed proposed changes in **Section 39.**, explaining that this section repeals NAC 445.538. Mr. Fronapfel discussed **Section 40.**, the effective date provision. Based on a table submitted by Mr. Fronapfel (exhibit #3), sections 2, 3, 18, 20, 22 and 25 are to become effective upon adoption and filing with the Secretary of State, while the remaining sections would become effective on November 15, 1994.

Chairman Close returned to **Section 8** and asked about the wording of fugitive emissions. Mr. Fronapfel commented that the section was based upon federal requirements. Mr. Fronapfel provided examples such as vehicles driving on dirt roads. Chairman Close asked whether the same type and size of emissions coming from a road could also be emitted from a vent or stack. Ms. Mischel replied that the standards used by EPA is resulting in stricter language being placed before the Commission. Commissioner Fields asked about the interaction between LCB and the EPA Administrator. Mr. Fronapfel replied that the term Administrator should have been included. Commissioner Fields pondered whether the state was acting as the surrogate cop for the U.S. EPA. Commissioner Turnipseed asked if other states were also in the quandary faced by Nevada with these regulations. Commissioner Fields asked if a new mine opening in Washoe county would be facing the criteria imposed by subpart e. Administrator Dodgion replied that only ozone, carbon monoxide and particulate were subject to action. These regulations are focused upon powerplants stated Administrator Dodgion.

Mr. Fronapfel concluded his remarks regarding petition 94008. Chairman Close then opened the

hearing to public comments on petition 94008.

Lynn Girauo, Barrick Goldstrike Mines & Nevada Mining Association presented testimony on petition 94008. Ms. Girauo stated that "if someone in good faith thought they would be able to get a general permit and they were operating on the assumption that we didn't think that they were intended to get five years of fines, if however, five years down the road someone then said wait a minute - we have changed the way we think about this and we have looked at it again and you don't get a general permit." We want to bring to your attention, said Ms. Giruado, the preamble to the federal regulations. The preamble indicates that they have that language to deal with real abuse. I think the Nevada regulations already allow for that. If someone blatantly misrepresents things in their air quality application you (the state) have the authority to take action against them (applicant).

Ms. Girauo continued that the last item that concerned us was the "reasonable time frame", but Tom Fronapfel took good care of this (see section 30 proposed amendments) so that there is not an issue within "reasonable (timeframes)".

Ms. Giruado continued "the first item, which is on "insignificant activities", is the language that Tom proposed to serve as our fall back approach. It is the last paragraph on that and we certainly feel that is fall back approach language. We want to bring to your attention, again from the preamble of the federal regulations, that we felt they were trying to allow for "insignificant activities" by not having to include the determination of the status of the source to be in compliance with the Title V program. If you were a small source, and had one item that is on the list of exempted activities, such as a tank under 40,000 gallons, if you were to exempt that, you have to go around and look for any stationary tank then what you've got is 100 gallons or 10 gallons. Adding up some of these little things could get pretty onerous, especially for a small company that didn't have a large staff to handle this sort of thing. We want to point out that we felt the EPA, in their preamble, did allow to exempt some "insignificant activities" from having to use this "add up" procedure under Title V to determine if you hit the 100 ton trigger you then get into the Title V program. Mr. Fronapfel has talked with Region IV EPA people and they indicate no, that is not what they mean, but their regulation preamble indicates it, so that it is contradictory. Also, I think you hit on the 5 acres on the top soil disturbance. You have to set a lower limit someplace or it gets to be absurd, trying to quantify everything. I think, said Ms. Giruado, that we were looking for some limits on some things where smaller operations, smaller

companies, wouldn't have to try to determine every single emission source that possibly could exist in a facility because that could get tough. I will, stated Ms. Giruado, leave that for you to think about. Another thing I want to mention is, it is difficult from the public's participation standpoint to not get the actual regulations that you are going to be voting on until we walk in the door. I don't know if there is any way to work that out better, because the LCB can change things to such a point that it is hard to figure out who is on first."

Chairman Close apologized to the public for not being able to provide the actual LCB documents more in advance of the meeting and explained that Mr. Fronapfel, from the Bureau of Air Quality did not receive the document from LCB until 4:30 pm, Tuesday, March 2, 1994. Chairman Close suggested that Commission staff attempt to schedule the meetings to insure that there is adequate time to send the LCB document out to the public before the Commission has to meet. It was determined that the LCB has a time limit to turn around these documents and they wait until the 30th day - thus future hearings should not be scheduled on the 31st day but farther into the future. Chairman Close stressed that adequate time must be allowed to mail the document to the public prior to a hearing.

Mr. Fronapfel agreed, but explained that in this particular case the Division was under a time constraint with EPA.

Chairman Close noted that Nevada Power's letter was in the hands of the commissioners and asked if a representative wished to speak (exhibit 1). There was no person from Nevada Power Company to discuss the letter. Mr. Fronapfel proceeded to discuss the Nevada Power Co. letter. Mr. Fronapfel stated that the concerns mentioned in Nevada Power's letter had been addressed.

Chairman Close asked for additional public comment. No other person rose to speak to the Commission regarding petition 94008.

Tom Fronapfel explained that when the original Title V package was discussed in November, 1993, the Division had indicated that within the context of the discussion, as well that of this petition, that one of the provisions that the Division wished to become effective immediately on adoption was the elimination of our exhaustive list of hazardous air contaminants and replacing them directly with EPA's list of 129 hazardous air pollutants. The inclusion of the hazardous air

pollutants was to be made within NAC 445.6605, however, we neglected to modify a particular section of the existing regulations to delete the reference to the existing list at the November 3, 1993 hearing. He stated that he has discussed this issue with your counsel Ms. Jean Mischel, and she believes that we can make that change today as it relates directly to NAC 445.717, a copy of which has just been provided to you (exhibit 5), Substances which are toxic or hazardous air contaminants. A substance is a hazardous or air contaminate if:

1. "threshold limit values for chemical substances in the work environment 1987-88 and the allowable concentration is based on the toxicity of these substances or".

We request replacing that, as we discussed in November, with:

"if it is listed in Title 42 of the United States Code Section 74.12 b list of hazardous air pollutants incorporated by reference in NAC 445.6605"

Commissioner Gifford asked Mr. Fronapfel what the number of pollutants would go to.

Mr. Fronapfel stated that the current list is on the order of some 500 or so compounds and they are based on the threshold of 1/40th limit value, etc. and it is just about impossible to enforce, and that on November 3, 1993 we proposed and discussed to replace that current list with the actual list (only 129 compounds) of hazardous air pollutants, making it much easier for industry and DEP to enforce.

Chairman Close asked for comments on changed NAC 445.717. No additional comments were received. Chairman Close declared the public hearing portion closed on LCB R-015-94 (94008) and also the changes to NAC 445.717.

The changes to petition 94008, other than NAC 445.717, were discussed for clarification.

Section 20, subsection (l) changes are:

The potential emissions from the sources listed in this subsection must be included in the determination of whether a source is a major source, except for motor vehicles and special mobile equipment, residential and household vacuum systems, agricultural land use and disturbing top soil of less than five acres.

Section 30, subsection 4 changes are:

Except as otherwise provided in this subsection, if the owner or operator of a Class I source submits a completed application for an operating permit or a renewal of a permit in a timely manner, he shall not be deemed to be in violation of the requirement for an operating permit during the time the director considers the application. The owner or operator shall be deemed to violate the requirement for an operating permit if the director requests additional information in writing following a determination that the application is complete and the owner or operator fails to submit the requested information **[by the]** within a reasonable time as specified in the director's request.

Counsel Jean Mischel recommended that, with respect to the effective dates, a new section be added. She suggested making NAC 445.717 section 40 just for purposes of adoption and then make the existing section 40 a new section 41 and to include the attachment of the effective date, which is essentially to say, sections 2, 3, 18, 20, 22, 25 and 40 are to become effective upon adoption. Then, Ms. Mischel continued, a new section, 42, for the remaining sections to become effective on November 15, 1994.

Commissioner Gifford asked Counsel Mischel if she was reading from the Petition rather than the LCB sections. Counsel Mischel replied that she was only placing the sections in order for the purpose of clarification.

Commissioner Turnipseed moved that LCB file R-015-94 be adopted as amended.  
Commissioner Bentley seconded the motion.

The motion carried.

### **Item III. Discussion Items**

#### **A. Senate Bill 127 Strategy Development Status**

David Cowperthwaite, Executive Secretary, explained that a task force has been established on Senate Bill 127 which requires the commission to establish a framework to coordinate the underground storage tanks and the regulatory framework among a variety of state

agencies and local governments. The strategy was presented to the Commission in September of 1993 and the commission concurred with that strategy. Allen Biaggi, with the Bureau of Corrective Actions is moving ahead on that issue. This will be discussed further in the next Commission hearing.

**B. Status of Division of Environmental Protection's Programs and Policies.**

Administrator Lew Dodgion reviewed the situation with the Enhanced I & M Program, stating that the state is still in a holding pattern as far as implementing that program. We are waiting to see the results of the negotiations between California and the federal EPA. They are trying to reach a compromise of whether California will go with the regulations as proposed by EPA or whether EPA will allow them to do something different. Negotiations are on-going and will effect Nevada because we will need time to get the program up and running in Nevada.

Commissioner Turnipseed asked Mr. Dodgion if the rumored EPA threats of sanctions against Nevada have been taken. Lew Dodgion explained that there are two sanction processes. One is deemed mandatory sanctions and this 18 month clock started against California in late December, 1993. EPA placed a notice in the Federal Register stating the public hearing was to take place on March 3, 1994, however the earthquake hit southern California and the EPA Administrator withdrew from the discretionary sanctions process. The process was started, but then stopped. Mr. Dodgion explained that we have heard, at EPA staff level, (not confirmed by management) that they have found that our submittal, which we made close to November 14, 1993 deadline, was incomplete. The incompleteness would be based on the fact the Department of Motor Vehicles & Public Safety has not moved forward with the detail of how the enhanced I & M program would run. And, as a matter of finding it incomplete, that the mandatory sanctions clock would then start, giving us 18 months to rectify the incompleteness of the SIP submittal.

Ms. Mischel asked if, in respect to the filing of this commission's regulations, there were questions about the Legislative Counsel Bureau changes after the adoption by the Commission. Mr. Dodgion replied that LCB seems to want to add a lot of definitions to regulations and they wanted to define terms that are absolutely common knowledge within the regulatory and regulated community. Mr. Dodgion stated that he stood on the Board to Review Claims for the Petroleum Fund and LCB wants to define terms such as "initial payment" . In this particular case they wanted to put in a definition for "test only" and you had amended your

regulation to say that this is for a "test only program". The LCB only has the authority to take what you adopt and change the language such that it is consistent with the codified language, they do not have the authority to add definitions etc. We have requested that they remove their language and I believe they are on the verge of honoring that request.

### **C. Past & Future Meetings of the Environmental Commission**

Executive Secretary David Cowperthwaite explained this meeting item has been created to allow the commission members to discuss past or future meetings. Mr. Cowperthwaite distributed a packet of reports, explaining that in the future these reports will be provided as part of the meeting packet to apprise the commissioners of current issues and items of interest within the various NDEP bureaus; tracking of the status of the regulations acted upon by the Commission; and an in-depth petition history and review.

Mr. Cowperthwaite discussed the commission field trip to the mines and stated a cost projection of \$4,000 - \$8,000 for the trip. He concluded that regulatory constraints must first be met and the financial status of the budget needs to be determined, after all the regulatory work, before proceeding with final plans for the field trip.

### **D. General Commission or Public Comment**

Commissioner Tangredi commented that in his experience, while acting as Surgeon Director for the United States Public Health Service in New Orleans, as a point of information in regard to the question on fugitive dust, that a chimney, an object designed to capture the conflagration of the combustion in a furnace, is meant only to, at the top of it, allow completely burned emissions, so gases will leave the top of the chimney. If you look at the chimney and the chimney had a little view finder from top to bottom, in the initial combustion, propellants of solid particles, and this applies to the term fugitive dust, would be shot up in that chimney such as portions of metal or coal, which would be hazardous if left to spew about the area. They would move up the chimney, then by virtue of gravity fall back down and would be captured and taken away. The purpose of the chimney is to capture fugitive dust and to allow it to shoot up in the chimney and fall back down harmlessly instead of being carried by the wind to other areas and only permit burning for combusted materials or gases from the top. So when they say that

fugitive dust means emissions of solid airborne particulate which could not reasonably pass through a stack, they mean that it would fly up in energy and then fall back down.

Commissioner Tangredid noted that some chimneys in New Orleans and Louisiana had to be made longer because they were allowing the fugitive dust to continue up and out into the environment.

Chairman Close asked if, when you say "could not reasonably pass through" are you saying it cannot reach the end of the stack. Commissioner Tangredi replied that it could not reach the end of the stack because gravity would take it back down but if it could pass through the stack you have to do either two things: make the chimney longer so that it would then reach it's maximum height and then fall back down, or leave it alone and have the area contaminated by fugitive dust. A unburned or incompletely burned particle would be emitted from the combustion and travel up the chimney but then it would lose its propellant force and fall back down and then be carried away. But if the chimney were not long enough it would continue out and then be captured by winds and spewed for miles.

Commissioner Gifford complimented David Cowperthwaite for creating the informative, concise reports and stated that the reports would be a helpful resource item for the commissioners.

Commissioner Close adjourned the meeting at 11:05 am.

As submitted by David Cowperthwaite, Executive Secretary.

Nevada State Environmental Commission  
Regulatory Hearing  
Exhibit Logs

Hearing Date: March 3, 1994

Location: Reno City Council Chambers

**REGULATORY EXHIBIT LOG**

| # | Item         | Item Description  | Accepted<br>Yes/No |
|---|--------------|---|--------------------|
| 1 | Letter       | Nevada Power Co. remarks concerning<br>Petition 94008 dated February 28, 1994           | Yes                |
| 2 | Letter       | Nevada Mining Assn. remarks concerning<br>Petition 94008 dated February 28, 1994        | Yes                |
| 3 | Table        | Effective Dates for Petition 94008 showing<br>petition and LCB file R-015-94 (NDEP-BAQ) | N/A                |
| 4 | Table        | Cross reference tables for petition 94008 and<br>R-015-94 (NDEP-BAQ)                    | N/A                |
| 5 | NAC Citation | Proposed changes to NAC 445.717 (NDEP-<br>BAQ)  | N/A                |
| 6 |              |   |                    |
| 7 |              |   |                    |
| 8 |              |   |                    |

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