NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF March 8, 2002

HELD AT: Reno , Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **9:30 a.m. on Friday, March 8, 2002**, **at the Nevada Division of Wildlife's Conference Room B, 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 2002-05 is a permanent amendment to NAC 445B.400 to 445B.774, the vehicle emission control program. Amendments are proposed for NAC 445B.575, devices to control pollution; 445B.5815, the inspection of vehicle: certified on-board diagnostic systems and 445B.6115, the exemption of vehicle from certain provisions. NAC 445B.51815 is amended to remove the limitation on applicability of the on-board diagnostic systems for counties with a population of more than 400,000. The restrictive trigger for effectuating the implementation of on-board diagnostic systems is removed from NAC 445B.575 and 445B.5815. An effective date of March 1, 2002 for implementation of on-board diagnostics is established for Clark and Washoe Counties.

The Nevada Department of Motor Vehicles has already moved forward with implementing the on-board diagnostic II testing at the state's smog check inspection stations. The estimated short-term impact is approximately $12,950 per station. There are approximately 400 stations in Clark and Washoe County for a cumulative cost of about $5,000,000. The inspection stations have already incurred these costs. This investment cost will offset the existing tailpipe testing, reducing the long-term emission testing equipment maintenance costs. The proposed amendments are not expected to have any economic short or long-term adverse impact upon the public. The implementation of the proposed regulation is not expected to result in any additional cost by the Division of Environmental Protection for enforcement. There are no other state or government agency regulations that the proposed amendments duplicate. The regulation implements U.S. EPA final rules of May 8, 1998 (Federal Register Volume 63, No. 85, pp. 24429-24434) and April 5, 2001 (Federal Register Volume 66, No. 66, pp. 18156-18179) for Inspection/Maintenance Program Requirement for On-Board Diagnostic Checks. The amendment is no more stringent than federal requirements. This regulation does not provide for any new or increased fees.

2. Petition 2002-06 is a permanent amendment to NAC 519A.120 to 519A.240, the mining reclamation program. The amendments are to 519A.225, fees for application of permit; 519A.230, submission of fee if permit not issued; 519A.235, annual submission of fees for services by division and 519A.240, time for submission of fees for new exploration projects and mining operations. The proposed fees are to be effective April 15, 2002.

The proposed regulation increases fees for mining reclamation permits. The regulation will increase permit costs for the mining industry. The fees will allow a continued level of service for timely review and approval of permit decisions. The fees will also allow for sustained coordination with federal agencies (the BLM and U.S. Forest Service) also involved in mining reclamation. The proposed amendments are not expected to have any economic short or long-term adverse impact upon the public. The implementation of the proposed regulation is not expected to result in any additional cost by the Division of Environmental Protection for enforcement. There are no other state or government agency regulations that the proposed amendments duplicate. This regulation is no more restrictive or stringent than federal requirements. This regulation provides for increased fees for mining reclamation permits. It is projected that the fees collected will be annually about $ 438,100. The expenditures cover the cost for administration and enforcement of mining reclamation regulations. The fee supports 6.5 positions including costs for salaries and benefits, travel, training, equipment, operating, information services and indirect costs.

Pursuant to NRS 233B.0603 the provisions of NRS 233B.064 (2) are hereby provided:

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

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

A copy of the regulations to be adopted or amended will be on file at the State Library and Archives, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 1771 E. Flamingo, Suite 121-A, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notices have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at **http:/www.leg.state.nv.us.** In addition, the State Environmental Commission maintains an Internet site. It is at **http://www.ndep/state.nv.us/admin/envir01.htm**. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on **March 1, 2002.**

This public notice has been posted at the following locations: Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library and Division of Wildlife in Reno, and the Division of Environmental Protection and Department of Museums, Library and Arts in Carson City.

# # # #

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
MARCH 8, 2002

The Nevada State Environmental Commission will conduct a public hearing commencing at **9:30 a.m. on Friday, March 8, 2002**, **at the Nevada Division of Wildlife's Conference Room B, 1100 Valley Road, Reno, Nevada.**

This agenda has been posted at the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library and Division of Wildlife in Reno, Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. The Public Notice for this hearing was published on February 7, February 14 and February 21, 2002 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 December 11, 2001 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. **Petition 2002-05 (R-017-02)** is a permanent amendment to NAC 445B.400 to 445B.774, the vehicle emission control program. Amendments are proposed for NAC 445B.575, devices to control pollution; 445B.5815, the inspection of vehicle: certified on-board diagnostic systems and 445B.6115, the exemption of vehicle from certain provisions. NAC 445B.51815 is amended to remove the limitation on applicability of the on-board diagnostic systems for counties with a population of more than 400,000. The restrictive trigger for effectuating the implementation of on-board diagnostic systems is removed from NAC 445B.575 and 445B.5815. An effective date of March 1, 2002 for implementation of on-board diagnostics is established for Clark and Washoe Counties.

B. **Petition 2002-06 (R-020-02)** is a permanent amendment to NAC 519A.120 to 519A.240, the mining reclamation program. The amendments are to 519A.225, fees for application of permit; 519A.230, submission of fee if permit not issued; 519A.235, annual submission of fees for services by division and 519A.240, time for submission of fees for new exploration projects and mining operations. The proposed fees are to be effective April 15, 2002.

III. Variance Request * ACTION

Variance Request by Full Circle Composting located at Milky Way Farms in Minden, Nevada for a variance to NAC 444.670 for compost plant buffer zones. This variance is in accordance with NAC 444.748.

IV. Settlement Agreements on Air Quality Violations * ACTION

A. Modern Concrete; Notice of Alleged Violations #1607
B. Sierra Pacific Power Company; Notice of Alleged Violation # 1570, 1578, 1579 and 1580
C. Mine Services and Supply; Notice of Alleged Violations # 1612
D. US Ecology; Notice of Alleged Violations # 1581 to 1584

V. Discussion on the cost/benefit of the I/M Heavy Duty Diesel smoke and engine testing program and the role of the Environmental Commission

VI. Status of Division of Environmental Protection's Programs and Policies
a. Divisional staff water quality awards

VII. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary, David Cowperthwaite at (775) 687-4670, extension 3118. The public notice and the text of the proposed permanent regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at **http:/www.leg.state.nv.us.** In addition the State Environmental Commission maintains an Internet site at **http:/www.ndep.state.nv.us/admin/envir01.htm**.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-4670, ext. 3118, by 5:00 p.m. **March 1, 2002.**

# # # #

STATE ENVIRONMENTAL COMMISSION
Meeting of March 8, 2002
Nevada Division of Wildlife
Reno, Nevada
Adopted Minutes

MEMBERS PRESENT:
Melvin Close, Chairman
Alan Coyner, Vice Chairman
Terry Crawforth
Demar Dahl
Mark Doppe
Paul Iverson
Joseph L. Johnson
Hugh Ricci
Steve Robinson

MEMBERS ABSENT:
Tim Crowley
Joey A. Villaflor

Staff Present:
Deputy Attorney General Ronda Moore, Deputy Attorney General
David Cowperthwaite - Executive Secretary
Sheri Gregory - Recording Secretary

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

Agenda Item I. Approval of minutes from the December 11, 2001 meeting.

Commissioner Johnson asked what is the tapes, are the tapes the official record or the minutes?

Chairman Close answered I think the minutes are the official record because that's the one we're going to be adopting and signing. Of course the tapes would always supplement the minutes and (inaudible) or lack of information appeared in the formal minutes.

Commissioner Johnson asked would it be problematic if we put off the adoption of the minutes until the next meeting so I can review a portion of the tapes that I have some questions about?

Chairman Close answered I have no problem with that. If there's no objection we'll not adopt the minutes at this point. We will reserve their consideration for the next meeting to give you a chance to review the tape.

Commissioner Johnson stated thank you very much.

Chairman Close moved to **Agenda Item II. Regulatory Petitions, Petition 2002-05.**

(Petition 2002-05 (R-017-02) is a permanent amendment to NAC 445B.400 to 445B.774, the vehicle emission control program. Amendments are proposed for NAC 445B.575, devices to control pollution; 445B.5815, the inspection of vehicle: certified on-board diagnostic systems and 445B.6115, the exemption of vehicle from certain provisions. NAC 445B.51815 is amended to remove the limitation on applicability of the on-board diagnostic systems for counties with a population of more than 400,000. The restrictive trigger for effectuating the implementation of on-board diagnostic systems is removed from NAC 445B.575 and 445B.5815. An effective date of March 1, 2002 for implementation of on-board diagnostics is established for Clark and Washoe Counties.)

Colleen Cripps introduced herself as chief of Air Quality Planning. She stated the Bureau of Air Quality Planning is proposing some amendments to the vehicle emission control program regulations relating to the implementation of an on-board diagnostic program, or OBD. In June of 2000 we came before the Commission to add a

requirement to implement an OBD program in Clark County should that county experience an exceedence of the National Ambient Air Quality Standards for carbon monoxide or if the actual vehicle miles traveled exceeded the projected miles traveled in their approved carbon monoxide SIP. EPA has required these changes for SIP approval. Since that time, the OBD was adopted as a federal program and must be implemented now in both Washoe and Clark Counties. In order to meet those new federal requirements, we're proposing the following changes to the regulations. Basically we will be removing the references to counties with populations over 400,000 so that this program can be implemented in all areas that are currently now in non-attainment and we're going to be removing those triggers that would have resulted in the implementation and replacing those with a specific date and that would be March 1, 2002. This date has been negotiated between EPA, DMV and the Division in order to allow enough time for DMV to work with station owners and get the equipment together and make sure that we can actually get this program implemented by that specific date.

The bureau held workshops on February 27th in Las Vegas and on March 1st in Reno. No adverse comments were received on the proposed changes. These changes are required by EPA in order to approve Clark County's CO SIP.

Chairman Close called for questions. He asked what is the status of the diagnostic machine? My understanding is from reading the newspapers that they aren't effective and not working. Is that correct?

Ms. Cripps deferred that question to Lloyd Nelson of DMV.

Lloyd Nelson introduced himself as being program manager for vehicle emissions with the DMV Management Services and Programs Division. He stated we would like to request that the regulations be approved because the problems that we've experienced with the initial rollout of the analyzers does not pertain to OBD II at all. The OBD II program we are rolling out at emission stations right now. We have 21 stations and 40 analyzers that have the program. The OBD procedure is working very well. The problems that were in the newspaper related to RPM pickup on newer vehicles that don't have distributors and we're working with the analyzer company. They are modifying their RPM pickup on the analyzer and were giving training to the inspectors on different areas where they can pickup RPM readings. So the problems that we did have with the RPM was more or less a training issue with the inspectors. The OBD itself is working fine. We're having good feedback from the inspectors with the program.

Chairman Close asked except for that one area, the analyzers work as they were anticipated to work and make all the proper diagnostic determinations? Is that correct?

Mr. Nelson answered yes. The analyzer is working very well overall. We found that when it come to RPM pickup that has been a problem for the last several years with the advancing technology with the newer vehicles we haven't had trouble getting RPM signals even with the old equipment and the alternate RPM pickups are all different on every analyzer. So, we found that it's a training issue. The vehicles that were having a problem picking up RPM was less than 1 percent of the fleet and we found that when you place the RPM pickup in the right areas that the machine does work. So, we're working to train the inspectors and that issue is getting better also.

Commissioner Coyner stated it says in here there's no impact to small business and yet they had to buy a $12,950 machine. How do you rectify that? Is it an add-on module to their machine or do they have to get a brand-new machine just to satisfy this? My testing guy is continually complaining about the costs of these new machines and how he has to replace them all.

Ms. Cripps explained the way we wrote this was that we assumed that for these regulations, which basically just direct DMV to implement a program, there was no cost. But DMV's regulations, which is actually the implementation of the program itself and the requirements of which machines and how much the machines would cost were something that would be associated with the regulations that DMV adopted. So we wanted to make sure that it was clear that there was a cost to the program overall, but because this is a federally-required program and the regulations we specifically were adopting weren't going to increase the cost to the businesses. That's why we wrote it the way we did.

Commissioner Coyner stated so you're not the bad guy, the EPA is the bad guy.

Ms. Cripps stated there is a cost and we did address that in there, but this specific regulation is not what's going to drive the cost.

Commissioner Coyner asked did the owners of the small businesses initially complain when the EPA passed the regulation? Is there an upside to this that they don't have to do some other things that help offset the cost? I understand the regulation has to be passed because it's EPA, but it's for my own personal knowledge because when my guy complains to me again I can tell him, "This is why it costs more to get your machine."

Ms. Cripps answered my understanding is that there was only a certain period of time that they were anticipating that the older types of equipment would be useful anyway and that they would eventually have to buy new equipment. Those older pieces of equipment were also at a point where they couldn't get them repaired, they couldn't replace them because they were just so outdated. So they were going to have to buy something new anyway. This was the next thing on the block.

Commissioner Coyner asked I understand from reading this that perhaps it might eliminate the tailpipe inspection for the newer models? So will the cost go down to the consumer as a result of that?

Ms. Cripps answered I doubt that, but I'll let Lloyd answer that question.

Mr. Nelson stated during our initial rollout of the OBD II inspection, we're finding that the test time has been reduced to 5 minutes for the entire inspection, where with the tailpipe test the average time is right around 10 minutes overall statewide. So there is a reduced time to test an OBD vehicle. We have not looked into reducing the fees yet. That is something that we have been discussing.

Commissioner Coyner stated great, I'm glad there's an upside for the consumer.

Commissioner Johnson asked there's presently a remote sensing, part of the remote sensing program is to evaluate the on-board, is not that true? I mean they're supposedly going identify vehicles that are high emitters and then check to see whether their on-board system is working?

Mr. Nelson stated that's one of the advantages of OBD II. When a vehicle exceeds 1.5 times the federal certification standards the light comes on on the dashboard and it notifies the motorist that there's a problem. The system is very proactive in finding a problem and during our initial rollout we found that a vehicle can fail OBD II but still pass the tailpipe test. So that's one of the studies that we have planned when we start doing our roadside monitoring in April would be to find a correlation to see how aggressive the OBD II is. If the vehicle failed the OBD is still passing the RSD, try to come up with a correlation.

Commissioner Ricci asked how long have these been in place now? Or are they going to be placed in service now? Are these diagnostic machines in place now and actually doing some tests on these OBD's?

Mr. Nelson answered we rolled out the OBD inspections in Reno on Beta around the 20th of February and we're continuing to roll the new program out to emission stations. We plan on rolling OBD out in the Las Vegas area next week.

Commissioner Ricci asked are you finding more that are out of compliance now with this new system as opposed to the older systems?

Mr. Nelson answered we just received our reporting applications from our network vendor and we are starting to get that information back. We'd be happy to give you a report as the rollout progresses.

Commissioner Johnson stated another question. What model years are generally equipped, starting when and does it vary by make and model or?

Mr. Nelson answered federal requirements 1996 and newer vehicles light duty have OBD II. Heavy-duty vehicles do not have OBD II compliance as of yet. So we will be checking '96 and newer light-duty vehicles through the computer instead of a tailpipe test.

Chairman Close called for further questions. There were none. He called for a motion.

Commissioner Coyner motioned to approve.
Commissioner Johnson seconded the motion.
The motion carried unanimously.

Chairman Close moved to **Agenda Item II.B. Petition 2002-06.**

(Petition 2002-06 (R-020-02) is a permanent amendment to NAC 519A.120 to 519A.240, the mining reclamation program. The amendments are to 519A.225, fees for application of permit; 519A.230, submission of fee if permit not issued; 519A.235, annual submission of fees for services by division and 519A.240, time for submission of fees for new exploration projects and mining operations. The proposed fees are to be effective April 15, 2002.)

David Gaskin introduced himself as chief of the Bureau of Mining Regulation and Reclamation with NDEP. He stated I'm here this morning to present a proposed revision to the fees that support our reclamation program. I'd like to present a PowerPoint presentation that will give some general introduction and explain a little bit of our rationale for the fee adjustment and then I'd like to go through the actual regulatory revision with you and then Mr. Biaggi would like to make a statement to wrap things up.

In the Bureau of Mining Regulation and Reclamation we have three different branches: the regulation branch, which handles the water pollution control permits for active mining operations; the closure branch, which handles closure issues from a water standpoint; and the reclamation branch. The definition of reclamation is rather lengthy, but it means actions performed during or after an exploration project or mining operation to shape, stabilize, re-vegetate, or otherwise treat the land in order to return it to a safe, stable condition consistent with the establishment of a productive, post-mining use of the land and the abandonment of a facility in a manner which insures the public safety as well as the encouragement of techniques which minimize the adverse visual effects.

The reclamation program reviews reclamation plans submitted by applicants and cost estimates for reclamation. They issue reclamation permits. They handle all the bonding for the bureau. They perform inspections of operations, handle any compliance and enforcement issues as required, and cooperate to a great extent with the federal land managers. Most of the mining exploration projects, there are many of them in the State, are mixed of State, private, and public land that requires a joint reclamation coordinated effort. Connie Davis is the branch supervisor of the reclamation branch. We have three permit writers in the branch: Dave Simpson, Todd Suessmith, and Todd Process. There's also a Program Assistant, Leah Atkinson. We also cover Ginger Poulson, who is our Management Assistant and helps with the administrative affairs of the entire bureau and they cover half of my salary out of the reclamation fees that they collect. So it's a total of 6-1/2 staff, 3 actual permit writers.

What are the funding sources for the reclamation program? We don't get any State general fund money, or federal money, nothing but permit fees. It's a totally fee-funded program. I'd like to describe briefly the financial situation and why we're here. It's a little tricky to see, but as you can see, the blue line on top represents the total financial resources that we have, which is the amount we've collected in fees and the amount that we've carried forward from the previous years. The red is the amount of expenditures that we have per year and you can't really read it, but it says Fiscal Year '03 is where those lines intersect, which means that we will no longer have resources to operate the program.

Why is this happening? There's been a decrease in revenues over the recent years and a steady increase in expenses. As you'll see in a minute, the expenses are mainly due to salary cost of living increases. There hasn't been a fee increase in over 10 years since the program was established. Here's how the expenses for the program are set up. The large light purple area on the bottom is salaries. You can see that's approximately 60 percent of the entire budget. The dark purple at 15.6 percent is a transfer to the Nevada Bureau of Mines and Geology,

which is set up in the reclamation statutes, $100,000 a year off the top goes to them. The light blue 12.5 percent large wedge is indirect costs, which is taken as a percentage of our salaries for our Division's administrative expenses and other overhead. And then that group of small wedges over on the right, which totals less than 7 percent is things like travel, training, equipment, things that really are within our direct control and you can see that's a very small percentage of the overall budget as it's set up. So, salaries are indeed the lion's share of our expenses. This just shows, on the bottom again in the purple is the salaries over the years from '97 up through '02. You can see that our overall expenses have had a steady increase with the cost of living. The other expenses right up on top, those small little wafers, are what's in our direct control and they've varied a little bit, but haven't really increased significantly over the years.

Why have the revenues decreased? As you know, the mining industry has been challenged with low metals prices for the past few years that has resulted in fewer new projects coming online. The existing projects that are out there have been scaling back trying to cut costs and that's resulting in reduced operation. A lot of the existing projects have been maturing through the years and now parts or all of those projects are going into closure and reclamation. Bankruptcies have had a significant impact on our programs, all of our mining programs. And if you're wondering, "Has the caseload really changed?" You think, "Well if the mining industry as a whole is shrinking, shouldn't your workload shrink along with it?" We do have fewer new projects, but we've always had a backlog of work so even if we do have a temporary decrease in new projects coming in, there are plenty of existing projects that we need to catch up on. We have approximately 200 projects for those 3 permit writers to handle. With things changing and projects going into closure and reclamation, there are more requests for bond reduction or release. Over the past years the quality and depth of the review that we perform, reclamation plans and cost estimates has really increased. We've gotten better, more in-depth submittals from operators and we do a more thorough job reviewing them. Additional requirements have been added to the program. You'll probably remember, we've added recently bonding for process fluid stabilization; we've implemented the interim fluid management plan, different corporate guarantee requirements. There are additional elements that are being added to the program. And, as I mentioned, we work closely with the federal land managers. The BLM in particular has most of the projects that we work with. We've been working closely with them on bonding and other issues and unfortunately they have very limited resources as well so that results in de facto deferral. To us of many tasks which we would expect them to handle normally. Also, there are 3809 regulations, which handle hard rock mining on public land, have been through some serious revisions. Our reclamation regulations are required to be consistent with 3809 so as those change, that changes the tasks that we have to perform.

Now we'll look at the proposed fee revisions. There is a statutory component and a regulatory component to the reclamation fees. We're proposing to leave the statutory of fees alone. In the regulatory part of it there are application fees and annual fees. We're also proposing to leave the application part of that alone and just focus on the annual fees. They are something that are more predictable and we can project better and they are a larger portion of our income. So it's easier for us to apply any revisions to the regulatory annual fees. What we'd like to do is adjust those fees to reflect the current mining industry's situation and adequately support the workload. When the reclamation fees were initially established over 10 years ago, the powers that be did their best estimate at how the industry would look over the next number of years and what would be an adequate fee structure. It must have worked fairly well because it's been over 10 years since we've had to look at it, but now's a good time.

The existing statutory fees consist of an annual fee due on or before April 15th of each year for land disturbed by the operator and not reclaimed through the proceeding calendar year. It's $1.50 an acre for public land and $5.50 an acre for private land. This is where the Nevada Bureau of Mines and Geology gets their money. They get all of that public component plus 3/11ths of the private component to a cap of $100,000 a year. If there's any left over from that, we get it.

The regulatory fees - as I mentioned there's an application fee and an annual fee. The application fee is a one-time fee assessed to new applications that are received by the program; $1.50 an acre public land, $2.50 an acre private land. The annual fee is due on or before April 15th of each year per total affected area. Affected means land that is or will be disturbed by a project or operation. It's divided into exploration projects for mining operations for exploration projects is a flat fee of $100 for any size exploration project from very small to very large. For mining operations there's a grade-aided scale based on acreage from under 200 acres up to over 1,000 acres. As I mentioned, we would like to focus on the annual fees in our proposed increase. We'd like to add

some categories in the exploration area to address differing workload based on differing sizes of exploration activity. In the mining operation portion we'd like to add a smaller category to accommodate small mining operations, not have an impact on them and then we'd like to add some larger categories. Back over 10 years 1,000 acres seemed awfully big, but we do have a lot of mining operations that are substantially larger than that and require a lot of work so we would like to add a couple of larger categories.

Here's again, the existing regulatory annual fee for exploration, $100 for any size. We have 71 of those. We would propose to have a category for less than 20 acres. Keep the same $100 fee to not impact the small exploration projects; there are about 28 of those. As you can see, we've added a category between 20 and 100 and then 101 to 500 acres and then over 500 acres. You can see the number of projects associated with those.

Commissioner Iverson asked if I drill an exploration hole here and then I drive for a mile and drill another exploration hole and go another mile drill another exploration hole, how do we figure the acres?

Mr. Gaskin explained there's a definition in the regulations that says how close they have to be before they're considered one project.

Connie Davis stated it's a one-mile radius.

Mr. Gaskin stated they look at everything within a one-mile radius of a particular project. It's to avoid people from having many small projects close together and not paying for a large project. The existing annual regulatory fees for mining operations, as you'll see there's a small category, 200 or less acres, 57 of those and then 201 to 500, 501 to 1,000 and over 1,000. Those are the existing fees. What we propose is to have a small category under 50. We have 27 of those, a rather substantial number at the same fee of $500. Then we have the category 50 to 200 and then some similar categories in the middle and then over 1,000 we have 1,001 to 2,500, 2501 to 5000 and then over 5000. So we have some rather large projects. You can see the distribution of the number of operations fairly well distributed, a lot on the small side.

Commissioner Iverson asked could a company through concurrent reclamation drop down after the initial . . .?

Mr. Gaskin answered absolutely. Yes sir.

Commissioner Iverson asked so on a yearly basis your permit people would submit whether they do concurrent reclamation or as they are mining they can drop down into a different category?

Mr. Gaskin answered yes sir.

Commissioner Iverson asked so there is an incentive for them if they want to drive it down they can do that (inaudible) reclamation?

Mr. Gaskin answered yes.

Commissioner Ricci stated the chart that you have there doesn't quite match what we have in the regulation.

Mr. Gaskin stated we have been in discussions with industry, with the Nevada Mining Association, in particular and there have been some recent revisions and I believe they've been handed out.

David Cowperthwaite stated the March 7th version is on your desk.

Mr. Gaskin stated we should be looking at the same version, the March 7, 2002 version from the LCB. Modifications to permits have been a big issue. As I mentioned there are a lot of changes that come in as things change with economics or other things that effect an operation. It takes a lot of our time. We recognize that as a big component of our workload. We want to be responsive to industry when they have a change they want to implement that's a high priority for us. We have proposed a fee for a minor modification of half of the annual fee. We have had some questions over exactly what is a minor modification. There is a definition in the regulation.

Some things weren't quite clear. We want to make it clear that seed mix changes are not included. Often during reclamation as things go the exact composition of seed mixes will be revised either by the operator or by the regulatory agencies. We don't want that to be something that will penalize the operator for accommodating. So that's not included. Also, in the regulations it's required for a three-year review of the surety amount to be performed. We will be including that into the annual fees. We won't be assessing that as a separate fee. It will be just something that's included in our normal workload.

Fee for a major modification would be equal to the annual fee. And we're proposing a fee to cover our expenses for the review of a corporate guarantee. A small number of operators still have corporate guarantees. They are very large dollar amounts in many cases. We feel very strongly that it's important for us to perform an adequate financial review as evidenced by our revision of the corporate guarantee regulations late last year. That does come with a certain cost. We don't have the in-house expertise for detailed financial review. We do farm it out to our financial consultant. We're estimating about $10,000 a year is how much it costs us to do that. However, we do have an option in there for operators who want to elect to have a third party financial analyst do it, other than our financial consultant. If they perform that review to the satisfaction of the Division, that would be fine. That would just relieve us of the burden of that cost.

Here are some numbers. A lot of numbers, but basically it shows on the top for the years, fiscal year '02, '03, '04 and '05 how much we would project to collect from the regulatory fees, statutory fees. Modifications are difficult to project, but we have some numbers in there. Applications are nearly impossible to project. We just have some actual ones that have come in so far in fiscal year '02. Review fee, we are anticipating most companies will choose to provide their own review. So we didn't include that. Subtotal. Then we do have balance forward, the "BF" is balance forward from the previous year, how much we carry forward, resulting in a total revenue of resources that we have to operate. Then our projected expenditures by year, which is going up 5 percent per year for cost of living. (inaudible) budget no significant increases, no increases in personnel resulting in the balance forward to the next year. That balance forward is very important based upon how these fees are set up because we don't collect the fees until April 15th of each year, yet our fiscal year begins July 1st of the previous year. So we have to have enough balance forward to carry us all the way from July 1st until the next April 15th. So we need a significant balance forward in our budgeted amount.

What we're hoping to do with this fee increase is maintain the existing level of service, which means provide timely plan review, timely permit approval, timely bond reduction and release and maintain a defensible reclamation program without any extra staff or significant increase in our resources or our infrastructure. Fees are due April 15th of each year and so we're hoping to receive approval very soon so that we can maintain the integrity of the reclamation program. As I mentioned, at the current rate if we do not adjust the fees we will run out of funds early in fiscal year '03, which as you know starts July 1st of this year.

I'd like to go through the details of the regulation change. I should note that we did have public workshops. We had them in Winnemucca, Elko, and Carson City. We did mail notices of this change to whole mailing list, which covered all our permit holders, county commissioners, BLM districts, and Indian Tribes. If you'll look at the March 7th regulation proposal, Section 1 merely introduces that Chapter 519A of NAC is hereby amended adding thereto the provisions of Sections 2 and 3.

Chairman Close stated Tim Crowley, one of our commissioners, gave me a letter yesterday that he wanted me to distribute. I'd like you to have a chance to look at it before your presentation is concluded, as well as all the commissioners. I apologize for interrupting your presentation.

Mr. Gaskin stated section 2 addresses the corporate guarantee review. It says, "If an operator has filed a corporate guarantee to meet the surety requirements of NAC 519A.350 the operator shall on or before April 15th of each calendar year either (1) submit to the Division an annual review fee of $10,000 or (2) arrange for an annual review by a third party financial consultant to demonstrate to the satisfaction of the Division that the operator has adequate financial security."

Chairman Close asked is there any time frame within which the review by the third party has to be presented to the Division?

Mr. Gaskin answered we would anticipate that they would have their financial information from the previous year analyzed properly by the end of the first quarter of the calendar year and we're hoping that they could then submit it by April 15th. That's kind of how this whole fee program was set up was to allow them to properly have time to evaluate the previous calendar year's activities, put that information together and then present it. They do have to provide some similar information to the SEC (the other SEC) each year and we would try and tie it together with that.

Chairman Close asked would it be helpful for you to have a time frame within which the third party information has to be provided? You control your own review, but if you don't give you one that meets your satisfaction by a certain date, then would that be something that you ought to have in here or is it something you just want to work out with them?

Mr. Gaskin stated that's a good point and something we should work out with them depending how difficult it is for them to get this review in a timely fashion. It is tax season and a lot of financial consultants are busy during that time of year. So we might look at July 1st or something to give them a little more time to act and put that information together.

Chairman Close asked do you want to have that in the regulation or do you want to just have it in-house that you, or do want to have some muscle to compel them to do it?

Mr. Gaskin answered the way the corporate guarantee review is set up as we modified the regulations last year, is that the bureau itself will receive financial information from the operators. That information will be conveyed from the bureau to the corporate guarantee review panel and that review panel will make recommendations to the administrator. So, that process will have to be worked out as far as the exact timing.

Commissioner Johnson stated if you contract for a financial review you have April 15th, but if you allow the mining company to contract with an independent third party that's negotiable. The people who do your analysis will rely on the very same information that the independent one would. Why not require the same information on the April 15th?

Mr. Gaskin stated well the fee itself is due on April 15th, but I don't believe we've committed ourselves to have that analysis completed by that date.

Commissioner Johnson stated oh, okay.

Mr. Gaskin stated Section 3 goes over the annual fees. It says, "The fee for minor," Oh, I'm sorry this is modifications. "The fee for minor modification to a permit for an exploration project or a permit for mining operation is one-half the amount of the applicable annual fee for the permit." And then, "the fee for a major modification of a permit is equal to the amount of the applicable annual fee for the permit." And then, as I mentioned, we do have the clarification, "As used in this section minor modification does not include an increase or decrease in the amount of surety necessary to cover the cost of reclamation as determined by the three year periodic review of the amount of surety required by NAC 519A.380." And that's how we've discussed it with industry is that we see a change to the plan or to the actual activities of the site as possibly triggering a modification. The amount of surety is periodically reviewed and if it's just a dollar adjustment, that would not be subject to a modification fee. Part B is changes to the proposed seed mix for reclamation would not be included as minor modifications.

Commissioner Coyner asked could you explain to me why that's not a minor modification to change the seed mix?

Mr. Gaskin explained because it often is something that's just worked out between the operator and the different agencies. It doesn't require a substantial amount of workload or review on our part. Therefore, we don't think it merits charging a fee for it.

Commissioner Coyner asked it isn't subject to a fee?

Mr. Gaskin answered it is not.

Commissioner Coyner stated,"As used in this section, minor modification does not include"

Mr. Gaskin stated it does not include those.

Commissioner Coyner stated I read that to mean well it maybe a major modification. You're saying that A is not a major modification? The time you spend on that three-year (inaudible)? That could be very time consuming.

Mr. Gaskin stated that does require time, but working with industry we decided to include that in the annual fees themselves and cover that workload as a lump sum with the annual fee.

Commissioner Coyner stated I agree with Mark. I think Mark's on the same wavelength as I am that the way it's written it's unclear and it might be considered a major modification. So it does not include as a minor modification. Well, you're saying it's not a modification at all. There's no fee associated with it.

Mr. Gaskin stated it's less than a minor modification, yes.

Commissioner Coyner stated but I read it to mean those were major modifications or potentially.

Commissioner Doppe stated it would strike me as though that the wording could be cleaned up to say that those will require no modification by way of this regulation. Because right now if you're just going to leave it open it says not just (inaudible) it might be a . . .

Mr. Gaskin stated yes I see that. There's not a formal definition of major modification in the regulations. There is a section of the regulations that covers things that would be considered major modifications. In the past 10 years we have only had one major modification. So, it's certainly not a common occurrence and something that would be likely to frequent misunderstanding. But, I understand the clarification that would help.

Commissioner Doppe stated nonetheless, it would be better to not have to refer to another document to have to figure out what this one means and we could simply say that these items don't require, or don't trigger any sort of modification. It would make it a lot simpler.

Commissioner Johnson stated since you're intending to hope to have this adopted today I guess we need to establish what language we really are suggesting now.

Chairman Close stated if you want to take some time to think about it, you don't have to do it while you're standing there at the podium. We'll give you an opportunity to think of the language and then we'll adopt it at a later time.

Mr. Gaskin stated I think if I understand it, you would just say in the introduction to this section you could say, "As used in this section the following are not considered modifications to the permit."

Commissioner Doppe stated words to that effect.

Commissioner Ricci asked does the changing of these regulations and the re-submittal back to LCB going to cause you any problems to meet the April 15th deadline that you're trying to make?

DAG Moore stated if you don't make a material change, it doesn't need to be resubmitted to LCB. A material change would be considered something that the public would not have notice of that would matter to them. So this change does not change the meaning, anyone's rights, duties, obligations. So I would not deem this to be a material change that needs to go back to LCB. You as a board can change language in a nonmaterial way at this hearing.

Mr. Gaskin stated Section 4, it just clarifies that as used in the reclamation regulations and sections 2 and 3 of this regulation that the words and terms defined in NAC 519A.015 to 095 the definitions, inclusive, have the meanings ascribed to them in those sections.

Section 5 is the substantive one that covers the annual fees. And it's NAC 519A.235(1) is, "On or before April 15th 1991 and on or before April 15th of each year thereafter, an operator of an exploration project or a mining operation shall submit to the Division for services rendered by the Division the applicable fees required by this section."

The next section covers exploration projects. "For each exploration project which is active on October 1st 1990 and for which a permit has been issued by the Division, or an application for a permit has been submitted to the Division, the operator shall submit to the Division" and then (a) is, "20 acres or less a fee of $100," (b) is "20 to not more than 100 acres a fee of $500", (c) is "if the total affected area is more than 100 acres, but not more than 500 acres a fee of $1,000," and (d) is "more than 500 acres a fee of $2,000."

Part 3 is for mining operations. "For each mining operation which is active on October 1st 1990 and for which a permit has been issued by the Division or an application for a permit has been submitted to the Division, the operator shall submit to the Division (a) if the total affected area is 50 acres or less a fee of $500" then 50 to 200 is $1,500, 200 to 500, $3,000, 500 to 1,000, $4,500, 1,000 to 2,500 acres, $9000, 2,500 to 5,000 acres $12,000 and if the total affected area is more than 5,000 acres a fee of $16,000.

Those are the proposed regulation revisions and that concludes my presentation. If you have any questions for me before Mr. Biaggi makes his statement, I'd be glad to answer them. Or if you'd prefer to hear the other information, I can come back up.

Mr. Cowperthwaite stated this is defined as Exhibit No. 2, which is a letter from Commissioner Crowley to the Chairman, Mr. Close.

Commissioner Iverson stated if you look at the original regulations that are in the book, it says that anything over 5,000 acres would be up to $10,000 and I'm hearing in this new regulations it's $16,000. I'm assuming that the industry supports that. Where did these increases come from?

Mr. Gaskin stated what we did was have the initial proposal. We did have extensive discussions with industry to talk about how this fee increase could be set up to meet the needs of the program and properly assess the amount of disturbance and workload on the bureau. Some of the parameters we had were the timing of the fee increase, should we implement it now? Or if there was an option maybe they could do it in July of the next fiscal year. Industry gave us feedback that they would prefer to implement a fee this April that would cover us all the way until next April. So that's the way it was designed. I see Mr. Crowley has that as his Item No. 3. We have kind of done it on a longer-term projection out to fiscal year '07 and tried to spread it out over those years. Industry has a lot of concerns over the future, very understandably. They're not able to project that far into the future. They'd prefer if we could just cover this next year with this fee increase and then reevaluate it in the near future. So that's how some of those changes came in. And also the modification fee, I mentioned the three-year update was a separate fee before and then we rolled it into the annual fee. So that had a contribution to that.

Commissioner Iverson asked so the industry has seen this copy?

Mr. Gaskin answered yes.

Commissioner Iverson asked they weren't working off of this when they basically indicated support?

Mr. Gaskin answered no. We worked with them to develop the final version.

Commissioner Iverson stated the other concern that I have, I'm glad Tim picked it up too, I have fee-based divisions in my agency and we're not as fortunate as you are to have an industry that's willing to provide you

enough fees to have more than 100 percent of your total expenditures as carryover. We've always sort of figured out about 25 percent need for carryover. I think that's wonderful that the industry is willing to step forward and say, "That's fine." But if you look at that graph you have up there, within a couple of years, you only went to 2005, but if you keep going, you're going to have a lot more money than what you're able to spend. I think Tim hits it on the, the nail on the head here. You've got an industry out there that's scratching and digging for everything they can and trying to stay alive and there's been hundreds and hundreds of people laid off and there's been a tremendous downturn in this industry. I'm concerned that if by the year 2005, and I would assume you are getting ready for your next budget cycle, with that type of a carryover, the following year you're going to have $1 million and once you reach that kind of money, there's people that would like to see that money spent in other ways if they can get their little hands on it. So I think I get real concerned when I see carryovers going above $1 million.

The other concern I have is that you indicate you were backlogged 200 cases. I think maybe something that you could offer the industry, and I'm not speaking for the industry, they can do whatever they want on this, but maybe a way to keep that carryover down and a way to provide services for the industry and a way to maybe better meet the needs of an industry, again, that's struggling is rather than having a back load of 200 cases or only having three writers, it might be worthwhile to increase your staff so you can turn these permits around faster and be a better resource. I'm just concerned when I seen the carryover because I think it's a wonderful opportunity for you. I think Tim mentions here a little bit about you've got an industry out there that's struggling and yet we're increasing fees and I think in government sometimes we get to that position. Rather than trying to cut back any or do things a little bit more efficiently, it's always easy to keep increasing fees and it works really well when you've got an industry that's blooming and doing well. But when an industry is struggling and people are being laid off it does ring a bell and people do get concerned about it.

Mr. Gaskin stated Mr. Biaggi's statement will address the general issue that you've brought up, in particular with the carryover. As I mentioned, the way that these fees are set up we don't receive the fees until the end of April, that's 10 months out of the 12-month fiscal year that we are without funds. So that's why we have to have about 10/12ths of our total annual expenditures in that carry forward from the previous year.

Commissioner Iverson stated so you want almost 100 percent.

Mr. Gaskin stated we do need nearly 100 percent, unfortunately. If we were to change the date that we collected the fees it might help alleviate the cash flow. We did talk with industry about that. At this time, it's probably not something they're going to want to do, separate billing cycles, they decided to keep it simple. We do intend to evaluate it as we go and we don't anticipate going beyond the end of this calendar year without having a serious look at where the projection will be going. In working with industry they desired to have an infusion of cash to get us through to next April and then see where we are at that point closer on.

Commissioner Iverson asked is there a piece of legislation or in your statutes that says that this money is dedicated to this purpose and no one can reach down and pick that money up and spend it on something else related to outside of your Division?

Mr. Gaskin answered it says it will be utilized for administration of the reclamation program.

Commissioner Johnson stated yes my question and I certainly don't see it in my purview to look at efficiency and manning and that sort of thing, but philosophically what you've done is operated under the assumption that the requester of services pays the price and that's reflected in that you have no general fund appropriation and these fees are your recommendation to meet the needs as you perceive them.

Mr. Gaskin stated yes sir. Mr. Biaggi's statement will address that.

Allen Biaggi introduced himself as administrator of the Division of Environmental Protection. He stated Dave and his staff have worked very hard with industry to come up with a set of regulations that attempts to address two very important considerations: (1) the operation of a regulatory program to ensure reclamation is done in the State of Nevada without providing undue burden and economic concerns on an industry that right now is

struggling. Based upon those discussions, I'd like to read the following statement that I think addresses those concerns and provides a commitment by the Division of Environmental Protection.

"The Division appreciates the consideration of NMA and the mining industry as a whole with regard to the modification of fees for the mining reclamation program. The Division recognizes the difficult economic conditions in the industry and future uncertainties with precious metals prices, with bonding and with 3809. We also recognize the economic impacts fee adjustments can and will have. At the same time, however, it is critical that mining in Nevada be conducted in such a way as to ensure protection of the public health and the environment, that lands are reclaimed for productive use and that the citizens of the State of Nevada are protected to the greatest extent possible from liability from bankruptcy in mining abandonment. The Division and the industry have worked together for over a decade to put the appropriate regulatory controls in place to accomplish these goals. Because of the recognized uncertain economic factors with precious metals mining, the ongoing uncertainty of the federal regulatory environment and the consistently evolving situation with financial institutions that provide bonds and other financial assurances, the Division commits to revisiting the reclamation program's fee structure as an action item at the first State Environmental Commission meeting after January 1, 2003."

Essentially what we are saying is that we are committing to put this item on the agenda next January or the first meeting of the SEC after that time to reassess these fees and the fee structure in light of the mining operation and the industry economic forecast at that time. So that was something that we have negotiated with the industry and that we are committed to do.

Chairman Close called for questions.

Commissioner Johnson stated I will address the same question and that's just a statement of policy that it is the policy of the Department to assess fees based upon the services required.

Mr. Biaggi stated that's true Mr. Johnson, but I'll take it one step further. It's the policy of the State of Nevada through legislative directive that that is the way that the mining program was set up over a decade ago that in order for large-scale mining to occur in the State of Nevada there would be stringent regulatory controls for water pollution, for air pollution, and for long-term reclamation and that those costs would be borne by the mining industry.

Commissioner Doppe stated that was a quick education for me. I originally thought it was an outrageous fee increase, something on the order of between 8 and 18 percent annually compounded. A couple of things, in delivering what appeared to initially be a large surplus rolling forward, in fact isn't a surplus because of the kind of the backwards overlay of the way they do their budget. In fact, they're working on borrowed money. They need the money for next year to pay back what they've banked this year. Now I can begin to understand it a little better. I can see it from that regard and I can only presume then that if we had seen a balance for the last 10 years, we would have seen a diminishing balance. It's gotten to the point where now it no longer is enough to pay next year's bills and that becomes clear. It seems to point out the need of that coupled with the dynamic economic situation in the industry that these things have got to be done much more short-term than a 5 or 10 year horizon. They almost need to be done annually and fine tuned annually to meet the needs of the industry and of the Division. It appears as though that's the track we're headed towards. Every time I'm on any kind of a board or group or anything I've said in an era of rising costs you can't afford to set them and forget them and come back 5 to 10 years later. I think that's happened in this group before where we've set fees and we have them removed then all of a sudden we're faced with a 30 or 40 percent increase for something and industry has to catch their breath. I think it's a lot easier on industry to move them year-by-year, even though it's a bit more of a pain, maybe just 2 years, but not 10.

Mr. Biaggi stated I think you make an excellent point and every time we adjust fees these types of things come up. We try and keep our fees to the barest bones possible while providing the necessary services. I would like to point out a couple of things. First, the mining program has a history of reviewing fees on a periodic basis and, in fact, has delayed fee increases in the past in the regulation program recognizing that we're perhaps over collecting or collecting more money than we had anticipated and have either reduced fees or delayed the collection of

additional fees. If you'll recall, back in the late 1990's that occurred. We did something very similar in the air quality program where we actually were over collecting. We reduced fees for a three-year period, came back to you and asked to increase those fees, which is a very painful process. I think something that this Commission did which was very wise and probably the wave of the future was in the water pollution control fees. We hadn't raised those fees in over a decade. We came in with about a 35 or 40 percent increase. This Commission said, "We don't want to see that again" and asked for an automatic inflationary adjustment. I think that that was greatly supported by the industry because they know their long-term exposure and their long-term requirements for fees for the future. So I think that that is the trend that we are going to and in the mining program at least for the next couple of years we will be reviewing those fees before this body on a yearly basis.

Commissioner Iverson stated I want you to know I support what you're talking about 100 percent. I do have a question, however. Normally when we do mining business there's usually a letter from the Mining Association indicating their support. I'm assuming that Tim is writing this letter as a Commissioner and no longer a member of the Nevada Mining Association?

Mr. Biaggi answered there is a member from the Nevada Mining Association in the audience today who I believe will make a statement.

Chairman Close called upon Jonathan Brown.

Jonathan Brown introduced himself the Director of Environmental and Regulatory Affairs for the Nevada Mining Association. He stated I'm here this morning to present the position of the Nevada Mining Association regarding this petition. The Nevada Mining Association wishes to thank the staff for the opportunity to work with them on this petition as well as to the statement read into the record by Administrator Biaggi. We truly appreciate his recognition of the difficult times the industry is currently in. In spite of these difficult times, the Nevada Mining Association continues to recognize the importance that mining in Nevada be conducted in such a manner as to ensure the protection of the public health, the environment, that lands are reclaimed for productive use, and that the citizens of the State of Nevada are protected to the greatest extent possible. The association and the Nevada Division of Environmental Protection have worked together for over a decade to put the appropriate regulatory controls in place to accomplish these goals and we look forward to continuing to do so. Therefore, except for the annual fee request for corporate guarantee reviews by a third party contractor for which our association has no consensus among its membership the Nevada Mining Association does, nevertheless, concur with the rest of the petition proposed by staff and duly modified by the agreement to revisit the reclamation program fee schedule as an action item at the first State Environmental Commission meeting after January 1, 2003.

Chairman Close asked so then you have no recommendation in those two areas? Is that what you're telling us?

Mr. Brown answered the one area that we do not have a recommendation is for the corporate guarantee review by a third party contractor, the $10,000 fee. We could not reach consensus among our membership. We are a consensus organization and will not take a position either in support or against when we do not have consensus.

Chairman Close called for further questions.

Commissioner Doppe stated with regard to that one item, the Division has attempted to strike a balance between their legitimate out-of-pocket costs to try and verify a difficult financial transaction and at the same time provide an alternative to a private industry person who might be providing such a guarantee if they're going to the trouble of, in that case, probably buying an expensive audit and everything else of their financial statements, it would probably be significantly cheaper for them to bring their auditor in and make their case in a fashion that's acceptable to the Division. I think that by giving them the two alternatives, they recognize it's a real obligation and duty that has to be done. You have to make sure that there's something behind that guarantee and it costs money to do it. So I think they've made a pretty good proposal.

Chairman Close stated this is a flat $10,000. In some cases I presume it's not enough and in some cases it must be too much. Have you considered the situation where you have an extremely complex financial analysis to make

and $10,000 doesn't cover your fee and you've considered where you have a relatively small company that is self-guaranteeing and you don't need the full $10,000? How did you come to that $10,000 conclusion?

Mr. Gaskin explained we have limited experience in the full evaluation of the finances required to satisfy corporate guarantee under the new criteria. The experience we have indicates that it will be approximately $10,000. You're certainly right, there will be some cases that are simpler than others, but I don't think we've seen any case that, even though it's small, is very simple. They all need a rather large amount of man-hours on the behalf of the financial consultant that does add up substantially, but if an operator sees that certainly he could do it himself for significantly less, that's the option we have presented to them.

Chairman Close called for further questions.

Commissioner Coyner asked could a company's accountant come in and give a review for the annual review? I understand it to be only a third-party financial consultant.

Mr. Gaskin answered yes. We have termed it as a third-party consultant so it would not be their in-house financial analyst. It could be someone they have relations with and have dealt with financially that's familiar.

Commissioner Coyner asked how many corporate guarantees do we have? How many companies have corporate guarantees? How many people are we talking about paying this fee?

Mr. Gaskin answered six.

Commissioner Johnson stated this, I would think for a public company they have to essentially have the independent review anyway for a private company, and you probably don't have any of those that are seeking corporate guarantees. So I think the issue of whether it's third party or internal is not necessarily duplicative because they'd have to make those same public reports.

Chairman Close called for further questions from the Commission. There were none. He called for further testimony from the audience. There was none. He called the public meeting closed. He called for a motion to adopt the March 7th revision as amended.

Commissioner Iverson made the motion to adopt as amended and asked for clarification of the amendment.

Chairman Close stated in section 3, paragraph 3, "As used in this section the following are not deemed modifications." He then called for a second.

Commissioner Doppe seconded the motion.

The motion carried unanimously.

Chairman Close stated if there's no objection we'll include Commissioner Crowley's letter as part of the record on that matter. He then moved to **Agenda Item III. Variance Request by the Full Circle Composting Company.**

Craig Witt introduced himself as being a farmer from Carson Valley. He stated we own a farm called Milky Way Farm and we've been composting in Carson Valley for the last seven years. We are here today to ask for a variance in some existing regulations that we find would restrict our efforts in composting. You should have in your presence a photograph or two that kind of keeps my little presentation short because these pictures are supposed to be a thousand words. We have cattle on our farm. We raise about 300 head of Holstein replacements. We utilize that manure as a nitrogen source in developing composting recipes that allow us to be a service to the rest of Carson Valley in helping them recycle recyclable materials, i.e., yard waste, wood wastes and those type of things. The Forest Service has asked us to be a willing participant to assist them in the recycling of wood waste that's being generated from the Tahoe basin. And what we found was is that we were in violation

of some regulations. The little map shows you those regulations and gives you an example of that. There's a setback for composting facility that consists of 1,000 feet, which would be the pink line from any near public road and then also a setback of 500 feet for any adjoining property. If we were to invert those lines on the grid area of yellow it would show you that we'd be extremely restricted as far as where we could compost. So what we're asking for is a reduction in those setbacks to 100 feet in both cases: from the road and from the adjoining property. At this point in our 7 years of operation, I personally have yet to receive any complaints. We work hard. We know a little bit about working with Mother Nature because we've farmed there for 80 years and we try to do a good job and we try to address all of those concerns of odors and those types of things. The fact is we still do have cattle there and if there probably is any odor emission, it's more than likely coming from the movement of the manure to the compost windrows as far as allowing us to process that.

Chairman Close asked what is the makeup of the buildings that surround your operation within the yellow and the pink lines?

Mr. Witt answered in the picture probably the summertime photograph kind of shows that. We treat our composting as an agricultural crop. I call it farming microbes. I would call these industrial buildings here a crop of industrial condominiums. Does that answer your question? It's an industrial park. There are several different entities in there. There is a restaurant there, a brewery. We've assisted them in recycling their brewers' grains.

Chairman Close asked if we look at the map with the yellow and pink lines the industrial park are within the yellow lines? Would that be correct?

Mr. Witt answered yes. The pink line represents 1,000 feet away from our property line. So that shows the encompassment of the 1,000-foot regulation that is essentially the road. The road where you see the industrial park, which would be Airport Road is, the pink line is 1,000 feet back from that.

Chairman Close asked what's within the lower right-hand corner of that map? What is this area right here? What are those buildings?

Mr. Witt answered that's the Douglas County Airport. We're right adjacent to the Douglas County Airport. So those are hangars. Off on this side this is actually one of the runways where the planes fly.

Commissioner Iverson stated the Milky Way operation out here has been going for a long time have been excellent neighbors. Whenever we have an odor problem with manure or anything like that it seems like we get the calls too because it's always a real issue with residential areas for example, you know what's going on in Vegas with the pig farm down there. We also have odor issues in other areas of the State. But as Craig said, I've never heard anything about this area. I think these people are probably from the heritage that manure smells good and it's good for you to breath that stuff all the time. I know that they do a lot with the kids from Minden and Carson City as far as letting the kids see what they've done, not only in the dairy, but also in this operation. You know, I think it says a lot about this company that they're able to do this so close to these modern buildings that they do a good job of working with their neighbors. I would like to tell Craig though about the first time you start getting complaints then the whole thing turns around on us. So, what ever you do keep it buried.

Mr. Witt stated right.

Commissioner Coyner stated the map I'm looking at says 1 inch to 1,000 feet. So, I'm assuming that's four 40's in total, more or less that you're occupying there?

Mr. Witt answered yes.

Commissioner Coyner stated four 40's, which is 160 acres.

Mr. Witt answered yes.

Commissioner Coyner stated and on that you're doing currently 50,000 yards yearly and you would like to increase to 200,000 yards, which is quadrupling it, that's four times. Are you under capacity right now and you can still put all that 200,000 on that 160 acre footprint or are you going to have to expand?

Mr. Witt explained in the essence of treating our composting operation as a crop, it becomes the rotation crop as we move through our alfalfa cycle. So any alfalfa stands that are going to be replaced is where we compost. Currently our footprint is approximately 10 acres to compost what we're doing and we don't crowd ourselves. If we crowd ourselves, then you begin to start having to compromise the process where odor becomes an issue. So the reason for our request and this layout is that as we rotate our alfalfa out we move our composting, our windrows to those locations. That serves as a field crop and then we replant alfalfa, therefore we address any excess nutrient contribution from the windrows to the soil by taking them back up with the plants. So, it's somewhat unique in the arena of composting. We have centralized in the center of our property those aspects of composting, i.e., wood collection and grinding to buffer that and give us a maximum buffering distance from any of our neighbors so that they don't have noise issues and those things.

Commissioner Coyner stated yes, perfect. So it's not fully occupied with compost (inaudible) moving it around?

Mr. Witt explained it's not fully occupied, right. In the volume of approximately 200,000 cubic yards, my estimation is that if we do not condense and try to make a concerted effort to crowd ourselves, we will occupy approximately 40 acres. So the map would show, an example is one of those, you know, just quarter the total acreage.

Commissioner Coyner asked and is your footprint defined by zoning, by a permit or a special use permit by the county, or how is that?

Mr. Witt answered currently we have dual zoning. One-half of this property is zoned airport industrial; the other half is zoned agricultural. So we kind of, we fill both ways. Our permit for composting allows us to do it and essentially we're kind of unique because we're an agricultural composting operation with a permit.

Commissioner Ricci asked what's the disposition of the compost that you generate there? Do you sell it? I'm assuming that's what you're trying to do is make a profit.

Mr. Witt answered exactly. We make several different products. Our product line, the finished hummus that we make is called soil essence. That's a screen product. It's basically hummus, which is the un-growing of all the vegetation and the recycled materials that we begin to compost. We return them via the microbial workforce into their original constituents of raw elements. We have a recipe that we do to do that. A large portion of our business comes from landscapers and homeowners. We allow direct pickup for our compost at our site. Not too unlike the milk that we used to produce with the lactating cows, we weren't allowed to sell raw milk there. It had to be processed. In this case we can sell the product that we produce right off the farm. The other large portion of our business is in working in the Tahoe basin in a rather fragile ecosystem of the issue of lake clarity and reclamation for erosion control and sedimentation that's going into the lake. And so we've worked on a lot of research. So that is another big portion. We have a product that we call the integrated Tahoe blend that has been and is being proven to be a substantial contribution to the clarity of the lake.

Commissioner Robinson asked are you actually taking material out of the basin or receiving it? I see the letter from, referring to the Forest Service and the other federal agencies and my agency, but . . .

Mr. Witt answered currently we work in concert with several different entities. We work with South Tahoe Refuse and Douglas Disposal. They have green waste collection efforts and that green waste then has to be utilized. In California if it is utilized via composting, you receive 100 percent of the recycling credit for that. Some wood waste can go to different alternative uses like cogeneration. Usually that has to be a pretty clean product, in other words, no soil contamination. So in Tahoe, with the dead and dying trees and the effort for cleaning up that fire hazard, we receive a lot of that material. That becomes the carbon source. We marry that with the manure or the nitrogen source from our cows that allow us to make these different products. We also then are working with other individual landscapers and contractors that want to meet our spec. In other words,

we don't accept things that aren't clean. Currently, the current landfill regulations exist, but the contributors of that 10, i.e., the business people, they'll bring clean products there. We work in that area in trying to have a product that comes to us that's clean enough. In other words, there are a lot of materials we just don't take because there's too much contamination from plastic and different types of things that people don't ever want to see in their finished compost.

Commissioner Doppe asked are there residential neighbors around here?

Mr. Witt answered the residential neighbors would be you can see little farmsteads.

Commissioner Doppe asked agricultural?

Mr. Witt answered agricultural. But also, just outside of the footprint are North Sales and Southern Spars, which are our neighbors that manufacture sales and those things. Otherwise, probably the closest neighbors to us are the county bus yard and the county maintenance yard.

Commissioner Doppe stated I have a zoning question for you. In terms of a land use designation, there's no residential per se subdivision-type land located inside this perimeter that you're . . .

Mr. Witt stated no. No residential.

Commissioner Johnson asked but the agricultural could be and is it included in the Master Plan, not necessarily zoning, but what's the Master Plan in that area? I know it's highly controversial when it's Douglas County.

Mr. Witt stated the current Master Plan shows that we are the only industrial property north. In other words, where the little loop is on your map, that's the industrial park. These 80 acres is the only industrial property north of Airport Road or west of Heybourne and that's zoned airport industrial and currently that's in the Master Plan and so right now I'm composting on industrial property.

Commissioner Dahl asked what does the zoning airport industrial, what does that allow you to do beyond this? Is that why you're able to sell from your property for instance?

Mr. Witt answered actually, agriculturally we are allowed to sell from the property because of the fact that we can sell alfalfa that we produce, and we can sell manure, if we choose to sell manure, even sell eggs. I would have to check with an expert on the county regarding the industrial zoning. I haven't investigated that to answer it 100 percent.

Commissioner Johnson stated I have a technical question. The process depends upon an appropriate mix of nitrogen and cellulose and all the things you know about and I don't. But my question is simply that if you have increasing amounts of forest salvage, one (inaudible) will you get the nitrogen? Are you anticipating increasing your herd? And I personally am concerned that the nature of the additional material that you will be getting and how you deal with this balance.

Mr. Witt stated that's a very good concern and a solid concern. Forest vegetation falls into the carbon classification. Essentially what is being marketed as compost in this area right now is nothing more than mined sawdust piles that have existed from previous lumber industry. So there's a vast difference in what we see. But if you go to Home Depot, for instance, and you purchase one of those products that is more woody in material and you do an analysis on it it will have a high carbon content, i.e., probably 200 to 1. When you put it in your soil it robs nitrogen. It doesn't function according to Mother Nature's laws. So when we build these recipes those carbon materials are very benign. The highest hazard in those cases is fire hazard. If you pile a lot of wood in a pile and there's moisture you can get a spontaneous combustion. The nitrogen source is typically a recipe. With the type of wood we have not being classified as a hard wood, we look at the recipe consisting of 25 percent nitrogen from some source. A good example of that source of nitrogen would be grass clippings. If we take grass clippings, that alone will suffice and we can mix 25 percent of that with this wood material and we will have our recipe. So to answer the question, we don't anticipate increasing our cattle herd unless it could be profitable to do

so. Currently feeding Holstein replacements is not a big giant moneymaker. What we've done has been proactive in managing the manure and the odor from those cattle and we're an example to all of agriculture for doing that. So that's where I really work and consult in those arenas. So then we would also be able though to with the carbon sources in place we could look at other things that one might want to entertain. With having the carbon we could look at bio-solids. We've looked at that and chose not to. That's sludge from water treatment plants. We could also look at food residuals. We of course would work very closely with the Solid Waste branch of the agency before we would make big strides in that direction.

Commissioner Ricci asked so you provide a service then also to some of the landscapers for getting rid of their grass clippings?

Mr. Witt answered yes. We provide them an alternative to going to a landfill and then we also work with the landfills when they choose to go there and we also work with the landfills as the landfills have to go somewhere with that in order to really recycle it.

Commissioner Ricci asked do you have any problem with the competition as far as being in competition with the disposal service?

Mr. Witt answered actually we try to work in concert with them. Disposal services are essentially trucking companies moving a commodity, which is garbage and in the efforts to sustain Mother Earth we have regulations that are trying to force garbage companies into separating those things that can be recycled properly. It's my opinion that farmers really should hold that responsibility because we take care of the earth. That's a little plug for what we do and I hope it answers your question.

Chairman Close called for further questions.

Commissioner Crawforth stated I was curious if there's a recommendation or concern from the Division.

Les Gould introduced himself as the supervisor of the Solid Waste branch in the Bureau of Waste Management with the Division. He stated the Division supports the request for the variance at this site. Full Circle Compost has, as far as we can tell, been a good neighbor. The buffer zone limits that are in the regulations are there I think primarily to protect neighbors against things like odor, dust, noise, that sort of thing, probably odor more than anything else. In all the time that they've been operating the compost facility, we have never received a complaint concerning odor or dust or noise or anything else. In our visits to the site we have never observed any problems. Unlike some other facilities that we regulate this facility seems to be in the business of composting and producing a product as a service and something that's available to the community there. They provide a market for recyclable materials, organic materials that are generated in the community. They divert solid waste from landfills. We think those things are to the good.

We did send out a public notice to all of the potentially affected landowners. Thirty-one different landowners were notified that this request had been filed with the Commission. We did not receive any responses in writing. I don't know if anyone is here today to comment. I did receive three phone calls on this matter. One call expressed opposition to it, but did not really explain why or what was the reason for the opposition. There was another call that said that they operate some of the buildings in the industrial park and that they have received some complaints about odors from their tenants and that they would prefer to see the operation move further north. One of the other calls, or the other call was I guess one of the major industrial park owners the developer of the Meridian Industrial Park and he actually wanted to register a comment in favor of the operation and said that it has been a good neighbor and they've never had any problem with it. So, on balance I don't believe that it is a problem. I think that the way that they manage the manure is probably about as good as you can do to keep odors and other potential nuisances down.

Commissioner Iverson asked if we grant this exception what happens five years from now, two years from now, as Johnson Lane continues to grow, and the county for some reason goes in there and changes some zoning? Does that put us in the position five years from now if this is a problem that we've granted this that we couldn't come back and reevaluate? Or can we do that at any time?

Mr. Gould answered I'm not sure that I can answer that question. I don't see why you couldn't. It seems to me that the Commission has the authority to waive one of the regulatory requirements; they could revoke that waiver also. But that's a personal opinion.

Commissioner Johnson stated well I think that's something that we need to review because I believe there's regulatory or statutory requirement that these variances be reviewed and I don't believe I've seen any of the past variances come at this level. I'm not certain that it comes back to the Commission, but I believe the agency has a responsibility to review that.

Mr. Gould stated I'm not aware of that.

Mr. Biaggi stated I think that if there were concerns that were expressed by the growing community that indicated the variance was no longer appropriate this Commission could always revisit the variance and either rescind it or modify it as you see fit to reduce the nuisance or the complaints that were provided.

Commissioner Johnson stated but that requires the action of the people over and beyond simply calling up and saying, "Hey, it stinks." And I really did think that on variances that there was some periodic review by the Division.

Mr. Biaggi stated I don't recall that either statutorily or regulatorily.

Commissioner Doppe stated I often times bump into these issues at being a land developer and I have never thought it fair that an existing operation approved in the light of all of the requirements that are in place at the time and operating within its approval basis, should some how in the future then have to say, "Well, oops we can't do that anymore." And they be reeled back in at sometimes a significant investment because somebody moved across the street and discovered that, "Oh my goodness, there's an airport across the street, no more airplanes." Or, "Oh my goodness, there's a farm across the street, no more cows." So I think it would be foolish to expect Mr. Witt or anybody else to whom we grant the variance to have to back off to that later. That makes no sense to me. Now, my bigger concern on this is I would like to figure out a way to grant, I wish we didn't need a variance in all honesty because it strikes me as though the administrative code says provide a buffer zone, which I don't understand. I don't know why you'd be 500 feet from your neighbor but 1,000 feet from a road. If anything that strikes me as backwards. But nonetheless, why do we have no distinction where if your neighbor is an airport versus if your neighbor is a subdivision? I think if your neighbor is a subdivision, maybe 1,000 feet is enough, maybe 500 feet is enough, I don't know. I know in Las Vegas with the pig farm 500 feet or 1,000 feet is not enough, you know.

So, that's another problem though because you're talking about houses that are up close. Here you're talking about a use that is right smack dab in the middle of an industrial/agricultural area, as we know it today, why do they need 1,000 feet between the next farm or between the airport? It makes no sense to me. It strikes me as though that if we were to grant the variance, we should probably do so along with a recommendation that these requirements be revisited in light of the surrounding land use. We're not zoning folk, but we're being tossed into it, (a) and (b) if we don't make such a recommendation along with approval of a variance, do we not set ourselves up for one of these other folks to come in who is not quite such a good operator to say, "Hey, I want to move to 100 feet too," and how do we step back and say, "Well, you can't. He did, but you can't." I would think that we need to find a criteria and I think we have one that being that you know Mr. Witt's operation is right smack dab in the middle of a non-residentially, fundamentally or very low density use and base that as a reason to do this. Not the fact that he's a good operator, tomorrow somebody could file a complaint on him. It might not have validity, but if you start holding up no complaints, complaint, I'm not sure that works. This is pretty hard and fast. I think that we could do it and if we were to do something like that, I think we need to find a black and white reason why we could support this.

Mr. Gould stated I would note on that in that issue that we are aware that these regulations are a problem. They were established in 1977, I believe. We think that they are in need of revision. At one point a few years ago we actually had public workshops at which we discussed revising the composting regulations. But it didn't get very

far. There were other regulatory priorities that took over at that point. But we do recognize that there are some issues with our composting regulations that need to be addressed and I think that this is one of the most important ones. We have looked at what some other states do in the way of buffer zones for composting operations and it's kind of all over the map, but I think that some of the considerations that you brought up, that is surrounding land uses is certainly one of them. Another consideration for us would be what kind of composting plant we're talking about. Are you going to take garbage, or are you taking forest products? Other considerations might include the size of the operation and so forth. So we intend to address that with a regulatory amendment request. We haven't got anything drafted at this point, but that is something that we're working on.

Commissioner Iverson stated Mr. Chairman I sort of agree with Mark in that it's unfortunate when these operations like this start out and then because of demographics, we start moving houses in there, we get new communities and land developers and they're going to look for whatever opportunity they have too and all it takes is a change in Commission at a local level. Things can start to happen in a hurry. Luckily, in Gardnerville and Minden we still have a lot of emphasis down there for agriculture. Trying to keep it a little bit green. But things could change. That community is changing too. I agree we probably need to take a look at this. I think it's an absolute shame what has happened in Las Vegas at the pig farm. I mean here's a place when I started teaching school down there was a long-term field trip for our kids to go to the pig farm and now you've got brand new high schools and homes around it. And this same thing could happen at this point. There's nothing that says that zoning can't change and that land developers can't start putting houses somewhere close to this. But I think a key to this whole thing is being a good neighbor. The other thing that I watch and that I see a lot of times is it only takes one or two real active people who've got it in for you because they may not like what you're doing or they may not like that little odor to go door to door and pretty soon we're into a full fledged hearing and taking a look at this thing again. So, you know, I agree. We need to maybe look at that someday and see what's happening, if we need to make changes in the regulatory areas on composting. Composting is going to become more important with the emphasis on organics and recycling. There was composting happening in Lovelock and currently in other places. I really believe that that is one area we really need to look at. It is a good industry if it is done well.

Mr. Gould stated I agree and that's one of the reasons why our agency feels that we need to readdress the regulations to provide a little more structure and guidance.

Commissioner Johnson stated normally I vote against variances for the reasons that just mentioned. That I think it is normally better addressed in changing the underlying regulation. But their "one-size-fits-all" obviously doesn't in this case. I have real mixed feelings and at first reviewing the operation I think as I've heard the people speak I think I would vote for the variance. But it concerns me that we're quadrupling the size of this process and you don't simply just by increasing by that factor increase the noticeable affect maybe much more than that and the concern is that there isn't an actual formal review at least that's noticed on the operation as it increases in size by four, rather than simply its present operation that's there. It would be my understanding it would need a variance to operate presently, but not only is that happening, but we're going to increase the amount of material by a lot. And that concerns me.

Mr. Gould stated I know that Mr. Witt submitted documents to indicate that he desires to increase the size of his operation and he indicated that to our office too and that was actually the impetus for us and at this point you definitely need to request a variance before we will even consider that application. So, this is something that we still have to review.

Commissioner Johnson asked he has to come to you for a permit with the increase?

Mr. Gould answered yes.

Commissioner Johnson stated okay. And so at that point in time you review this issue that I see as potential concern?

Mr. Gould answered we will definitely look at the quantities of material, the types of materials and the method of operation and so forth.

Chairman Close stated I guess I have kind of a different thought on this thing than has been expressed. My thought is that we do adopt the somewhat arbitrary standards of 500 feet and 1,000 feet, one-size-fits-all and we've done that for a purpose and that is to protect people from nuisances. I don't know how much that's going to protect anybody but that's our theory anyway, protecting people from nuisances that are offensive to them. And I surely agree with the compacting program that you've engaged in. I think that's great. I think we should have more of those. However, I am reluctant, I think, to grant a variance, which once granted legal, I think, legally becomes an irrevocable grant of right without having some method of review left in our hands for what may happen in the future. Somebody else may buy this property from Mr. Witt and may not be as good of an operator as he is and although it's not our responsibility, it's the zoning people's responsibility, they're going to let houses start developing around here, some day it's going to happen, surely. I think that I would favor the variance, but I think we ought to have at least a two or three year period within which you have an obligation to review the situation to make sure that the operation is being conducted as it is today with no complaints and no problems.

Mr. Gould stated we can do that. Would you like us to prepare a report at a certain time for you on this?

Chairman Close stated I think it's going to be more than a report. I think the variance has got to be conditioned upon your periodic review in continuing on with the variance.

Mr. Gould stated I see how that could work for a two or three year period. During that time we could go through the process of developing regulations which would address buffer zones in general and perhaps come up with something that would apply and, specifically to that site and it could be considered again by the Commission.

Chairman Close stated because once this is granted and it's a legal right that's not going to be easily modified or repealed.

Commissioner Crawforth stated Mr. Chairman I guess I would take a little different approach to that even yet. I think it's the mission of this body and the Department of Environmental Protection to be looking for encouragement on environmental activities like recycling including composting. So we should be encouraging this kind of thing. I happen to have some history in that valley and this particular operation. These people have been there for 80 years and they have rights to use their property. Are we going to now be party to precluding them from doing that because some imaginary new use of neighboring property might show up and take away their rights? So, you know I don't mind a review. I agree with Commissioner Doppe that we certainly need to take a look at the regulation and the Division has agreed to do that. I would commend Mr. Witt and think we ought to be encouraging this kind of thing because it's the very essence of what this body is about. So, I guess I'm a little surprised by the concern you have.

Commissioner Doppe stated I guess I can view the concern one of two ways. I think a condition to come back and look at this issue two years hence makes no sense because I think you already have the right to review his operation from a composting perspective, right?

Mr. Gould answered right.

Commissioner Doppe stated he has to come before you for permits on a periodic basis and he has to keep his act together otherwise you're going to jump all over him for that point anyway. All he is asking for now is a reduction in buffer areas. So I don't see any reason why you would want to have to come back and review what could become a significant investment on his part and yank it out from underneath him because it's something you already have the ability to do under this permit to begin with. However, I am concerned about the precedent that this body would set if we try and start patching together appropriate solutions, mind you, but nonetheless patchwork to an old regulation that needs to be overhauled. So I would suggest that if, in that light, we were to put a two year review of the variance with the understanding that one of two things are going to happen. Preferably we're going to come back inside that two-year period and overhaul these regulations, in which case a need for a variance goes away to begin with. That's my strong preference. Otherwise, by so doing and by putting a condition or two on there, we at least reserve some right to say that we did not grant this variance just arbitrarily, we granted it with a condition and if we can't fix these things we're going to come back and we're

going to look at it and probably come up in the same conditions with the same conclusion. But at least there's something there. I don't know if legally we need to do that to protect ourselves, but I'm not worried about, absent that, a need to just come back and review the variance. I don't think that that's fair or necessary.

Commissioner Johnson stated I guess this is a question and we get into property rights and this is not a land use variance. This is a variance to a condition for a permit and there's a great deal of difference in how that's treated I think and maybe this is the geologist speaking, but I think there's a big difference in a variance to a condition for issuing a permit and a variance of land use. Does somebody wish to speak to that that's knowledgeable? I simply don't know, but I am not satisfied with what I hear.

Chairman Close stated I think the county has the zoning obligation and the ranch has been there for 80 years according to what I've just heard and so surely they are zoned properly. But we also have a responsibility as an Environmental Commission to protect the environment and that could include somebody within 1,000 or 500 feet.

Commissioner Johnson stated I think that's my point. I mean that's (inaudible)

Chairman Close stated and so just to give a blanket forever variance not knowing what's going to happen in the future I think may be unwise.

Commissioner Dahl asked does Douglas County have a freedom to farm ordinance like Churchill County does? For instance, it says if you have a farm and houses move up next to you, you get to stay there, even if you have a bad odor?

Commissioner Iverson stated all counties have a freedom to farm, and that's in the statute. Prior to a county adopting ordinances that can impact your farm there is a procedure they have to go through. They can't just arbitrarily pull things out of the air and just adopt ordinances against farmers.

Commissioner Dahl asked does that provide some protection then for this operation? Or because of the composting does that make a difference?

Commissioner Iverson answered I don't think there would ever be a problem unless you can get four neighbors in there that all of a sudden didn't have anything to do but cause trouble and then this body would hear about it.

Chairman Close stated we hear about things like this all the time; that wouldn't be a surprise to us.

Commissioner Ricci asked with or without the buffer zone, as them holding the permit with you, would you still have the obligation to investigate any and all complaints regardless of whether it's odor or water quality issues or whatever? And then take whatever appropriate action there is, whether there's a 500-foot or 100 feet?

Mr. Gould answered that's right. I guess I should point out that there are other mechanisms within the regulation that we have at our disposal to regulate compost plants. They have to submit an operating plan; it has to be approved by us. Their facilities and equipment have to be approved by us. If there were a problem, such as odor, that's how we would go about dealing with it, we'd say, "What is it in your operation that is causing this problem? And let's come up with some ways to address that, to fix that." So if moving some of the equipment or a part of the operation to a different location on the property were necessary I think we'd have the authority to do that.

Chairman Close called for further questions or comments from the Commission. There were none. He called for public comment. There was none. He called the public hearing closed. He called for a motion.

Commissioner Doppe motioned to approve the variance. He stated I'd like to state for the record that the reason we do so is because of the history of the applicant, the nature of the operation, the fact that the applicant's property is surrounded on all sides by either industrial or agricultural land and it's current to date and the fact that the regulations themselves are old and in need of revision. I would also like to direct

the Division that by the end of the 18 months that they have conducted the appropriate workshops and bring forth back to this Commission changed language to the extent that it's in their power to do so.

Commissioner Crawforth seconded the motion.

Chairman Close stated my question to you then Mark is is this variance then subject to that new regulation? Or is this variance going to be grandfathered in because of our action today? Or is it going to be subject to review based upon the new regulation that comes back from the Division?

Commissioner Doppe stated my intent is that it would be subject to the new regulation. In fact it is what spawns the need for that in the first place.

Chairman Close asked and so you'd modify your motion accordingly then?

Commissioner Doppe answered yes.

Chairman Close asked second, accordingly?

Commissioner Crawforth stated I'll withdraw my second.

Chairman Close called for a second.

Commissioner Coyner asked Mr. Witt, for point of clarification, you grow grass on the areas when it's not being composted? You turn that into alfalfa fields? Do I understand that correctly, is you rotate through? Because there was the question about significant investment and I'm not sure if you're just turning it back into an alfalfa field how much investment do you really have?

Mr. Witt answered yes. In Carson Valley probably the most valuable routine agricultural crop is alfalfa. Alfalfa will normally want to rotate itself back to grass and when the grass invades to a certain point then you rotate it out to get a clean stand of alfalfa. So the way we compost there is we compost as a rotation crop. So, essentially then usually we'll follow up where we've composted with a grain crop so that we can manage the grass and get the grass out so we have clean ground to go into alfalfa. As far as investments, the major investment is in the equipment that you need to have: grinder, a compost turner, and the equipment to properly manage those windrows. As far as site preparation that's where it's unique. We're not confining ourselves to for instance a cement pad and I think one of the reasons why and I just want to make it known that I really appreciate your time spent on this issue. I was just in Wisconsin and they have indiscriminately now forced the issue that anybody that mentions the word "compost" in the State of Wisconsin will only do that on a concrete pad, which means then that the dairymen and the farmers have got their hands tied because they are not the individuals that can afford to have a concrete pad. We then force composting into the hands of waste management, which typically that mindset is not on how to do this for low cost and the right reasons. So, I think that's why it's taking so long to come to some kind of a decision.

Commissioner Johnson motioned to approve the variance request without comment.

Commissioner Crawforth seconded the motion.

The motion carried.
Commissioner Coyner voted yes.
Commissioner Crawforth voted yes.
Commissioner Dahl voted yes.
Commissioner Doppe voted yes.
Commissioner Iverson voted yes.
Commissioner Johnson voted yes.
Commissioner Ricci voted yes.

Commissioner Robinson voted yes.
Chairman Close voted no. He stated I vote no on this because I believe there should be a time limitation on the variance.
The motion carried.

Chairman Close moved to **Agenda Item IV. Settlement Agreements on Air Quality Violations A. Modern Concrete.**

Mike Yamada introduced himself as the supervisor of the Compliance/Enforcement branch in the Bureau of Air Pollution Control. He stated today we have four items to bring before you for your consideration in settlement agreements for air quality violations. The first is Modern Concrete. On October 12, 2001 in response to a complaint we received about an operation in Battle Mountain, which is being operated by Modern Concrete, our inspector observed that a silo had been erected at a site and that it had been used to load their trucks with concrete, with cement. The erection of that silo and that use of it without a Change of Location Approval permit is a violation of NAC 445B.275 under violations. We issued a verbal stop order, which was followed up with a written stop order on October 15, 2001. We notified them that they could not operate their facility until they obtained the permit. They did obtain a permit on October 30, 2001 and we withdrew the stop order. We held an enforcement conference on November 20, 2001 to afford Modern Concrete the opportunity to present information regarding the alleged violation. Based on information they provided us, we issued NOAV No. 1607 for violation of NAC 445B.275, which is basically operating without a permit.

We established an administrative penalty of $510 for NOAV No. 1607, which is agreeable to Modern Concrete. At the present time, Modern Concrete is in compliance with all the applicable air quality regulations. We are asking that you approve the stipulation and order that they signed.

Chairman Close called for questions from the Commission. There were none. He called for public comment. There was none. He declared the public meeting closed and called for a motion.

Commissioner Doppe moved to approve the settlement agreement on NOAV 1607.
Commissioner Crawforth seconded the motion.
The motion carried unanimously.

Chairman Close moved to **Agenda Item IV.B. Sierra Pacific Power Company.**

Mr. Yamada stated Sierra Pacific Power Company is an industrial and electric and gas utility that generates and transports and distributes electrical energy and provides natural gas products in Nevada and California. An air quality operating permit AP 49110194 was issued to Sierra Pacific Company for the Tracy generating plant station on October 27, 1997. The Nevada Division of Environmental Protection reviewed Sierra Pacific Power Company's Tracy generating station's excess emission report on January 17th to January 19th 2001 for combustion turbine CT3 and CT4 from January 30th to January 31st 2001 for CT4. The review showed that Sierra Pacific Tracy units CT3 exceeded it's CO limit and CT4 exceeded its CO limit during periods 1 and 2, which was the January 17th, 19th, and January 31st, 30th through 31st. The permit calls for 24 hour rolling averages in which they just drop off the last hour and keep adding hours onto their permit and then we calculate what that permit limit would be. They're limited to 25 ppm on a rolling 24-hour average. What happened was during the period they were running they exceeded the rolling average and when they shut the plant down because they do not count the periods that you do not run, the rolling periods run concurrently with another so until they start up again and add another hour of operation to it, it looks like the violation is for a longer period than it actually is. So what prompted this problem from what I can tell from the records we examined was that because of the low temperatures during January they used more fuel than they would normally have used to heat the boilers and that caused CO emissions to rise. They also had a problem within California, the stage III alerts were in effect and all power was being diverted to California on the open market. There was also a problem with Valmy Power Plant at the time, which also went down for mechanical failure. We were notified by Sierra Pacific that they might be exceeding their CO limits and we told them they couldn't do that. They attempted to operate Tracy's 3 and 4 during those low ambient temperature conditions and they violated the CO.

We requested that Sierra Pacific Power Company submit their operating histories for both of those turbines due to cold weather conditions and we received that information. After our discussions with Sierra Pacific Power we determined that there should be a penalty of $2,000 per violation for a period of three days, which ended up being $6,000. We also issued another NOAV for the Tracy peaking combustion turbine No. 1 which exceeded its 100 hours of operation that's allowed in the permit. Following that NOAV we issued another one because then after exceeding 125 hours they exceeded another 4-1/2 hours. For that violation we assessed a penalty of $1,160 for a total of $7,160. SPPC has agreed to the penalty. We are recommending that we assess them a penalty of $7,160 for those violations.

Commissioner Doppe stated we have low temperatures so they ran past, now pretty soon we're going to have high temperatures in the summer time. What's the outlook for the summer?

Mr. Yamada stated we had some discussions with them on what they're outlook is on like their resource planning efforts and they're looking at the purchase power issue. The NOX, the CO won't be a problem. They really didn't have a CO problem until 2001 January and I think it was basically a failure of several things. They ran the units they probably wouldn't have run during that period because of a shortage of power. If there were any problems at all during the summer months it probably would be NOX because as temperatures rise you would get a NOX violation rather than a CO violation. We haven't seen that. So I don't suspect that we'll see that. And they can purchase power and they buy a lot of power also. It will probably be more available during the summer than in the winter months.

Commissioner Doppe asked do we have a better situation this year coming up than we did last year?

Mr. Yamada answered I think we do, yes. There's a sequence of events that occurred here like the failure of one power plant that they would have run in place of say, Tracy's units. I can't predict exactly if all of those units are going to be operating the way they should, but I think they've probably learned a lot from this particular incident.

Commissioner Johnson stated $7,000 seems like a fairly hefty fine, but in reality the economic benefit that they gained by supplying this peaking power could be significant. Do we have any idea; was that any discussion or analysis?

Mr. Yamada stated at the period when they were running this operation California was looking at purchased power of I think it was like $3,500 per megawatt hour.

Commissioner Johnson asked what size are their peaking plants?

Mr. Yamada answered I'm not sure of the exact size of those peaking plants. What happens there is if you buy the expensive power at that point I'd say for $100 dollars per megawatt hour, that's a cost that gets transferred actually to the ratepayers eventually through a regulation. Like they're trying now basically. So there is some economic benefit, but purchased power is a pass-through item. You can actually make money off it.

Commissioner Johnson stated purchased power is, but your comment was that they were selling and delivering to California.

Mr. Yamada stated no they weren't selling to California. That was to support Nevada's use. That's why they weren't buying from California because everything was going to California that was available. At the time the federal government required everybody to sell to California if you had excess generation. And so all the power was kind of being funneled to what they call the ISO in California. Since a lot of the energy was at a very high price at the time, what was occurring was, as it passed around they would buy the power, the price would be transferred over to the rate payer. But they are allowed to make a profit of whatever they generate on their own. I'm not quite sure what that was because the units didn't run consistently.

Commissioner Coyner asked is this Sierra Pacific's first violation?

Mr. Yamada stated they have more than one power plant. I'm not sure about the total history of Sierra. I came on in May of 2001. So I don't know exactly how far back the history goes. They do have other violations associated with the other power plants like some of the diesel ones.

Commissioner Doppe stated apparently I drew an erroneous parallel to the Southern Cal Edison issue that we'd addressed six months ago where the citizens of Southern Nevada said, "We do not want to turn the generators on in Nevada to provide excess power for California, even if that comes back to Nevada. But we do not want to jeopardize our air quality so that they can have a cheaper power bill in California." And my initial read of the NOAV made it appear as though that the Stage III alerts in California were, in part, what triggered this thing.

Mr. Yamada stated well it affected them because they weren't able to purchase the power at a reasonable price and they first had to make an offer to California before they could free it up.

Commissioner Doppe stated I would comment that there's no economically justifiable penalty that you can place against Sierra Pacific, Southern Cal Edison that would turn them around to turning a generator; $7,000 isn't going to make a difference. So if we get to a point to where we're having to balance off Nevada air quality versus California power requirements we're going to have to look at a different mechanism other than a $7,000 penalty, it isn't going to get it done. Apparently we're not there with this issue and I'm glad to hear that. But I worry about the summer coming up because I don't imagine we've heard the last of this issue.

Commissioner Crawforth stated we've had some other violations that are in the Truckee canyon and I don't remember the term now where they do an ecological project or something?

Mr. Biaggi stated Supplemental Environmental Project.

Commissioner Crawforth asked was there any discussion about that in this particular situation?

Mike Elges introduced himself as chief of the Bureau of Air Pollution Control. He stated hopefully I can bring a little bit of history maybe that Mike hasn't been involved in to some of the questions that you have regarding the facility. Before I try to answer your question I want to make sure that there's a clear understanding that the units at the Tracy power plant are base-load units. They're not peaking units. So there are obviously some decisions that are made that the operators at Tracy go through before making a decision to consciously just sell power outright. Our understanding of the situation was at the point in time where these violations occurred there were two unique situations: (1) the ambient temperature was dramatically low. They've never operated the units in that type of situation. So we ran into a situation where they had emissions that were an artifact of the ambient temperature. Something they'd never done before. The second was the ability to purchase power for replacement was limited. So they were up against a how do we supply Nevada with power situation in a unique cold weather situation. We believe that has a lot to do with how we resolve the issue with them and are confident that that's not a driving factor hopefully in future compliance issues related to this facility. As far as the study that's going on in the Truckee River corridor, we're following up with that. We've had a number of issues that have held us back from getting a final report from our contractor. I'm not going to tell you a lot of the detail, but essentially there's just been a tremendous effort made to ensure that the data that we're using in that evaluation is accurate and the sheer time involved in running those analyses has just been much, much longer than what we originally anticipated. So hopefully within the next couple of weeks we'll actually have that final report and have some information to be able to present to you to let you know really where we're at from the Truckee River corridor perspective altogether.

Commissioner Crawforth asked did we consider instead of this fine having them participate in a Supplemental Environmental Project?

Mr. Elges answered no we did not.

Commissioner Crawforth stated I guess the other question that I have that generated was the ambient temperature; they had never experienced operating these new generation facilities that have been recently constructed out there in those temperatures? It's been colder than that in that canyon in the past.

Mr. Elges stated absolutely. No, what typically happens is that they don't prefer to run these units in that low of an ambient temperature. They recognize that they become horribly inefficient and the technology for pollution control is subject to failure when you drop below a given ambient temperature. The units as they're designed from the manufacturer are guaranteed certain emissions within ranges based on that relative temperature. They simply don't like to run those units in that low of an ambient temperature for operational purposes. In this particular situation they simply did not have an option because there was no other power available. So that's why they made the decision to do that.

Chairman Close asked what is that temperature cut-off point?

Mr. Elges answered I'd have to go back and take a look, but my recollection is that it's about 20^{o}F. You get below that factor and things start to really get kind of crazy with the combustion principles of those two units.

Commissioner Johnson asked you commented it's a base load but they're restricted to 100 hours of operation?

Mr. Elges answered no sir. These units are base load units that can operate 8760 hours a year on natural gas. There are some constraints on fuel oil combustion for these units if there's a need or a curtailment of natural gas and that's where we do have some limitation.

Commissioner Johnson stated okay, so the 100 hours of fuel oil . . .

Mr. Yamada stated that was a combustion peaking unit. It wasn't the base-loading unit. There was another unit that they were talking about. So that one had a limitation of 100 hours on it.

Mr. Elges stated yes. I think we were just talking about a lot of different units.

Chairman Close called for further questions from the Commission. He called for public comment. There was none. He declared the public meeting closed and called for a motion.

Commissioner Ricci motioned to accept the settlement on NOAV 1570, 1578, 1579 and 1580 in the amount of $7,160.
Commissioner Crawforth seconded the motion.
The motion carried unanimously.

Chairman Close moved to **Agenda Item IV.C. Mine Services and Supply**

Mr. Yamada stated Mine Services and Supply is an operating agent for Haliburton's barite process located near Dunphy, Nevada. Haliburton Services is the company that holds the air quality permit for the barite process. On October 9, 2001 an inspector from the Bureau of Air Quality noted that a dense white plume was emitting from a transloading operation at the Haliburton facility. She found that the transloader was off loading barite from a railcar and dumping it directly onto the ground with no controls or hopper to capture the material. A verbal stop order was issued and a written stop order was followed up to the verbal stop order. It turned out that Haliburton did not own the transloader. It was actually owned by Graymont Western and really didn't have a permit because it was a minor source. Mine Services and Supply was using that particular facility without permission from Graymont. The reason they had done it was they said the car that containing the barite had been damaged and they couldn't unload it the normal way, but they still just dumped it onto the ground rather than try to contain it. So there was this huge cloud of dust out there that the inspector saw.

We had Haliburton, Graymont and Mine Services in for an enforcement conference. We went over all of the aspects. Mine Services said they would pay whatever fine that was necessary and that it was their problem, not either of those other two companies'. Based on what we found we issued NOAV 1612. We assessed a penalty of $420 because it had a minor potential for harm, although it was a major deviation from the regulatory requirement. The initial base penalty was $600 for one day of violation and we decreased that by 50 percent because of the amount of cooperation we got from Mine Services. At the present time Mine Services and Supply

is in compliance with all of the applicable air quality regulations based on the dismantling of the transloader and the removal of the transloader from the site. So that no longer exists as a potential problem.

Commissioner Ricci asked since Graymont Western accepted the responsibility for the creation of the violation, in the history of this company from now on, say they get another violation, does that mean that you take this one into account as well?

Mr. Yamada answered yes.

Commissioner Ricci asked regardless of who accepted the responsibility for the (inaudible)?

Mr. Yamada stated in this case Mine Services actually runs the plant for Haliburton. So they would get the violation if they caused another problem.

Commissioner Ricci asked in determining the fine for any other subsequent violations, would this one be considered as a violation?

Mr. Yamada answered it would be part of the multiplier of any of the ones in the future.

Chairman Close called for further questions from the Commission. There were none. He called for public comment. There was none. He called for a motion.

Commissioner Crawforth moved to approve NOAV 1612 in the amount of $420.00.
Commissioner Johnson seconded the motion.
The motion carried unanimously.

Chairman Close moved to **Agenda Item IV.D. U. S. Ecology.**

Mr. Yamada stated U. S. Ecology is a company located 12 miles south of Beatty, Nevada. They operate a temporary storage and disposal facility that's actually covered under a RCRA permit, but we have the air quality for that facility. They stabilize, process and dispose of hazardous waste shipped from all around the country. Their violation resulted from when they conducted a compliance test for their permits. They failed to provide us with that information within the 60-day limit and on top of that they also had an exceedence of VOCs and particulate matter. Because they weren't quite forthcoming with their information we held an enforcement conference on August 7th in Carson City and we went over the violations that that we alleged they had done. Based on the information presented, we issued warning NOAVs No. 1581 for failing to report the source test report within 60 days, warning NOAV No. 1582 for failure to report exceedence of PM and VOCs for System 12, which is a violation of NAC 445B.232. We issued NOAV 1583 for exceeding its permitted VOC emission limits and No. 1584 for exceeding its permitted PM emission limits. Both of those, 1583 and 1584 are classified as major violations. There was significant non-compliance with minor potential for harm. A penalty of $4,080 was negotiated for those two NOAVs. The other two NOAVs No. 1581 and 1582 were warning NOAVs and carry no penalties and both of these are classified as minor violations. We are recommending that you accept the settlement of $4,080.

Chairman Closed called for questions.

Commissioner Coyner stated their history of violations isn't in our packets.

Mr. Yamada stated this is their first violation from the air quality side. We're looking at a potential one again, but it's an alleged violation so we haven't made a determination whether or not one of the NOAVs will be issued.

Commissioner Crawforth asked what does their reluctance to be forthcoming with their information mean?

Mr. Yamada answered well when they got the information they should have notified us. This is required by the code. But they didn't. We should have received the report within 60 days. We didn't get that and they didn't

provide it to us right away and it took a little while for us to get all of the information out from them. But they seem to have come away from that because the last thing that might be a violation they called us immediately and shut down their operation. I think they also released the woman that was the environmental person in charge of the operation at that time. They hired someone else to do that job. So, I think they've kind of turned a corner here.

Commissioner Crawforth asked does the Commission need to take action on warning notices or just actual penalty notices?

Mr. Yamada answered no. The warnings are minor violations, just the other two.

Commissioner Crawforth asked so you're just advising us of those? We don't need to confirm your action on those?

Mr. Yamada answered not on those two.

Chairman Close called for further questions from the Commission. There were none. He called for public comment. There was none. He called the public hearing to a close and called for a motion.

Commissioner Doppe motioned to approve the settlement agreement for NOAV 1583 and 1584.
Commissioner Crawforth seconded the motion.
The motion carried unanimously.

Chairman Close moved to **Agenda Item No. V. Discussion on the cost/benefit of the I/M Heavy Duty Diesel Smoke and Engine Testing Program.**

Adele Malone introduced herself as working with the Bureau of Air Quality Planning in NDEP. She also introduced Lloyd Nelson (who was with her) as being with the DMV Emission Control section. She stated what I plan to do is give a brief presentation on Nevada's Emission Control Program for heavy duty diesel vehicles and compare it to California's program and then Lloyd will talk about test procedures and equipment used in the program.

At the last Commission meeting Mr. Johnson asked for an information item on Nevada's heavy duty smoke program and in between then and this meeting I wrote a memo and I think you all should have a copy of that. It's the memo dated February 1st. In it I've compared the California program and the Nevada program. California has two heavy-duty diesel tailpipe-type programs: the periodic smoke inspection program and the random roadside program. Back in 1996 the Commission adopted a random roadside program for Nevada, which is based on the California program. California also has that periodic smoke inspection program, which is an annual self-inspection program for fleets that have two or more heavy-duty diesel vehicles. This kind of a program in Nevada was considered unnecessary. We felt that it would impose economic burdens that were not acceptable on fleets. It would impose purchase of equipment, training, staff to do inspections or hiring a contractor who would have imposed record keeping and we just felt that that was not necessary. The random roadside program that we did adopt is a program that basically targets gross polluters and there's a table at the end of that memo that you all have that compares California and Nevada programs. For the most part the Nevada program is very similar to the California program. There are two main differences and that's in the third row in the . . .

Chairman Close stated I don't think we have the table you're referring to. At least I don't have it.

Ms. Malone stated okay let's use the PowerPoint.

Commissioner Doppe stated we don't have the February 1 memo. We have the February 25th memo.

Chairman Close stated the February 21 memo.

Commissioner Johnson stated David I have the original copy that was sent to me. Do you want to copy it and make it an exhibit?

Ms. Malone stated basically what the table does is compare the two programs and the third row of the program, or are we missing people? Should I wait a moment?

Chairman Close stated they're making copies of the chart you're referring to. Is it going to go on the screen, the chart also?

Ms. Malone answered yes.

Chairman Close asked why don't we wait then until you get the chart fired up or until we get the document back?

A short break was taken.

Ms. Malone stated I'll just quickly go through this table that compares the California and Nevada programs. They are both random roadside programs done at random locations on the roadside often at highway patrol weigh stations. They can also be done at fleet facilities or on surface streets. Both programs focus on the heavy, heavy-duty vehicles as opposed to the lightweight pickup size heavy-duty vehicles. Then comes the difference, the major differences in that third row that's called opacity standard and model years regulated. The California program tests all model years of the heavy-duty diesels. The Nevada program tests from 1977 and newer. The California standards or the pass/fail cut points for opacity are 55 percent for the 1990 and older vehicles, 40 percent for the 1991 and newer, whereas the Nevada standards are 70 percent opacity for the pass/fail cut point. The subject of tightening Nevada's standards has been discussed by the I and M committee, that's the advisory committee on control of emissions from motor vehicles, which is a committee headed by Mr. Nelson from DMV and includes representatives from both Clark and Washoe County, DEP, DOT, and industry generally participates, the Nevada Motor Transport Association is usually at meetings and participates. That committee at its last meeting recommended that Nevada align its opacity standards with what the U.S. EPA recommends which is this 40/55 standard and that is also what most of the neighboring states around Nevada are using. There are 16 states around the U.S. that have heavy-duty opacity programs. Forty of those states use the 40/55 standards and all of the neighboring states around Nevada that have the program use the 40/55 standard except for Utah. Utah does have a different kind of a program. It's not a random roadside program so it's a little bit difficult to compare our program to them. But I spoke with them and one of the reasons that they don't use the 40/55 standards is that they don't incorporate altitude adjustments. They are a high altitude state and we're a high altitude state. Lloyd Nelson will probably talk a little bit more about the altitude issue and testing equipment and test procedures.

As far as cost benefit analyses goes, basically for Nevada there have not been any cost benefit analyses done for this control strategy. California has done a cost effectiveness study based on the program costs for their two programs versus reductions in hydrocarbons, NOX and PM. They have come up with $1.12 per pound reduction in the year 1999 and $1.05 per pound pollutant reduction in 2010 and since most emission control programs in California that target the criteria pollutants typically costs between $2.50 and $5.00 a pound, they conclude that the opacity program is a very cost effective program. In Nevada we will be able to do some analyses based on the data that DMV has been collecting on the program. They've got fiscal year 2001 statistics showing that repair rates have been averaging about $700 to $800 per heavy-duty vehicle. We should also be able to compare the failure rates at the 70 percent standard, which is calculated, and this will be calculated as a percent of total visual observations to what the rate would have been at the 40 and 55 standards. I've looked, with Lloyd's help, a little bit at those figures and it looks like the, tightening the standards would possibly increase the failure rate by perhaps 50 percent. That's a tentative number. The actual failure rates themselves for the program are very low. We're talking in the 2 and 3 percent range for failures.

On the benefits side we can expect a reduction in particulate matter and whether or not NOX will be increased or decreased is still under debate. Generally it's felt that NOX may increase when you tighten or reduce PM or smoke from heavy-duty diesel, but it would not increase above what the manufacturer's certification levels were. So that would be not a significant increase. Concurrent with particulate matter decrease there would be a visibility improvement, ozone and smog reduction. There would be secondary health benefits and in California

you're probably all aware that PM is very much in the news from heavy-duty diesel vehicles because they have declared particulates a toxic air contaminant and specifically a carcinogen. There would be public perception benefits as the number of heavy duty diesels emitting excessive smoke is further reduced and also the California analysis lists a decrease in fuel consumption as a benefit when you better maintain the vehicles and an increase in vehicle reliability and performance. We have not tried to quantify the benefits and I've been in discussions with the Clark County Department of Air Quality Management and these benefits would be very difficult to quantify. We don't have the modeling programs at the moment to calculate expected emission reductions. So I don't know if we can expect an actual cost benefit analysis. We do expect to come forward to the Commission over the next several months probably with a petition suggesting that we amend the opacity standards, or the regulations. That's basically what I wanted to say to you. I would be glad to field questions or we can turn the program over to Mr. Nelson to talk about the procedures.

Commissioner Dahl asked would this apply statewide or Washoe and Clark?

Ms. Malone answered this is a statewide program, but we only implement it in those two counties where there's a heavy population concentration, basically and the heavy duty diesel vehicles mostly run through either Las Vegas or I-80 through Reno and so we capture most of the target there.

Commissioner Dahl asked so the idea then is to have it a statewide program in case you want to expand it, but for the time being you implement it only in Clark County and Washoe County? Is that what you're saying?

Ms. Malone answered that's right.

Commissioner Johnson stated I have a series of questions and my reason for asking for this particular deals with the second component of the California program. Do you wish to address that issue? The periodic . . .

Ms. Malone asked this periodic smoke inspection program?

Commissioner Johnson answered smoke inspection, and my question got to the statutory requirement of being substantially similar in whether there's a whole program out there that we've ignored and it gets into the issue of you said, "We've decided." Who is "we?" Where is the documentation for that and I'm sure that it would cost the companies to do that, but there was no subsequent analysis of what the reduction would be. And the on-site you've got $1.00 a pound or a $1.50 which is by far the cheapest that you can do. I'm not particularly enamored with that particular on-site inspection and not trying to promote that, but it is the process and who makes that decision and this is my question that Susan looked at in her letter that's in your packet, or the Commission's packet and it didn't really, it talked about process, but it's the geologist reading the law that said that the Commission adopt standards that's essentially that's similar and the Director makes the decisions and where the comma appears in this sentence is important. Does he make the decision that's appropriate for the State of Nevada? Or does he make the decision that it's appropriate to maintain this essential conformity? And in my view that there's a requirement that we maintain that conformity and secondly, in the last portion of subsection 3 it expressly designates the Commission as the agency that decides whether there should be a variance about the equipment and the costs to the company and it's pretty explicit in allowing the authority, but it allows us the authority and it's not going to come to us to make that decision. Why then should the statute be there? And this is the intent of the legislation that I'm addressing and ancillary to this in the past we've had these decisions made because, "Gosh we only have 2 percent of the truck traffic," but of the information that in California and the information on our inventory requirements the visibility standards say that diesel and largely 2/3 of that diesel smoke comes from off-road diesel, the fleet operators are much less proponents to this. Our statutes simply are regulatory.

We don't address those issues and that for visibility standards the inventory and I'll pass out the, a document that was delivered to this agency in the past and that's a visibility impact that was presented in the past from Naylor that said 66 percent of the visibility impact was from diesel. I don't care whether it was 60 or 50 or 40. It's a significant impact and we are statutorily and visibility is a regulated pollutant. I don't know what that means, but it's in our regulations and perhaps we should address the issue about it. And my broad question is simply in determining, I'm not an advocate of cost benefit, rigorous cost benefit analysis because of the problems you cited.

But it's difficult to document the cost to society of somebody polluting. The economic advantage that they gain by not having to comply is fairly obvious and they will present that. But, and you'll hear these things, but heavy-duty diesel vehicles have been not held accountable in the financial situation. My maiden aunt if her '82 Oldsmobile that she has to smog every year and pay the fee fails she, that's $400. Heavy duty diesel is not inspected at all other than if they're caught and these are a, you mentioned a very low fail rate, but these go through a 35 percent screen beforehand by not every truck that goes by is tested. The fail rate is 2.4 percent in California where they, resources board has an annual track and the average is 7 percent fail rate. Part of that has to do with the difference in the standards, certainly. But we've had those requirements for substantial compliance for a long time and I'm very happy and I don't wish to go backwards and address the reasons that we aren't there yet. But I simply want (1) to address the issue of the second process and who makes the determination and what we're going to do from here. My recommendation and I don't wish to belabor and run a lengthy time here because I think there are adequate reasons that this Commission get involved in a formal workshop. Not one that's out there that we never see the comments even. But I think that it's very vitally important that, and I will pass this out and it's the report, you can sit down, I'm going to talk some more.

Chairman Close called for further questions.

Commissioner Johnson stated I will comment back, but what you're getting and I'd like to have this entered into the record is simply the findings of the scientific review panel of the State of California and the report on diesel exhaust. And I think it's much too lengthy to try to get in the record, but there are several points that should be made. If you were trying to design a method of distributing carcinogenic material, a diesel particulate would be the ideal thing. In section 1 diesel exhaust is a mixture of gas, it's fine particles, and 2 the gas is fractioned composed of and it lists a whole series of various chemicals that are there. In section 3 the organic fraction consists of soluble organic compounds such as aldehydes, alkanes, alkenes and high-molecular weight PAH, which is a polycyclic aromatic hydrocarbon, PH derivatives such as nitro-PAHs. Many of these PAHs and PAH-derivatives, especially nitro-PAHs have been found to be potent mutagenics and carcinogens. There's a whole series of other listings of the 40 substances listed by Environmental Protection that are hazardous, 15 of which are identified as toxic to humans. Health effects, on page 3, "A number of adverse short-term health effects have been associated with exposures of diesel exhaust." Occupational exposures, increased cough, labored breathing, chest tightness, wheezing and so on. A number of adverse long-term non-cancerous effects have been associated with the thing and we've run on from chronic bronchitis, exposure to diesel exhaust, and so on. Diesel exhaust contains genotoxic compounds in both the vapor phase and the particulate phase. Co-exposure of diesel exhaust particles and ragweed pollen resulted in nasal IgE, and I'm sorry that our other Commissioner from the Health Board is not here to elaborate on this, but response greater than the following of either pollen or diesel by itself over 30 human epidemiological studies have been investigated and so on. Go to 20, "Based on available scientific information, a level of diesel exhaust exposure below which no carcinogenic effects are anticipated has not been identified."

The panel also has a statement of findings that this is the science available for the basis of the assessment. The panel consisted of experts in the field. They had hearings over an almost four year period with adequate public attention. The Commission, upon the recommendation of this report, the appendix to this report is some 500 pages and has appendices to the appendices. I didn't think you'd really be interested. I'd simply like to say that the State of California, based upon sound science has found that diesel smoke is toxic. The inventory and the reason that the, California has implemented the heavy duty inspection program is that, their comment is that over 70 percent of the carcinogenic risk on air pollution is due to diesel smoke. We quibble about 70 or 30, but it's a significant number in the visibility and urban haze in the Las Vegas Valley, it's some very interesting numbers. And on Table A which is on page 5 talks about the visible impairment and that fine dust particles has a coefficient of 1.25 for elemental carbon, which is identified as the main component of diesel smoke has a coefficient of 10, factor of 8 more. On page 7 we have a breakdown, an inventory and this is, I'd like to bring your attention to the amount of off-road diesel particulates. Forty-nine percent of the total PM10 visual effect is there. On the very last page of this document we have a little pie chart. Dust particles, diesel particles, 48.7 for the sources of visibility impairment. This is a document I don't remember. It says Exhibit 10 on it but I don't remember when we received it. I kept a copy and I think it's a subject that we probably need to address again.

There has been within the working group most recently on what February 4th there was a PowerPoint presentation for the air quality working group on the impact of visibility standards. I don't wish to address the, my particular version of visibility, but (1) diesel smoke is toxic, (2) diesel smoke is a significant portion of PM10, more specifically in the first document I gave you, 94 percent of diesel smoke fits in the minus 2.5 category which is most susceptible to being inhaled and retained in the lung with all of these 40 some known carcinogens. They're identified within our statutes as that. There is risk. We have not (1) adequately addressed the issue of diesel smoke and (2) we haven't addressed it in a fair and equitable manner. It (inaudible) southern Nevada homebuilder a whole bunch. It costs them $1,000 a house or something, or whatever it is. Fine them heavily and inspect them. Like I said, my maiden aunt in her '82 Oldsmobile spends her $400 in Las Vegas, but, and the question of who pays and whether indeed the on-road vehicle inspection program is adequate. These are issues that we should address and I think that first off at some time, perhaps a legal opinion to see what legislative intent was on NRS 445B.780. Again, I'm the geologist that simply says that it appears to me that there's a requirement that we have substantial conformity and I don't believe we do. We have a program that California has that we someone has made the decision that it's not economic, that may well be the case. But I don't know who made it. Whether it was the appropriate person who made that decision, whether it was a formal decision and whether the basis of the decision had adequate information. And to make the decision without adequate information is not correct. And how do we get the information to make it? I've had my sermon. Thank you.

Chairman Close stated my understanding from your comment Adele was that you're going to come back in the next five or six months with a proposal to adopt California standards? Is that what I heard?

Ms. Malone answered that was what we were thinking, yes. That's very narrow compared to what Joe was talking about.

Commissioner Johnson stated it's only the part of the opacity standard for the accepted on-road test. It doesn't address the maintenance test at all. That was determined to not be economically viable or that we didn't want to do it. And that's my question. Who made that decision and who has the authority to make it and what basis that it was made on?

Ms. Malone stated that's a piece of history that I don't have and I'll have to go back and find out. I don't know if anybody here knows that. I know that we went through in '94, '95 we went through a significant in the field-testing program with heavy-duty vehicles and the result of that was to recommend to the Commission to adopt the random roadside program. I'd have to go back and look at the history and see why the periodic smoke inspection program or if it was brought before you or . . .

Commissioner Johnson stated I'm not even sure that California had that program in '94 or a basis of selection.

Ms. Malone stated they did, but these two programs are the only emission control programs, the only I & M type programs that California has. California doesn't have I & M programs for off-road diesel.

Commissioner Johnson stated they have a very comprehensive plan to addressing the entire diesel program starting with garbage trucks and on and on and I can see that Allen and staff will have some whatever. Although the statute just simply talks about emissions and not necessarily fuels although we have statutory responsibility to set those. Fuels are certainly something that needs to be addressed too; particularly off-road diesel fuel, which we have not, we have 500 ppm sulfur standards. All other things being equal, the amount of particulate is proportional to the amount of sulfur in the fuel. It doesn't necessarily run straight across, but that's a rationale thing. Off-road diesel averages over 2,000 ppm and the standard, it is my understanding is around, is 5,000 in this State. Neighboring states, California has 500, that doesn't come under this statute I don't believe, but we need to address that from a health and safety point. Do we really want to do that? Particularly that the inventory shows that 60 percent of the diesel particulate is off-road diesel. And the question of this significant, I think it's significant, who determines whether it's substantial or not? That's my question.

Commissioner Dahl asked Joe, when you say off-road diesel, what generates the…

Commissioner Johnson answered it includes your agricultural areas, but in the area of the inventory in Clark County, it's primarily the earth-moving equipment, the construction stuff. And California has, they're addressing the agricultural diesel and they have separate programs and workshops and a whole bureaucracy that's out there. Again, that whole program I don't, I've preached my sermon, it's not about what we're going to do, it's about process and how we're going to get there.

Chairman Close asked Allen, in order to respond to Joe's comments and requests, what action, if any would be required from the Commission so that he could have his questions answered? Is that an easy question?

Jolaine Johnson introduced herself as being Deputy Administrator for the Division of Environmental Protection. She stated first of all, apparently we misunderstood the request for today's agenda and we regret that and would be happy to . .

Commissioner Johnson stated no, I'm sorry, I think you and Allen, we corresponded, he wrote a memo and I accepted that. What happened was that I went from the start, from the last meeting and brought up the Web site and by the time you download a 450 page appendices your knowledge of what hasn't been done or questions change. And I wish to, and I preached a sermon and I didn't mean that you were non responsive because I think you responded to my question from last time exactly.

Ms. Johnson stated okay, thank you. Mr. Chairman to respond to your question I guess what we would need is a bit of a clarification on what it is that you want to have evaluated. I have, in my notes, certainly that we can evaluate the issue of who made the decision to not to go for the second type of program in Nevada, who made that decision and on what basis that was made. I vaguely recall some of those issues and actually there may be actual statutory restraints on that, but we will certainly go back and review that. The second part of it, is the Commission requesting that the Division expand within the statutory authority programs for diesel emissions? And then, I think there's a third element to what Mr. Johnson is bringing up and that is the concept of approaching the legislature for even more expanded authority to address diesel emissions. This has been addressed repeatedly by the legislature for the last few sessions that I can recall and has not been adopted. Are you asking us to address that, to explore that?

Commissioner Johnson answered from my standpoint I think (1) it's noticed as a discussion item and it was I think it would be my desire first off to address the issue of 445B.780 and I didn't think that Susan's response that we have matched what I had in mind when I wanted to talk on that issue. Particularly in the authority and the concept that's engendered here. What's the legislative intent? Are we to stay compliant and who makes the decision about cost effectiveness or the impact or that sort of thing, which my read on it simply, "The Commission shall adopt regulations concern the equipment used to measure and make," and so on. "The granting of a waiver from the provisions adopted by reference in this section if compliance involves repair and equipment costs which exceed the limits established by the Commission the Commission shall establish the limits in a manner which avoids unnecessary financial hardship on owners." It seems to me the Commission has the power to grant variances and if the decision is made beforehand, that costs too much I don't see that the Commission has the authority at all. Didn't I send this around? This is a statute, seeing as how you all don't remember that statute, but it's just a copy of the statute. That I think has to be addressed as far as this substantial compliance. The issue of what we want done on diesel emission controls I think I would like to see and this would be my request again that that issue be an action item at some time of the Commission.

Ms. Johnson stated if I may clarify it, you want us to bring forward a proposal for . . .

Chairman Close stated before we decide exactly what we want to do, we've got some public comment and I thought I'd let him talk to us first and then we can make whatever motion is appropriate.

Commissioner Johnson stated or we, and I definitely have interest in their comments on the SNAP test also. I mean that didn't go away with my other tirade, but yeah.

Chairman Close stated so we will take the public comment and then we'll decide as a committee what we want to do. He then called upon Daryl Capurro.

Daryl Capurro introduced himself as being the managing director of the Nevada Motor Transport Association, a trade association representing the trucking industry operating in and through the State of Nevada. He stated there are a number of issues that have come up and we're fully prepared. We've worked with Adele and other elements of staff with respect to taking another look at our emission inspection program as it's currently constituted, particularly in the area of the limits that are contained in the regulations right now. I would tell you that our program is probably one of the oldest in the United States and there are only 16 states that actually have a heavy-duty emission inspection program out of 50. So I think we're probably more on the leading edge than we are as a follower on this situation. California did attempt to implement a program at one time. It was tied up on the courts significantly. So their program actually did not start before Nevada's did. Nevada's is one of the older programs. The Commission had established the 70, opacity standard at 70 simply to give the Department of Motor Vehicles the opportunity to collect data as to what the failure rates were because at that point in time there was no 40 and 55 as Joe well knows. I would also think Joe, maybe your memory needs to be refreshed, with respect to the periodic program that was a subject of quite a bit of discussion among an advisory group that reported to the legislature last session. That was one of the issues. That particular issue never made it to the legislature because the Advisory Commission rejected it.

So, insofar as the periodic program is concerned, yes I think the statute has some language in there, frankly, that is archaic and secondly, that is not popular with the legislature itself. I will tell you this, that in place of the periodic program we have fleet testing in the yard on the request of companies and that is becoming more and more, in fact we encourage the fleets to have that sort of inspection so they can have all of their vehicles inspected at one time. I'm not saying it's a word for word substitute for a periodic inspection program, but that is a very, very expensive proposition. You know we hear all the time about compared to California this, that and the other. Quite frankly, we're not comparable to California in any way, shape or form. Their pollution problems are much more severe than ours are, even in Las Vegas, if you've gone through more than three years without violating the CO standard in Las Vegas. The air quality is improving both in Las Vegas and in Reno with the controls that are in place now. I will tell you this, we have no problem with readdressing the issue of the standards, 55 for '91 and newer, or 40 for '91 and newer and 55 for '90 and older. I would ask that you take a potential look at '77 or some of the states go up to 70 for either '74 or '77 models. We'd like to see that included in whatever proposal is made. I'm not going to fight, frankly, the 55/40 although the deputy director of the new Clark County Air Quality agency at our convention indicated that they would be satisfied with a standard at 50, instead of the 40 and 55 for the older vehicles. I'm not going to hold them to that because it sounded like at that last meeting they were kind of slapping leather a little bit on that. But that was her testimony in respect to her address to our convention.

I will tell you this, what we are asking and I would certainly hope that it's in any proposal that staff brings to the Commission, that (1) you have to have the machines that are going to accurately measure the standard that you're going to adopt and there are such machines out now. I'm told that the State has purchased at least one. You need more than that. But the EPA standard and many people cite the EPA report that says the standard should be 55 and 40, but there's another part of the paragraph that says that that standard is exceeded in a couple of states, but they're high altitude states and therefore the standard is roughly equivalent with respect to ambient conditions. That's what EPA said, okay? Now EPA has come out with a basically when they adopted the J1667 standard, which Nevada has already adopted as have virtually all of the states that have a program. They also recognized that ambient conditions, temperature, elevation and other elements have an impact, a severe impact on what those numbers are and Nevada fits right into that. That's one of the reasons why Utah hasn't moved in that direction either. You need to be able to have a machine that actually calculates using this very complicated formula that EPA has suggested adjusting those readings for those ambient conditions. We're told that those machines exist. I will tell you this, whatever standard you adopt (1) I think the testimony or the indication from those manufacturers is that there's a 1 to 2 percent tolerance. That tolerance factor needs to be taken into effect on the side of the person being tested. Secondly, that if you set the standard at 55 there's evidence in the DMV information that's been provided that you've actually ticketed at 55. I believe that to not be correct because (1) that is the standard, so anything 55.2.4, whatever is still within that standard. It's a small thing, perhaps, but if you're going to adopt 55, I would suggest that you enforce at the next full number, that being 56, taking into account both the manufacturers avowed statements that there is a 1 to 2 percent tolerance factor in there and the normal whims of the machine besides that.

I would also indicate to you that one of the problems we have, and I fully agree with most of the information that's contained in the report that Joe handed out, you'll see that half of the PM10, and half of the particulate violations in Clark County are off-road. In fact, to be honest with you, the diesel-power vehicles and equipment on-road represent less than 15 percent, a far lower number than what the off-road vehicles represent. Our problem is this: you really have no authority to regulate off-road vehicles. There is no, they were not manufactured to a standard, the same as you have with respect to on-road equipment and until somebody answers that question, I don't see what standard that you would use to implement on whether you're testing the emissions from a large crushing unit, from a motor patrol or any other kind of equipment that was not manufactured to an emission standard that was required by law or by EPA. That's a problem. I'd like to see it solved too, but I haven't seen anybody come forward with something that would stick and would keep you out of court. The low failure rate was mentioned. Let me indicate to you this, I've analyzed the DMV information that's been presented for last year. My recollection is you had about 11,000 observations and of that 512 were actually tested. Do you want to know why? Because in the opinion of the inspector who was looking made these observations those 512 that actually were pulled over and inspected, represented a fair chance that they were going to be found in violation. Were they? No. Of that there were roughly what, 200? Two hundred and twenty, something like that that were found in violation. And trust me, after a while these inspectors and I can do it myself using the old (inaudible) test procedure, can pretty well tell you whether a vehicle is close to violating the standard. So these people have been able to develop their eye to the point they're not going to pull everyone over because everyone isn't violating the standard.

Commissioner Johnson stated Daryl, in California, their off-road or on-road standard has a 7.1 fail rate. What do you attribute to the difference?

Mr. Capurro stated I'm not going to comment on California's program because quite frankly I don't think that anything that California does is comparable to what we should be doing here in Nevada. Towards that end I will tell you right now that we will have a piece of legislation in, I have a sponsor for it, to amend Chapter 445B.780 basically to do two things: (1) to instead of imposing a program strictly on diesel-powered vehicles, it seems to me like they should be done on the basis of fuels and that should be special fuel under Chapter 366 and gasoline under 365. Why? Because it seems to me like to say that there is no pollution from any other alternative fuels is simply not the case. This program should be extended to any vehicle on the highway that is defined as heavy-duty and that should take into account propane, CNG, LPG, A55, peanut oil, or whatever. So we're going to suggest that basically the program be extended to any types of fuels. Secondly, to remove all reference to the fact that it has to be substantially similar to California. We are not substantially similar to California in many respects. So that would not prevent staff or anybody else from looking at any state and saying that we think our program ought to be modified to take this that or the other into account. But this language is so ambiguous as to be basically I think unenforceable. In the one side it says that the program must be substantially similar to programs in California. Secondly, though, it says that the Department of Conservation and Natural Resources director shall review each change that California has to determine whether it's appropriate for Nevada and if not, it's rejected. You could do that anyway without having anything in the law that says you have to. So it's my position and other shareholders, that that language should be removed completely. Take the shackles off the State's staff and let them review and interpret whatever they want to review and interpret and not tie it to California, Oregon, Colorado or anybody else.

The issue of fuels, I couldn't agree more with the idea that fuels are an important factor in the emission area. We've had great strides in the last 15 years with respect to the equipment itself, much more efficient equipment, but what you put into it also has an impact on what comes out of it and there's no question about that. EPA has adopted a standard for sulfur content, which would reduce it down to 15 ppm; the current standard is 500. That will take effect in 2006. I'm here to tell you right now that will probably drive the price of fuel up about 50 cents a gallon. That's been testified to by elements from the engine manufacturers to the folks with the, that actually produce the fuel because the refining process, most every one of those plants, particularly in California where we get our fuel will have to be substantially brought into compliance with respect to how they're built, what their processes are for producing fuel and the like. It will be a very expensive process, but it will provide fuel that can help to reduce emissions that come out of diesel engines, no question about it. If they don't reduce it, then we can't use trap oxidizers and other forms of after treatment because the sulfur in the fuel will foul those devices. Those devices cost $10,000 a piece and there are two of them.

So what we're looking at is we're the people that have to use the equipment. We don't manufacture the equipment. We don't manufacture the fuel. But we darn sure have to use it to bring goods and services to 80 percent of the communities in the State of Nevada that have no other way of receiving commercial deliveries. We're in this with everybody else. We want to be known as good neighbors. We want to meet standards that are reasonable and we will work hard to work with staff in any revisions. But I will tell you this, my own personal view of things is that 15 years from now when you buy a car it's going to be a car powered by hybrid (inaudible) powered fuel cell. You, we will be using, starting next year, we have propane-powered fuel cells that will be used in conjunction with the sleeper units that will be on the highways. Many times there are complaints about diesel engines being run over night in the truck stop areas. The reason they do it is, depending on the weather. If it's a summer time, they're running their air conditioning. If it's wintertime, it's running the heater. Some of them have microwaves; they have stereos. They have a bunch of things that use power and in order to power those things they have to leave the engine on. These new propane-powered fuel cells that will come into use next year will actually run all of those devices without having to run the engine. We think that's a real step forward in the process of evolution to a different type of fuel. But I will also tell you this, for the foreseeable future for the next 10 years, diesel is the fuel of choice. That's what we have available to work with. So we can look at studies all we want to. Some of this, quite frankly, I refer to as "junk science," but the fact of the matter is that diesel is the fuel that's going to be used at least for the next 10 years. Let's figure out how to clean it up within cost benefit parameters that we can all live with. We'd be very happy to work with you on that.

Commissioner Dahl stated I liked your comparing us to California. You know it seems to me, of course see I don't live in Washoe County or Clark County, but it seems to me that a lot of people moved from California because they wanted to be less regulated and the first thing they do when they get here is try to turn Nevada into California. There are a lot of distinctions.

Commissioner Johnson stated comments and it has to do with the altitude correction. This is one area that I agree with you, the EPA manual simply says that 70 percent is roughly equivalent and logic says that if you apply a correction factor, a coefficient of correction to 55 and you apply the same coefficient to 40, it doesn't equal the same number. And that's what is in error and has been perpetuated. Once in the literature it lives forever. And this business of altitude and how much it affects, I've talked long enough, but no correction if it's 1,500 feet or below so you have to assume that's not highly significant in the process and what we're really talking about is that altitude the engines, to be tuned, will produce more opacity and within the engineering of the engine. Is that not correct?

Mr. Capurro stated well, Joe you're taking one element. Ambient conditions refer not just to altitude, so if you're saying that 1,500 feet and below you don't have to adjust, that's not right. Particularly in Las Vegas because you have ambient summer conditions that quite frankly could send those readings through the roof.

Commissioner Johnson stated Daryl, and I happen to have read the SAE standard, which I was surprised at what it does and how it infers on our program, but you're right, ambient conditions are taken into account with the equipment. But in line, whatever it is, 5-6 or something it mandates that high altitude will have the correction. It does not mandate for lower than 1,500 feet.

Mr. Capurro stated right, and I understand that. But the fact of the matter is that type of machinery, because if it is available, and my own assistant Ron Levine attended a demonstration in Las Vegas on it and seemed to be impressed with it. Their other manufacturer, that was Red River or Red Mountain. There are other manufacturers too, I'm sure. But it does calculate and calibrate those machines to measure using that ambient change that EPA has suggested. I don't even know if EPA is right.

Commissioner Johnson stated right, I don't either and I have . . .

Mr. Capurro stated and I guess we'll find out, but . . .

Commissioner Johnson stated I have serious questions about tuning your engines to comply with this SNAP test, particularly the current production models and I mean the procedure that we're talking about is not necessarily a silver bullet.

Mr. Capurro stated we've got a real problem coming up too. I'll just throw this out and I'm sorry I've taken this amount of time, but because of the injunction that was placed on five engine manufacturers by EPA they are now having to come into compliance with 2004 standards in their 2002 equipment. Part of the problem is that any time you rush science or changes in the engine components and actually to achieve those kinds of standards, the 2004 standards, they have to make wholesale changes in the design of the engine. That was forced between 1999, when the consent decrees were signed and I frankly have no idea why they signed the darn things. I wouldn't have. But the engine manufacturers did. They're going to have a tremendously rough time in meeting those standards for, and that accounts for about 70, maybe 60 percent of the engines that are on the highway. All the major engine manufacturers are, what's going to happen? I'll tell you what's going to happen. There's a big, huge run up now on buying 2002 pre-October 1 engines and putting off the decision to buy new engines until there is more information available. Why? Because the manufacturers can't guarantee us that the equipment is going to meet the reliability standards that are necessary. We run diesels 500,000, 600,000, 700,000 miles. If they're only going to last 100,000 miles, the investment is worthless to us. So, we have no idea and the manufacturers can't promise us anything. So two things are going to happen: (1) we're going to hold our fleets longer. That doesn't help the air pollution situation one bit. (2) There will be a run up in the purchase of vehicles that are manufactured prior to October 1 of this year. It just seems to me like trying to rush the science in some cases actually ends up having the opposite effect. I just wanted to bring that to your attention because it is going to be a problem.

Chairman Close called for further testimony. There was none. He then addressed Commissioner Johnson. He stated so you've given us a fairly broad spectrum that you're interested in and I'm not sure that the staff or we understand exactly what the breadth of your request is. They are going to report back on a, I guess from what I understand, now a limited area of your concern. Is it your request that they broaden that in that investigation and report back in greater detail on other areas?

Commissioner Johnson stated first I think I would like and I don't even know if the Commission needs to make that decision and that is a legal, an opinion on what 445B.780 infers.

Mr. Biaggi asked Joe, are you suggesting a formal opinion from the Attorney General's Office?

Commissioner Johnson answered I guess that's probably what it takes because I think the issues involved are significant. I don't know that it would change actually what we are going to do and I'm not particularly concerned about who made the decision in the past and all the history of the decision. What I'm really interested in is programmatically who makes the decision that we are in compliance with the NRS that says we have this California program to be?

Mr. Biaggi stated I'm not quibbling with the nature of the opinion. My only concern is the length of time it take to get opinions from the Attorney General's office. What are they taking these days, Ronda, six months, eight months, a year?

DAG Moore stated it can take a while. I'd say six months is a fair thing. But probably you need to clarify your legal question. And I don't know if you want help, you know . . .

Commissioner Johnson stated my guess is that actually a request to LCB as simply a request of documenting a legislative intent might (inaudible) something. As I . . .

DAG Moore stated I may be able to help a little bit. I mean we can read this and I think what the Division came forward today and said to you was that they had reviewed California's changes and amendments to their program for the regulation of smoke and other emissions by inspection of heavy-duty motor vehicles. They had looked at California's changes and they had assessed them and determined that they did not deem it necessary or

appropriate to change Nevada's program to ensure that it is still substantially similar. Okay, now you, I think, have a disagreement with that conclusion?

Commissioner Johnson stated I'm not certain that there has ever been an actual decision in pairing those. And I'm not, the question . . .

DAG Moore stated that's a question of fact and they could answer that. I'm sure they could answer that.

Commissioner Johnson stated that's part of the history, but that's not where, I'm not going.

DAG Moore stated okay.

Commissioner Johnson asked the additional part is simply that it's maintained and is there a legislative requirement that it be maintained in substantial compliance?

DAG Moore stated okay so your question is the Division has not deemed it necessary to make changes to yours. You think that now perhaps the Nevada program is no longer substantially similar and your question is who has the authority to pass regulations to make it such?

Commissioner Johnson stated that's clearly stated in item 3 I think, the geologist says that and in the first part, you're the lawyer, but . . .

DAG Moore stated no. I'm just trying to clarify your questions. Every person aside from you being a Commissioner and this Commission having some authority in the area of course, every person has the right to petition an agency to ask them to pass regulations and they have to get back to you and respond with whether they're going to and if they're not, why. So, there's a process in law for you to get answers. I think that the Division will give you the answers that you're asking for as well.

Commissioner Johnson stated I'm sure.

DAG Moore asked and, so, what would then your opinion request be about, specifically?

Commissioner Johnson stated what constitutes substantial compliance? And who determines that? Is there a comma that says the director shall what's deems appropriate for the State and the director then shall recommend to the Commission any such provisions which he deems necessary or appropriate to ensure, it doesn't mean there was a prior determination about appropriateness to the State, it costs too much, okay? It's not appropriate. The second part says that he will make recommendations whether it's appropriate to ensure that the programs remain substantially similar. There's a second requirement that's there and it appears to me to be a conflict between those two requirements.

Commissioner Ricci stated I think I heard Mr. Capurro say that they were going to propose legislation to remove that thing of California. Should we wait until after then?

Commissioner Johnson stated my real issue is that I would like to see us take action about controlling diesel emissions. I think that it's a health hazard. We have a responsibility. It's certainly a visible impairment. We have a responsibility there. I really am not all that concerned about whether it's in compliance. I personally did not particularly like that language when it was introduced. It came by way of some folks that I don't know were more concerned about fuel, I believe. But the history is whatever it is, but that's not my concern overriding. I've talked way too much about those things, but I said that there's health hazards, there's visibility problems, aesthetic values, and so on and I would like to see us go beyond simply talking about whether there's a, whether the SNAP test is all we're going to do about diesel emissions and within the authority that we have there's certainly other areas and particularly the fuel and Daryl is certainly right about the engineering of off-road diesel engines even though there's statutory or regulatory language that we've already adopted that sets standards for diesel engines period that have hard opacity standards of 20 or 30 percent over a 5 minute operation in a 60 minute time, which we do not address and I think that we should.

What I'm really looking at is a time, a workshop that we review the inadequacies in the regulations that are in existence that many of them that Mr. Capurro would agree with me on that simply do not define what conditions are nor do we assemble the information. I will have yet to see in this State an adequate representative of the actual benefits that measurable won't happen. How can you say something is too costly if you don't know what the benefits will be? How can you make that decision? And I keep adding on to the things that I want to hear, but what I really want to hear is that we are not simply setting back and saying, "Gosh, here we are," and if we talk about and you guys have wasted a lot of time listening to me talk and we haven't got to your items, but why haven't we got a test program that was in compliance with the 1996 document yet? And, yes, 432 demanded and there was lots of conversation and there was a recommendation about the SNAP test. The agency said, "Gosh these we're doing, we're getting that equipment on line, we'll do it," and they are indeed doing that. But why wasn't the equipment that they had in compliance with the '96 regulation? And those are issues.

Mr. Capurro stated the suggested standard didn't come out of EPA until after '96.

Commissioner Johnson stated no, no. Daryl you're taking exception to something I didn't say. The equipment that we purchased . . .

Mr. Capurro stated I'm leading to that though, Joe.

Commissioner Johnson stated okay.

Mr. Capurro stated the fact of the matter is you had no reason to, because EPA hadn't even addressed the issue, because again, at that point in time there were probably only five states that had a program. It was not a mandate on the part of the federal government or EPA or anybody else that there be a heavy-duty emission testing program. So there was no standard to . . .

Commissioner Johnson stated our statutory, our regulatory requirement identified the SAE standard by name and cited section number and there may have been a more recent one than that but my copy that I pulled off the Web is a '96 edition, which we adopted the program in '96 so I assume that it applies.

Mr. Capurro stated but the SAE standard didn't at that time that we . . .

Commissioner Johnson stated (inaudible) yes, and it had altitude requirement in it.

Mr. Capurro stated J1667 didn't come out in 1996. The point being is this, that the equipment that we had didn't include the conversion table for the, that's a relatively new feature with respect to EPA's recommendation. That's the point I was trying to make.

Commissioner Johnson stated it requires the altitude adjustment to the equipment.

Chairman Close stated the secretary can only take down one thing at a time, so you can only speak one at a time.

Mr. Capurro stated the point was that EPA conversion formula for ambient standards was not contained in the '96 version of it because it had not become an issue at that time. I can't give you the exact date when it was, but that's the reason why the equipment didn't measure it because it wasn't required.

Chairman Close stated now we're getting more into the detail rather than the general overall philosophy that we're looking at here. So I think we've moved off kind of the point that we started out with on the agenda.

Commissioner Doppe stated the legal issue is probably not the most important thing depending on how Allen feels about it, because as I read it there are two things that were supposed to have happened. One is we were supposed to have established a program in substantial conformance. Apparently that happened some time ago. The other is, it was supposed to be kept up-to-date by the administrator. So now it's up to Allen whether or not he feels it's up-to-date and to the extent that Allen is willing to open that decision process up for examination,

probing, review, workshop participation, and with you guys being the final say so, that's your authority, then perhaps what we can do is we can take these detail-type discussions that we keep falling into and put them into the appropriate arena which ought to be some sort of a place where we can talk about why wasn't this done or what can be done or what's the appropriate thing to move forward? I think that moving forward is going to need to happen one way or another. I know in southern Nevada there's going to be some moving forward that's going to have to happen. I don't see why the State ought not be involved in that. I think that's our role, particularly your role and to the extent that you'd be willing to do that, I think you can move this discussion forward and if you can sponsor those sorts of discussions, then I don't think we need to get legal, I don't know how you feel, but I wouldn't think we need a legal opinion. We just need to talk about the issue.

Chairman Close stated 780 was pretty clear and you've read it and you've told us what it says. We've all read it so we all know what it says and I think Mark's comment is well taken. Can you tell us what position you would take relative to reviewing whether or not our program meets the California standards and report back to us? To the extent that it doesn't meet it, why doesn't it meet it, and if you intend to go forward with the workshops or whatever that Joe is requesting, if that's appropriate.

Mr. Biaggi stated I think we can do that. I would like to hear a little bit from Adele and from some of the people at DMV about some of the discussions that have been going on in the existing committees and maybe some of these issues are being addressed and are being discussed.

Lloyd Nelson introduced himself as being with DMV, Management Services and Programs Division. He stated I'm also the Chairman of the Advisory Committee for Vehicle Emissions. At our last meeting we discussed the current status of the heavy-duty diesel program. We discussed the opacity level currently at 70 percent and the feasibility of matching California's standards of 40 for '91 and newer and 55 for '90 and older vehicles. All the members concurred that it would be good to move forward to take the procedure to lower those standards.

Chairman Close stated that's what Adele told us. But Joe's comment was that he wants to expand it beyond just those, that examination into other areas to see how we comply overall with the California standard. Is that what I understand Joe?

Commissioner Johnson answered that's correct.

Chairman Close stated so I guess that's the question. Adele has told us you're going to move forward on that limited issue. What about the broader issue of meeting the California standard?

Mr. Nelson asked such as the periodic smoke inspection program?

Chairman Close stated I don't know.

Commissioner Doppe stated such as (inaudible) yes.

Mr. Nelson stated the fleet testing.

Chairman Close stated whatever California has.

Commissioner Johnson stated or if and they are presently in workshops adopting additional programs and additional diesel emission reduction programs. I mean they're beginning in rule making and what response will we have to those?

Commissioner Ricci stated in your advisory committee meeting discussing these, other than just the opacity, by the reduction of the opacity is going to equate to some reduction in emissions. At least I think it would. So what does that represent and if it represents a substantial or I don't know what substantial (inaudible) for, but a reduction of some sort, could you quantify that number and maybe that could address some of the issues that Joe has regarding the reduction of emissions other than all these other things.

Mr. Nelson stated we have not discussed any of that in a committee as of yet.

Chairman Close stated Hugh's position is though that by reducing opacity you have to affect something else. That's your question, isn't it?

Commissioner Ricci answered yes.

Chairman Close asked it's what else do you effect by reducing opacity? There's got to be some emissions modification that maybe we should be aware of. But I don't think this is the time to really get into this. What I think that you've asked us to do is to find out whether or not and to what degree we meet California standards. I think that's your basic request. So my question is of the committee, is that the committee's request in compliance with 445B.780?

Commissioner Doppe stated that's absolutely my request as well and to the extent that we don't, what is the Division doing to get us there? Because I do believe they are mandated to do that, at least to the extent that they deem, what does it say, necessary or appropriate? So, I would like to find out are we? And if we're not, what is the Division doing to get us there in accord with the law? Also, what is the mechanism that's going to be happening? Are we going to be handed a set of documents that say, "This is what we think will get us there?" What's the process that's going on to get us there? What's the input, and all that kind of stuff, between now and then? I believe that it's a mechanical question. I don't know that there's all that much disagreement because I don't even know that the facts are appropriately laid out on the table with regard to the facts themselves. It's more of a how's it working kind of a deal.

Commissioner Johnson stated and I agree with Mark's that this is in part in why I asked for a kind of cost, not a formal cost benefit analysis, but a comparison, shall we say to benefit on the SNAP test or where we're going. I assume that it's very economical compared to what we're doing in other areas for particulate reduction. And therefore, is something that we desire, but in addition, from my standpoint everything that you said I agree with entirely (inaudible). But I would also like to see the basis of the decision that it's either appropriate or inappropriate. I mean, simply . .

Chairman Close asked inappropriate for what?

Commissioner Johnson answered the statute says that the director will determine its appropriateness for the State and I don't wish to place myself in the judge of whether he's right or wrong, but I would like to know how that decision was made.

Chairman Close stated but more importantly though, what we want to have now is the comparison and analysis of the California statute going forward. I mean it's interesting to know what happened previously.

Commissioner Johnson stated exactly, yes.

Chairman Close stated but the thing you're really searching for is from this point forward.

Commissioner Johnson stated that's correct. Exactly. But if it's deemed appropriate I think it's self, or to make a change it will give the reasons why he's decided that it's appropriate and if he deems it inappropriate, in the past we haven't seen it. And I would like to see why he deemed it inappropriate if it differs.

Mr. Biaggi stated I think I understand where you're coming from Mr. Johnson. What I would envision we would do is do an analysis to say, "Here's the Nevada program. Here's the California program. Here are the differences between the two." For the future we will go forward and do workshops or some other way to determine whether or not it's appropriate to move forward with those elements that are lacking in the Nevada program versus the California program. And you would like some input back to the Commission on whatever decision was made on either moving forward with that, which, as you said, would be self-evident by coming forward to the Division with a regulatory change, or to the Commission with a regulatory change, or not coming forward and why we're not coming forward.

Commissioner Johnson stated exactly. And I think I, in all my, exactly, in all my talking I think I mentioned that I really didn't intend to push this other test cycle. That's not where I was going with this. Exactly that.

Chairman Close stated so if there's no objection from the committee members that would be our request. Is that correct?

Ms. Malone stated my comment is simply that we can use the I & M Committee as tools for investigating this issue that Lloyd chairs.

Chairman Close stated that's fine. Whatever committee, whatever vehicle you think is appropriate.

Ms. Malone stated my question is about 445B.780. The way I read section 1 it says, "The Commission shall establish a program for the regulation of smoke and other emissions by inspection of heavy-duty motor vehicles." And by inspection I have been reading that to mean an inspection and maintenance type of program and there are as far as I know, and I'll do further research, but there are only those two inspection and maintenance tailpipe emission control-type of programs.

Chairman Close stated well then to the extent that our program exceeds that of California's which is, or at least the statute, because you go into maintenance as well as inspection, report back on that also telling us what we do so far as maintenance is concerned.

Ms. Malone stated well I think California has a lot of additional programs that control heavy-duty emissions that are not inspection type of programs. I'm wondering if 780 limit us.

Chairman Close stated I don't think we are. I think we have an obligation to do this, but I think so far as we are concerned we could probably go beyond 780 if we wanted to.

Ms. Malone stated okay.

Chairman Close stated I think this is the minimum that is required by statute of us to perform. So if there are other elements that you think we ought to be aware of then bring those to our attention.

Commissioner Johnson stated for instance, we are particularly tasked and authorized on fuel standards.

Chairman Close stated so, we're broadening this thing as we go, by the minute as we go here. So maybe we'll call it to a halt now so we won't go beyond where we are right now. Are there any other comments?

Peter Konesky introduced himself as being with the Nevada State Office of Energy. He stated one of the questions I think that was brought up that hasn't been addressed was what does the reduction in opacity constitute as far as reduction in contaminants or particulate count or this type of thing?

Chairman Close stated that was what Hugh was bringing up. He said, "When you reduce opacity you do reduce other elements that we are concerned about."

Mr. Konesky stated that's right, but we haven't got a finite number, if we go from 70 to 50 or 40 or whatever, and I think this would be very beneficial to the group here is this a less expensive way of doing some of the controls? If that could be related to actual numbers.

Chairman Close stated I presume that it can be. I don't know what your analysis will encompass.

Ms. Malone stated I went through a list of expected benefits, but mentioned that they are not quantifiable. We don't even have an emissions model that will quantify pollutant reductions for heavy-duty diesels at this point, though I am talking with Dennis Ransel.

Chairman Close stated make sure that you know the scope of our request and then come back and report to us what you have found.

Ms. Malone stated okay.

Commissioner Johnson stated Mr. Chairman because of my request I really would like to at least a very short summary on the implementation of the SNAP test and the time frame that you anticipate because I think they came prepared to answer that and I think it's important that we hear additionally what they're doing. I've made big issues about questions of what we're doing, but I think they are doing some good things and we could hear, just my opinion.

Chairman Close stated but my error was not taking a lunch break. I think people are probably prepared to go to lunch now. It's about 2:00 and if I'd known how long this was going to take I'd have taken a lunch break. And so at some point in time we'll get the SNAP test report and everything else, but I don't knows if it would add anything more right now except give us more preliminary information.

Commissioner Johnson stated maybe they could just say that they are implementing it and they are proceeding.

Jim Parsons introduced himself as the administrator with management services at DMV. He stated I don't know that it's my place and I'm certainly not the expert about this equipment, but we have been doing the SNAP test for quite a few years now and as Daryl said, we do have a new piece of equipment that we're using and testing and we're in the process of asking for money from Interim Finance to buy more pieces of that equipment and we will be putting that in the field and doing those tests. If you want more, we'll come back at a later date and give you more detail if you would like that.

Chairman Close stated there will be an opportunity to come back, I'm sure. He then moved to **Agenda Item VI. Status of Division's Programs.**

Mr. Cowperthwaite stated before you get too much further, you have an Exhibit No. 1 that's been offered.

Chairman Close stated we should adopt all the exhibits that Joe has presented to us. Let's make them part of the record.

Mr. Biaggi stated the item after this, which references the water quality awards, will be removed from the agenda. The representatives from the Lyon County Commission weren't available to make that presentation today. So we'll do that at a later date. I want to present a couple of quick updates concerning Commission business. David, if you would please, if you haven't already hand out the signed copy of the Jarbidge situation. Based upon the regulations you passed at your last meeting modifying what is no longer called "rolling stock" they are now called "temporary discharge permits," was satisfactory to both the Division and to Elko County and the appeal to the Nevada State Supreme Court concerning the Jarbidge road situation has been resolved to the satisfaction of both of the parties. It only took four years to do that.

There are a couple of things that will be coming before you to a significant degree in the next few months. The first is the Robert Hall appeal of the discharge permits for the City of Las Vegas, City of Henderson and Clark County. Aimee Banales, our deputy attorney general, will have a baby soon and because of that she is unable to fly. That appeal hearing is probably now scheduled for the May-June time frame. So there are some delays pending there. I think there will be some panels of the State Environmental Commission heading to Pahrump for two issues. One will be some air quality hearings concerning dust concerns in the Pahrump area and also there's been an appeal with regard to the Pahrump landfill. Once again, you're going to hear about set backs and the proximity of homes to a landfill in that valley.

I want to give you an update on the Fallon situation. Since we last met there's been another cancer case in Fallon. We thought we were done with the environmental sampling within the valley, but that new case has caused us to gear up once again and conduct additional sampling, which is ongoing this week and probably will continue for two more weeks in the Lahontan Valley. Again, we're assisting the State Health Division's Centers for Disease

Control and ATSDR and we're hoping this is the last case and the last time we have to do this. As you're aware it's been very resource intensive for our agency and we have not received any additional money or assistance in providing this service.

Chairman Close asked what about Walker River and Walker Lake, any developments there?

Mr. Biaggi answered it has been very quiet on the Walker River/Walker Lake front since you passed standards for Walker Lake and the River at the last meeting. It is our understanding that there have been settlement negotiations ongoing between the Western Environmental Law Center and EPA concerning the lawsuit that was filed. We have not been in direct privy to those settlement negotiations. So it's really been fairly quiet in the last three months.

Chairman Close called for further questions. There were none. He called for further public comment. There was none.

The meeting was adjourned at 1:45 p.m.

#	Item	Item Description	Reference Petition #	Offered	Accep
1	1 Page Memorandum with 2 Page Letter Attached	Memo dated February 25, 2002 from Adele Malone, Mobile Sources, Nevada Division of Environmental Protection to Joseph L. Johnson, State Environmental Commission regarding Status of Remote Sensing in Nevada. Two-page Letter by Lloyd Nelson, Program Manager, Vehicle Emissions, Nevada Department of Motor Vehicles to Adele Malone regarding the Department of Motor Vehicles involvement with Roadside Monitoring.	Heavy Duty Diesel Program	Yes	Yes
2	1 Page Letter	Letter from Tim Crowley, SEC Commissioner dated March 7, 2002 to Melvin Close Jr., Chairman of SEC regarding issues within petition 2002-06	2002-06	Yes	Yes
3	9 Page Report	Report of California Air Resources Board dated April 22, 1998 on the "Findings of the Scientific Review Panel on The Report on Diesel Exhaust	Heavy Duty Diesel Program	Yes	Yes
4	15 Page Presentation	Visibility (Urban Haze) in the Las Vegas Valley, a presentation to the SEC (Exhibit 10) by Michael Naylor, Director of the Air Pollution Control Division (circa 1999)	Heavy Duty Diesel Program	Yes	Yes
5	4 Page Memorandum	Memorandum from Adele Malone of BAQP to Joseph Johnson, SEC Commissioner dated February 1, 2002 "Comparing Nevada's Heavy-Duty Diesel Program to California's.	Heavy Duty Diesel Program	Yes	Yes
6	1 Page Citation	Nevada Revised Statute (NRS) 445B.780 "Program for regulation of emissions from heavy-duty vehicles; similarity to program established in California; waiver from requirements of program	Heavy Duty Diesel Program	Yes	Yes