

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF March 25, 1998

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES	REGULATORY
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
March 25, 1998
9:30 A.M.

The Nevada State Environmental Commission will conduct a hearing commencing at **9:30 a.m., on Wednesday March 25, 1998**, at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada.

This agenda has been posted at the Grant Sawyer State Office Building and Clark County Commission Chambers in Las Vegas; the Washoe County Library and Division of Wildlife in Reno; and the Nevada State Library and Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on February 23, 1998; March 11, 1998; and March 18, 1998, 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. Selection of Temporary Chairman for March 25, 1998 Hearing * ACTION**
- II. Introduction of New Commissioner Alan Coyner, Administrator of the Division of Minerals**
- III. Approval of minutes from the January 22, 1998 meeting. * ACTION**

IV. Regulatory Petitions * ACTION

A. Petition 98001 (LCB File No. R-033-98) is a proposed permanent regulation amending NAC 445B.590 to require that a waiver from the provisions of NAC 445B.596, the vehicle emission inspection and maintenance program, be increased from \$ 100 for self repair and \$ 200 for shop repair to \$ 450 and that the receipt for parts and services be from an authorized station. The provision to credit waiver expenditures for owner self repair of a vehicle is proposed to be repealed. The proposed amendments are required by the U.S. Environmental Protection Agency to be in effect by 1998 for the enhanced Inspection and Maintenance emission test program.

B. Petition 98002 (LCB File No. R-034-98) is a proposed permanent amendment to NAC 444.570 to 444.7499, solid waste disposal by adding new provisions relating financial assurance for municipal solid waste landfills. The regulation establishes a local government financial test and criteria for guarantees. The regulation also establishes a corporate financial test and criteria for financial guarantees for landfill owners and operators.

C. Petition 98003 (LCB File No. R-035-98) is proposed to permanently amend NAC 444.570 to 444.7499 by adding new provisions relating to solid waste public storage bin facilities and transfer stations. The regulations establish a process for application for approval criteria for transfer stations including the transfer design report, operating plan, design standards, and operating standards. Standards for public storage bins are established. NAC 444.666 is proposed to be amended to remove the provision requiring all-weather roads for approach and exit to transfer stations. NAC 444.628 is proposed to be amended to establish alternative frequencies for monitoring at Class II landfill sites. NAC 444.688 is proposed to be amended to define "operating day" for determining the necessary frequency and criteria for covering landfill sites. NAC 444.7175 is proposed to be amended to provide for alternative requirements for infiltration barriers at Class II sites. NAC 444.747 is proposed to be amended to provide record keeping criteria for Class III landfill sites.

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D. Petition 98004 (LCB File No. R-036-97) is proposed to permanently amend NAC 445B.321, minor revisions to Class I air quality operating permits, by clarification of the comment period for Class I minor revisions. This regulation will amend Section 28 of petition 97004, LCB file R-105-97, as adopted by the Environmental Commission January 22, 1998.

V. Non Regulatory Items * ACTION

A. COLORADO RIVER SALINITY CONTROL FORUM STANDARDS ADOPTION

The Environmental Commission will be reviewing and consider adoption of the Colorado River Salinity Control Forum's 1996 Review of Water Quality Standards for Salinity. Section 303 of the Clean Water Act requires water quality standards be reviewed from time to time. The Colorado River Salinity Control Forum, composed of seven states in the Colorado River Basin, recommends no change in the numeric salinity criteria at the three lower main reaches of the Colorado River. The 1996 review presents recommended revisions to the plan of implementation based upon hydrologic conditions and water use within the Colorado River Basin.

B. REGULATORY WORKSHOP & REVIEW PURSUANT TO NRS 233B.050(d)

The Environmental Commission will begin reviewing its Rules of Practice (NAC 445B.875 to 445B.899) pursuant to NRS 233B.050, subsection d. After the review the Commission will conduct a workshop pursuant to NRS 233B.061 regarding the development of possible regulations regarding the Rules of Practice, including such topics as management of appeals before the Commission and other relevant matters as may be defined upon the review of the Rules of Practice.

VI. Settlement Agreements on Air Quality Violations * ACTION

- A. Continental Lime, Inc.; Notice of Alleged Violation # 1289 and 1290
- B. Arimetco, Inc.; Notice of Alleged Violations # 1293 and 1294
- C. A & K Earthmovers, Inc.; Notice of Alleged Violations # 1297 and 1298
- D. Granite Construction Co.; Notice of Alleged Violations # 1301, 1302 and 1303

VII. Discussion Items

- A. Status of Division of Environmental Protection's Programs and Policies
- B. General Commission or Public Comment

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 104, Carson City, Nevada, 89706-0851 or by calling (702) 687-4670 no later than 5:00 p.m., **March 19, 1998.**

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**NOTICE OF INTENT TO ACT UPON REGULATIONS
NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF HEARING**

The Nevada State Environmental Commission will hold a public hearing beginning at **9:30 a.m. on Wednesday, March 25, 1998, in Conference Room 4401 located in the Grant Sawyer Office Building, 555 East Washington Avenue, Las Vegas, Nevada.**

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations in Chapters 444 and 445B. 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 98001 (LCB File No. R-033-98) is a proposed permanent regulation amending NAC 445B.590 to require that a waiver from the provisions of NAC 445B.596, the vehicle emission inspection and maintenance program, be increased from \$ 100 for self repair and \$ 200 for shop repair to \$ 450 and that the receipt for parts and services be from an authorized station. The provision to credit waiver expenditures for owner self repair of a vehicle is proposed to be repealed. The proposed amendments are required by the U.S. Environmental Protection Agency to be in effect by 1998 for the enhanced Inspection and Maintenance emission test program.

The proposed regulation is not expected to have an adverse economic impact to the regulated public fleet owners. Authorized Stations will realize an increase of revenue estimated at \$ 333,600 in Clark and Washoe county. Vehicle owners that do not pass the established emission standards will be required to spend an additional \$ 250 to \$ 350 in vehicle repairs in order to receive a waiver from those standards. Based upon the issuance of approximately 1,112 waivers in the preceding year, those vehicle owners will realize a total increase in expenditures of about \$ 333,600. The regulation will result in reduced carbon monoxide emissions in the urban nonattainment areas. The proposed regulation (NAC 445B.590) does not duplicate or overlap any other state or local requirements. This waiver amendment to require an expenditure of no more than \$ 450 from auto emissions standards is required by the U.S. Environmental Protection Agency in 40 C.F.R. Part 51.360. The requirement to have such repairs conducted at an authorized maintenance station is more stringent than federal requirements. Repairs conducted at authorized maintenance stations, where trained and certified emission repair specialists are employed will ensure that the consumer is protected and that repairs are effective. There is no additional cost to the agency for enforcement. There will be no additional fees, nor will there be an increase in fees associated with this regulation.

2. Petition 98002 (LCB File No. R-034-98) is a proposed permanent amendment to NAC 444.570 to 444.7499, solid waste disposal by adding new provisions relating financial assurance for municipal solid waste landfills. The regulation establishes a local government financial test and criteria for guarantees. The regulation also establishes a corporate financial test and criteria for financial guarantees for landfill owners and operators.

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There may be a modest beneficial effect accruing to both private businesses and for the public located in rural areas of Nevada due to potential reductions in the costs for construction and operation of some rural municipal solid waste landfills. The new financial assurance self-tests should result in lower financial assurance costs for some entities, especially local governments, owners and operators of Municipal Solid Waste Landfills. The public should not experience any short or long term economic adverse impact. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. The regulation is no more stringent than the federal regulation. The proposed amendments are consistent with those of the federal government and will allow the State to implement the RCRA program. This regulation does not impose a new fee or increase an existing fee.

3. Petition 98003 (LCB File No. R-035-98) is proposed to permanently amend NAC 444.570 to 444.7499 by adding new provisions relating to solid waste public storage bin facilities and transfer stations. The regulation establishes a process for application for approval criteria for transfer stations including the transfer design report, operating plan, design standards, and operating standards. Standards for public storage bins are established. NAC 444.666 is proposed to be amended to remove the provision requiring all-weather roads for approach and exit to transfer stations. NAC 444.628 is proposed to be amended to establish alternative frequencies for monitoring at Class II landfill sites. NAC 444.688 is proposed to be amended to define "operating day" for determining the necessary frequency and criteria for covering landfill sites. NAC 444.7175 is proposed to be amended to provide for alternative requirements for infiltration barriers at Class II sites. NAC 444.747 is proposed to be amended to provide record keeping criteria for Class III landfill sites.

The proposed regulation may have a modest beneficial effect accruing to both private businesses and local governments due to potential reductions in the costs for construction, operation and closure of some municipal solid waste landfills. There will be no immediate adverse or beneficial economic effect on the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The proposed regulations are not more stringent than what is required by the federal Resource Conservation and Recovery Act (RCRA), subtitle D. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

4. Petition 98004 (LCB File No. R-036-97) is proposed to permanently amend NAC 445B.321, minor revisions to Class I air quality operating permits, by clarification of the comment period for Class I minor revisions. This regulation will amend Section 28 of petition 97004, LCB file R-105-97 as adopted by the Environmental Commission January 22, 1998.

There is no estimated adverse or beneficial economic effect upon business by this proposed regulation, either immediate or long term. There will be no immediate adverse or beneficial economic effect on the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The proposed amendment will make the Nevada air pollution control regulations consistent with the federal Clean Air Act law and regulations. The regulations are no more stringent than federal regulations. This amendment will eliminate conflicting provisions and provide for an integrated program.

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There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

NON REGULATORY ACTIONS

5. REGULATORY WORKSHOP & REVIEW PURSUANT TO NRS 233B.050(d)

The Environmental Commission will begin reviewing its Rules of Practice (NAC 445B.875 to 445B.899 pursuant to NRS 233B.050, subsection d. After the review the Commission will conduct a workshop pursuant to NRS 233B.061 regarding the development of possible regulations regarding the Rules of Practice, including such topics as management of appeals before the Commission and other relevant matters as may be defined upon the review of the Rules of Practice.

6. COLORADO RIVER SALINITY CONTROL FORUM STANDARDS ADOPTION

The Environmental Commission will be reviewing and consider adoption of the Colorado River Salinity Control Forum's 1996 Review of Water Quality Standards for Salinity. Section 303 of the Clean Water Act requires water quality standards be reviewed from time to time. The Colorado River Salinity Control Forum, composed of seven states in the Colorado River Basin, recommends no change in the numeric salinity criteria at the three lower main reaches of the Colorado River. The 1996 review presents recommended revisions to the plan of implementation based upon hydrologic conditions and water use within the Colorado River Basin.

Persons wishing to comment upon the proposed regulations or any other matter listed above 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 5 days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 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, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notice 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>.

Pursuant to NRS 233B.0603(c) the provisions of NRS 233B.064 (2) is 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".

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

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89706-0851, facsimile (702) 687-5856, or by calling (702) 687-4670 Extension 3118, no later than 5:00 p.m. on **March 19, 1998**.

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

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STATE ENVIRONMENTAL COMMISSION
Meeting of March 25, 1998
Grant Sawyer Office Building Room 4401, Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:

Michael Turnipseed
Marla Griswold
Paul Iverson
Bob Jones
Roy Trenoweth
Mark Doppe
Joseph L. Johnson
Alan Coyner

MEMBERS ABSENT:

Melvin Close, Chairman
William Molini
Fred Gifford

Staff Present:

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

Executive Secretary David Cowperthwaite explained that due to the absence of both the Chairman and Vice-chairman the members needed to select an Acting Chairman.

Commissioner Trenoweth **made the motion Commissioner Mike Turnipseed act as temporary chairman for the March 25, 1998, hearing.**

Commissioner Jones seconded the motion.

The motion carried.

Acting Chairman (AC) Turnipseed called the State Environmental Commission hearing to order and determined the meeting complied with NRS 233B. The public notice was published February 23, March 11, and March 18, 1998, in the Las Vegas Review Journal and Reno Gazette Journal. The agenda was posted at the Grant Sawyer Building and Clark County Commission Chambers in Las Vegas; Washoe County School District and Division of Wildlife in Reno; and at the Nevada State Library and Division of Environmental Protection in Carson City.

Members of the public were asked to sign the sign-up sheet and those wishing to speak on an agenda item were requested to complete a speaker card.

Alan Coyner was welcomed as a Commission member.

Commissioner Coyner, Administrator of the Division of Minerals, disclosed his background was in exploration geology, primarily working in private industry. His most recent employment was Vice-president of Glass Mountain Pumice. Mr. Coyner expressed enthusiasm for the Commission, the mining program and explained his staff located in Carson City and Las Vegas is ready to assist industry, the public, the legislature, and the Governor on issues related to natural resources including metallic and non-metallic mining, oil and gas, and geothermal.

Commissioner Johnson requested a correction to the minutes of the January 22, 1998, hearing. The minutes state he

laid claim to being a Registered Geologist in the State of Nevada. There is no such title in Nevada and he asked that phrase be deleted.

Commissioner Doppe made a motion to approve the minutes with that change.

Commissioner Trenoweth seconded the motion.

The motion carried.

AC Turnipseed moved to Agenda Item IV-A: Petition 98001 (LCB File No. R-033-98), a proposed permanent regulation amending NAC 445B.590 to require that a waiver from the provisions of NAC 445B.596, the vehicle emission inspection and maintenance (I/M) program, be increased from \$100 for self repair and \$200 for shop repair to \$450 and that the receipt for parts and services be from an authorized station. The provision to credit waiver expenditures for owner self repair of a vehicle is proposed to be repealed. The proposed amendments are required by the U.S. Environmental Protection Agency to be in effect by 1998 for the enhanced Inspection and Maintenance emission test program.

Jolaine Johnson, Chief of the Bureau of Air Quality for the Nevada Division of Environmental Protection (NDEP) explained the Bureau reviewed the requirement through workshops with interested entities, including the Washoe & Clark County Health Districts. Copies of the letter of support from Clark County and the Clark County Commission recommendations regarding the I/M Program are located in the Commission packet. Washoe County is not required to have an enhanced I/M Program because their carbon monoxide (CO) levels are lower and they have a different classification in terms of their non-attainment status for carbon monoxide. Washoe County asked us to make changes to Petition 98001 to change the requirement from \$450 to \$200 to repair emission problems on a vehicle prior to receiving a waiver. They also request that the owner spend \$200 on vehicle parts prior to receiving a waiver if the owner is repairing his own vehicle. The \$200 expenditure is consistent with the federal requirements for areas that have a basic I/M Program. A copy of Washoe County's request is also located in the packet.

Ms. Johnson asked the Commission to refer to the document she distributed today, revised language to Petition 98001, and requested that language be reviewed and adopted.

AC Turnipseed asked if the amended language proposed the dollar amount spent for repairs be different in Washoe County than in Clark County because the CO levels were in attainment in Washoe County.

Ms. Johnson explained Washoe County is still considered non-attainment because formalities have not been concluded through the Federal EPA to change that. Federal EPA does not require as rigorous an I/M program because they have not exceeded the standard in many years.

Commissioner Doppe asked if the original language in the packet is still embodied in paragraph "b" in the document you just handed to us but you have added a new one for Washoe County or for other areas in the state that do not have the standards.

Ms. Johnson explained the original proposal suggested one program be applied to both counties and to the state. Through the request of Washoe County we are now asking for the distinction these changes represent. Paragraph "b" addresses the requirements for the Clark County area. In order to qualify for a waiver from certification they have to go a certified repair station and have \$450 in receipts from that station.

Commissioner Johnson questioned the exemption from exclusion on catalytic converters that often fail and cost

over \$450 to replace.

Ms. Johnson explained research on that issue revealed it was considered and extensively addressed by this Commission years ago. The SEC determined everybody should maintain their catalytic converter and not receive an exemption from having to do that. The federal rule allows for the catalytic converter to be considered in this waiver. Nevada regulations do not allow that.

Commissioner Johnson suggested the reason may have been the use of leaded fuel and recommended striking that exemption.

Ms. Johnson continued, people were taking their fuel inlet restricter off and removing their catalytic converter so they could use leaded gasoline, and that may be the reason. That distinction is no longer necessary but striking that language today would be a substantial change from the proposal submitted to the Legislative Counsel Bureau (LCB).

Commissioner Johnson asked Ms. Johnson if she anticipated potential federal changes in the enhanced I/M to other methods, off-site street inspections etc., of fulfilling the inspection of those vehicles that violate.

Ms. Johnson revealed a few years ago the Federal EPA pushed for the I/M 240 Program - a very special technology that had to be implemented, particularly in enhanced I/M areas - so much controversy arose regarding the implementation and effectiveness of that program that EPA completely backed off of that as a mandatory requirement. It has been suggested, because Clark County has not yet obtained the CO standard and because of tremendous growth, that we need additional control measures. This program meets the requirements of EPA today but we don't know what may be necessary to meet CO attainment in the future.

Michael Naylor, Director of the Air Pollution Control Division for the Clark County Health District asked what the effective date would be if Petition 98001 is adopted today.

Jean Mischel, Deputy District Attorney, stated under NRS 233B the effective date would be upon filing with the Secretary of State's office unless a date is specified in the regulation.

David Cowperthwaite, Executive Secretary, explained when the Commission adopts a petition the transmittal document is prepared and delivered to the LCB. LCB has 35 days to review the document and file it with the Secretary of State. Under that timeline, Petition 98001 would become effective sometime in May.

Mr. Naylor reiterated that Clark County Health District supports the proposed changes, namely that the minimum waiver dollars be changed to \$450, no self-repairs, and repairs that are done for a waiver would need to be performed by authorized stations and we understand that language would be amended for Washoe County. Mr. Naylor continued, Clark County has concerns with the current program. Relatively few vehicles are getting waivers, only 1,000 in 1997, which implies all the other vehicles are passing the test. In 1997 Clark & Washoe County performed about 700,000 smog checks so 1 out of 700 vehicles has received a waiver. Theoretically, that means 1 vehicle out of 700 is dirty, the other 699 are clean. Several studies have shown that 70 vehicles out of 700 (10%) are failing the test by more than double the allowed amount. Called gross polluters, those vehicles account for 10% of the vehicles on the road and for over 50% of the total emissions. The purpose of this inspection program is to make certain the gross polluters get cleaned up but apparently the stations, or the motorist (or both) are cheating.

Clark County believes the Department of Motor Vehicles (DMV) and the Division of Environmental Protection

(DEP), under Commission oversight, need to implement additional measures, such as stricter oversight and enforcement of authorized stations and the focus should be on those stations that have a low failure rate with the pre-1985 model vehicles that should be failing at a rate of 20%-30%. To reduce cheating and evading the smog checks there needs to be routine use of remote sensing, which DMV is trying to bring on line, and there needs to be an on-going way of auditing the inspection program. Inspections can be put on line to DMV, like putting them on the Internet, through the Nevada Emissions Testing System. The existing soft-ware problems with the smog analyzers, to put them into a computer system, are being worked out and it will soon be possible for DMV to actually track inspections as they occur. Mechanics need to be thoroughly trained and certified to perform all the repairs. That would require a regulation by DMV. We need to make certain we are getting honest inspections and repairs.

AC Turnipseed asked how the computer identification of a vehicle undergoing inspection worked.

Mr. Naylor explained tracking of all inspections is through the vehicle identification number (VIN).

Commissioner Jones recognized the other areas just addressed are part of enforcement, not regulatory, and asked if the Commission should move forward to try to get enforcement.

Mr. Naylor agreed the issues are enforcement related and would require regulations from the DMV, not the SEC. Clark County's current program called "test and repair" allows a station to do both testing and repair. EPA says that is only half as good as "test only" where you separate testing and repair. If enforcement does not get better and we can't be assured of complete honesty in the test, Clark County will eventually come back to the SEC to request the "test only" program for certain model years.

Clete Kus, Clark County Department of Comprehensive Planning, supported the proposed amendments to NAC 445B.590 to increase the waiver amount to \$450. A resolution and recommendations, formally adopted by our board on January 6, 1998, were developed by the Clean Air Task Force II and Clark County's Air Quality Planning Committee and copies of these documents are in your information packet.

Mr. Kus explained Clark County continues to have CO air quality problems. EPA finalized rulemaking last fall which resulted in the Las Vegas Valley being redesignated to serious non-attainment status so we will require additional control measures, focusing on the I/M Program. As part of the planning process we have begun developing a new Air Quality Plan for the Las Vegas Valley with respect to CO air pollutants and we are well on our way to identifying additional control measures. Preliminary information received from our consultants indicates additional improvements to the State's I/M Program will provide substantial emission reduction and those improvements are more cost effective than other available alternatives.

Commissioner Johnson asked Mr. Kus if he felt removing the exemption, or exclusion on repairs on the catalytic converter would cause Clark County any difficulty.

Mr. Kus admitted although leaded gas was phased out years ago, in terms of the magnitude of the problem at present he could neither support removing or keeping that language and recommended additional research be conducted. Clark County is proceeding with a voluntary vehicle repair program designed to utilize remote sensing technology to identify high-emitting vehicles. A part of that program is to obtain data of the types of emission related problems or repairs that are necessary along with associated costs and Clark County will provide the Commission with the results of the study.

Commissioner Jones asked who would move forward to DMV with the concerns that there are 10 times more failures appearing.

Mr. Kus explained the Department of Comprehensive Planning through our office is the designated Air Quality Planning Agency. We work closely with Michael Naylor and Health District staff who are in the monitoring end and the regulatory agency per NRS so it will be a collaborative effort to bring forth recommended changes for the purpose of controlling air quality in the Las Vegas Valley. The correspondence in your packet was also directed to the Director of the DMV&PS, Donald Denison.

AC Turnipseed noted leaded gasoline is no longer available so if a pre-1985 vehicle either never had, or had removed, a catalytic converter would there be an advantage to not replacing the catalytic converter and spending the \$450 on some other item.

Michael Naylor acknowledged different situations with the catalytic converter should be considered. A vehicle may have 100,000 miles on the odometer, the catalytic converter is worn out and inefficient and under that scenario it would probably make sense to include that with the \$450. But if the owner removed the catalytic converter, clear cut tampering, and then replaced it that cost should not be part of the waiver. It is a complicated issue, research is needed and it is a matter for another public hearing.

AC Turnipseed asked if the vehicles that would fail, causing a \$450 expenditure to obtain a waiver, are failing the cut-points.

Michael Naylor explained the estimate is 10% of the vehicles on the road are failing the cut-points by about 2½ times - not marginal cases at all.

Jack Greco, Chairman of the Nevada Retailers and Garage Owners Association, expressed full support of the amendment to NAC 445B.590 by the Clark County membership. He indicated he could not speak for Steve Yarborough nor the members in the north who may have issues with the softening of the self-repairs in the amendment for Washoe County.

Mr. Greco explained DMV's goal is to have their inspector sit across the street from an inspection station and utilize a lap-top to monitor a smog test being performed and we have always supported using remote sensing to help identify the gross polluters. If you allow the exclusion for the catalytic converter, as far as tampering is concerned, you might conflict with the tampering inspection that is done on the test. People remove catalytic converters, not just because leaded gasoline is unavailable but to reduce back-pressure and to increase horsepower. Some people disable the air injection portion of a 3-way catalytic converter because they change the engine and the new one may not conform to the air injection system. If I came to you for a waiver I could put on a catalytic converter, get a free ride for another year, but I have not brought it up to the performance standard of that year vehicle so perhaps that converter should be excluded. The Legislature kept it in because they felt that tampering should not be rewarded by a waiver.

Commissioner Johnson noted separate check-offs from the inspection form occur at the inspection site. Rather than simply failing the test you could have conceivably removed your catalytic converter, passed the emissions portion of the test and still fail the inspection because you have tampered with the vehicle.

Mr. Greco agreed. If they had removed the converter they could feasibly pay to replace the converter or reactivate their air pump, hit that \$450 figure and still have a car that is a gross polluter.

Commissioner Iverson suggested giving the NDEP the opportunity to look at those different alternatives to present to the Commission at another hearing.

Commissioner Jones asked Mr. Greco for his position regarding separation of testing and repair for better compliance.

Mr. Greco explained the Association is in favor of having both entities and a choice for the consumer. Abusers of the program can be found everywhere - In New York, 20 or 30 centralized testers were indicted for preparing false documents - we are in favor of developing a very strong program that is aimed at finding and removing those that abuse the program.

AC Turnipseed requested that the 2-page letter from Yvonne Atkinson, Chair, Clark County Board of Commissioners and their 1-page document recommending improvements to strengthen the states motor vehicle I/M program be entered into the record as Exhibit 3.

Commissioner Mark Doppe **made a motion to adopt Petition 98001 as amended with the second page** and agreed more information is needed on the issue of catalytic converters.

Commissioner Johnson second the motion.

The motion carried.

AC Turnipseed moved to **Petition 98002 (LCB File No. R-035-98)**, a proposed permanent amendment to NAC 444.570 to 444.7499, solid waste disposal by adding new provisions relating to financial assurance for municipal solid waste landfills. The regulation establishes a local government financial test and criteria for guarantees. The regulation also establishes a corporate financial test and criteria for financial guarantees for landfill owners and operators.

Les Gould, Supervisor of the Solid Waste Branch with the NDEP, reported workshops on the proposed changes were held in February in Carson City and Las Vegas. New state and federal solid waste municipal landfill regulations require that owners provide financial assurance, By April 9, 1998. On November 27, 1996, the U.S. EPA promulgated the final rule which establishes self tests whereby local government owners and operators can demonstrate financial assurance without going through a third party and also allows the local government to guarantee, through the self test procedure, the costs for a landfill under different ownership. EPA proposed a similar self test guarantee rule for corporate owners of landfills on October 12, 1994.

Mr. Gould explained EPA has not issued the final corporate test rule and will probably not promulgate it until April 8, 1998, (the day before the regulations are to go into effect). We don't expect major changes but at this point we would like to proceed with the adoption of the local government self-test rule which already exists in Federal Regulations and bring the final corporate test rule back to Commission at the next hearing.

Mr. Gould referred to Petition 98002, the copy distributed today, prepared by LCB in final form yesterday. Sections 4, 12, 13, 14, 15 and 16, deal with the corporate test, and asked the Commission to exclude those sections from Petition 98002.

Commissioner Iverson questioned if the Commission could act without reviewing Petition 98002 line-by-line.

Commissioner Jones suggested tabling Petition 98002 until EPA finalizes the rule. If the local government portion does not need approval now we may miss important parts creating future problems.

Les Gould explained there is a reason. There are operators in the state who are planning on using both of these mechanisms. Right now we don't have legal authority for allowing those mechanisms directly but we do have the authority to approve alternative mechanisms under the regulations for financial assurance demonstration. We feel that both of these mechanisms do meet the alternative requirements for financial assurance mechanisms and we can approve them in that manner. We would inform people that these are the regulations as we expect them to be adopted and we would plan on enforcing these regulations after they are adopted. We would check on people who are planning to use these and verify that they meet the minimum qualifications as outlined in the proposed regulations so that they would be able to use them once they became effective. Operators have to have this package together by April 8, this year.

Commissioner Johnson asked if meeting the April 8 federal deadline was burdensome, could not corporations be made aware that we had a scheduled, properly noticed, hearing and we could not meet the April 8 deadline. If we inform the federal government that we did not consider this when it was placed before us does that perhaps obviate your excuse.

Mr. Gould explained the Region IX office is aware of the situation. They basically would also leave it up to us to make the determination as to whether or not these mechanisms meet the alternative criteria under our regulations. The Bureau would prefer to have the local government regulations adopted because those are not going to change.

Commissioner Jones asked if a fairness issue would result if we adopt this for local government, they can move forward, but the private sector can't because they have to wait.

Les Gould agreed that is a possibility. One private operator realized that such a self-help procedure does not exist for them.

Commissioner Doppe commented that he carefully reviews the information packet when he receives it. Information disseminated the morning of the hearing becomes difficult to review and understand and even more so then, when that information has to be further dissected and the Commission cannot do a good job evaluating legal documents before us.

Commissioner Doppe made a motion to table Petition 98002, particularly since you have the ability to work around this for the next couple of months.

Commissioner Griswold seconded the motion.

The motion carried.

AC Turnipseed moved to **Petition 98003 (LCB File No. R-034-98)**, proposed to permanently amend NAC 444.570 to 444.7499 by adding new provisions relating to solid waste public storage bin facilities and transfer stations. The regulations establish a process for application for approval criteria for transfer stations including the transfer design report, operating plan, design standards, and operating standards. Standards for public storage bins are established. NAC 444.666 is proposed to be amended to remove the provision requiring all-weather roads for approach and exit to transfer stations. NAC 444.628 is proposed to be amended to establish alternative frequencies for monitoring at Class II landfill sites. NAC 444.688 is proposed to be amended to define "operating day" for determining the necessary frequency and criteria for covering landfill sites. NAC 444.7175 is proposed to be amended to provide for alternative requirements for infiltration barriers at Class II sites. NAC 444.747 is proposed to be amended to provide record keeping criteria for Class III landfill sites.

AC Turnipseed noted we are reviewing the petition handed to us today, not the one that was a part of our information packet.

DAG Jean Mischel explained for the record the language in the Commissioner's packet was submitted by the Division to the Legislative Counsel Bureau (LCB). The document disseminated today is LCB's changes and should not represent any substantive language change.

Administrator Lew Dodgion requested David Cowperthwaite to explain the procedure to the Commission.

Executive Secretary Cowperthwaite explained when a petition is received in the SEC office:

- 1) He immediately delivers it to LCB;
- 2) LCB has 30 days to draft it into regulatory language; so I allow 45 to 60 days to place it on a hearing docket.

The footer on Petition 98003 traces the history of this document. It was received in the SEC office on February 6, 1998, and immediately delivered to LCB but LCB did not return their drafted regulatory language until March 23, 1998.

There are things out of our control and we may have to be change the procedure for the Division to petition the Commission from a 45-60 day to a 90 day clock. We agree you need the LCB drafted language in a timely manner to enable you to make a decision.

Commissioner Iverson empathized with Mr. Cowperthwaite because his Division also works with regulations, is aware of the process and realizes there is no other way to perform this procedure.

Commission Jones asked if LCB is made aware of the hearing date and the public notice posting requirements and if they are aware, shouldn't they be held accountable?

AC Turnipseed explained LCB is not accountable to anybody.

Commissioner Doppe recognized that staff does a good job, even contending with these obstacles, that he has no problem receiving a draft that is substantially the same form as the eventual LCB language but he does have a problem when there are no similarities, as in Petition 98002.

Les Gould reviewed Petition 98003 distributed today.

Nevada solid waste regulations currently require only that:

- 1) Transfer station facilities and operating methods be approved in advance by the solid waste management authority;
- 2) That they be aesthetically compatible with their environment; and
- 3) That they be served by all-weather roads.

As Nevada's solid waste management infrastructure becomes regionalized in response to new landfill regulations, more solid waste is being handled at transfer stations and smaller storage bin facilities. Existing regulations do not establish specific standards or give guidance to the solid waste management authorities on what standards are appropriate. The lack of such standards could result in a corresponding lack of design and operating consistency among facilities under different solid waste management area jurisdictions and could result in the approval of facilities that do not provide for adequate protection of the public health and the environment. Petition 98003 proposes to remedy this deficiency, includes detailed standards for transfer stations, and distinguishes storage bin facilities to which minimum standards to notification, design, and operation would apply.

Section 1 - is introductory.

Section 2 - creates a definition for "public storage bin facility" which is established to distinguish that kind of facility from a transfer station which is what the bulk of these regulations are being developed for. A "public storage bin facility" is generally a rural location which accepts small quantities of waste from the public in containers and is later transported to a disposal facility. The definition for transfer station is farther down but I will just mention transfer station is generally more encompassing in what it does, usually it is a large facility where waste is brought and dropped and pushed into larger transfer vehicles perhaps for a few days then there is some minor sorting going on and then taken to a disposal facility. It is mainly a difference of volume so "public storage bin facility" is generally a small storage facility in a rural area.

Section 3 - Establishes application requirements for approval of a transfer station, specifically it requires that a report of design be submitted and that there be an operating plan submitted.

Section 4 - Details what must be submitted in the report of design as part of the application. Basically, it must be prepared under the direction of a professional engineer, it must have run-on and run-off control to control liquid that comes in contact with waste, it must identify the service area for the facility and the waste types that will be handled.

Section 5 - Details the information that must be submitted with an operating plan for a transfer station. It discusses, among other things, access control, waste screening requirements and waste storage.

Section 6 - The design and construction standards that would apply to these transfer stations.

Section 7 - The operating standards that must apply to transfer stations.

Section 8 - Introduces storage bin facility, provides for a procedure for notification of the establishment of the storage bin facility, and establishes some brief minimal standards for the operation and design of that facility.

Section 9 - Refers to the terms in the definitions of this proposed regulation.

Section 10 - Changes the definition of transfer station to distinguish it from storage bin facility.

Section 11 - Is a modification of the existing regulation which establishes the requirements for prior approval for a transfer station.

AC Turnipseed asked if Section 6(c) on page 4, "appurtenances to control litter", includes wind fences, etc.

Mr. Gould agreed it could be wind fences, wind breaks, or screens.

Commissioner Johnson asked Mr. Gould if he had compared LCB's language to the original proposal.

Mr. Gould ascertained he had carefully reviewed the language and verified that the meanings were not changed.

Commissioner Griswold asked if a fee was required upon presentation of the application and is there an estimate of the cost for the preparation of the operational plan and design to the entity making the application.

Mr. Gould explained there is no fee and generally these documents would have to be prepared by an engineering firm or by a professional consultant. Fortunately, there are many different templates or standard transfer station designs so most municipalities review and take advantage of that previous development work when developing their transfer station.

Commissioner Griswold asked how many transfer stations currently exist.

Mr. Gould replied 3 in Washoe County, 3 in Clark County and a couple of temporary transfer stations authorized - since the landfills closed - in other areas of the state. Part of the impetus for this was to provide guidance as to what these facilities would need to do in order to upgrade to meet modern standards for transferring trash.

Commissioner Johnson asked if there was a provision to assist the local rural communities, where local landfills have closed, in preparing plans for a transfer station.

Mr. Gould explained technical assistance is provided. We feel our role would be to inform them of regulatory requirements and we are trying to be specific about what would be required for a transfer station design and operation. We have visited all the rural communities and talked with them regarding their infrastructure, waste management, transfer stations or storage facilities.

Commissioner Coyner asked Mr. Gould to typify the public storage bin facility and the owner - would that be rural counties, campgrounds, etc.

Mr. Gould explained that would be rural local governments. Several are operating in Lincoln County now because their landfills closed and they had to put in something to replace it. They established specific designated areas away from the public that are usually accessible by graded, graveled roads and several containers are available there for the public to use. We have to make sure these sites are managed properly since they don't have an attendant.

AC Turnipseed asked if that facility was different than multiple bins like those seen at a restaurant or Albertsons.

Mr. Gould explained based on description of the requirements they would have to have signs declaring what type waste would be accepted and it would have to be advertised as being available for the public for any municipal waste management.

Commissioner Coyner asked if federal campgrounds would be considered as part of this.

Mr. Gould explained this proposal does not intend to bring in federal, state, or public campgrounds. It is basically intended for residential and commercial disposal of solid waste for a community.

Commissioner Coyner wondered if the 100 yards maximum capacity and 1 week removal time-line was acceptable for a public bin facility.

Mr. Gould explained the proposed language was "less than 100 cubic yards". At one workshop one operator expressed concern the regulation would exclude them because they used 50 yard containers at their facility so we

changed the language to read "not more than". Other areas of the regulations reference storage, "putrescible solid wastes are not to be stored for more than 1 week".

Commissioner Coyner asked who would be responsible for hazardous or some other non-allowable waste placed in storage bins.

Mr. Gould explained if it could not be determined who brought the material to the storage bin the owner or operator would be responsible. Waste being transferred to a solid waste disposal facility must be screened by the landfill and the landfill is required to have a program in place to detect and remove hazardous waste.

Commissioner Griswold asked Mr. Gould to explain the minimum attendant requirement for a remote arid transfer station.

Mr. Gould explained the regulations intend to establish that one attendant should be on site, access must be controlled and the facility fenced and the gate locked when the attendant is not there. If the requirement that an attendant be present if it is going to be open full-time was not included in the proposed transfer station's operating plan we would deny the application. Section 5, the operating plan of the transfer station, lists attendant requirements during operating hours.

Commissioner Griswold asked if a transfer station could have limited hours.

Mr. Gould agreed they could be open only one or two days a week. Some landfills and some transfer stations have located a bin outside of the gate for after hours disposal.

Commissioner Griswold notified the SEC that Elko County has many rural communities. Several will generate a good amount of solid waste so this issue is going to be painful to work through.

Mr. Gould recognized Elko County's progression in meeting landfill requirements. They have closed old landfills, set up alternative facilities and, based on inspections, they are meeting these requirements for storage bin facilities.

AC Turnipseed called upon Mary Shope Wiles.

Mary Shope Wiles, a Boulder City resident, thanked the Bureau for holding workshops enabling public input and stated her concern is mostly of a public standing issue - i.e, when Boulder City applied for a regional Class I landfill in the Eldorado Valley many issues came to light but the public was left out of many administrative issues.

The regulations presented today do not address future applications and solid waste management issues.

I appreciate that Section 8, number 3, tightens the time parameter to one week.

Section 12, number 4 addresses public review and comment. However, public hearings are held, you hear our concerns and comments, a decision is made and the public concerns are not addressed. In Boulder City's case, the story keeps changing. You permitted a certain application but it has changed. When does it come back to the public for reconsideration, for public comment and to give public standing?

Section 13 talks about an alternative daily cover and how that will be approved by the solid waste management authority. What if it has been approved but there is not compliance, and what if it changes?

The public should be allowed to appear in front of the authority to say "excuse me, you are really not doing what your application says" without the reply being "well Mary, the city agrees, the operator agrees, sorry Mary - the public has no standing, go to the District Court"! And that is not addressed in the regulations as they are written.

Section 15 also addresses public hearings and public comment and my concern of public standing. These regulations look good on paper but when the public goes to the authority with a concern and is not heard there needs to be that safeguard. We see storage bins being placed on empty lots throughout the Vegas Valley, in Boulder City, and out in the desert. The regulations need to address that so that we can bring them forth without causing a nightmare for Dave Emme's bureau and that of enforcement.

AC Turnipseed noted the language Ms. Wiles referenced in Section 13 is not up for revision today and cannot be changed by the Commission but the Commission understands those concerns, that there needs to be more public involvement at different levels.

Commissioner Jones asked Ms. Wiles if she had ever lodged a complaint about operations with DEP that was not responded to?

Ms. Wiles explained DEP has listened to her concerns regarding Boulder City's application but they divert it back to the Solid Waste Management Authority, the Clark County Health District. They have been cooperative but I get that song-and-dance - "Mary, you are the public - you don't really have true standing here - you have concerns, we understand that and we will do what we can do in the way of the regulations but you are not the applicant - you are not going to be one of the bidders or the operator of the landfill". We have concerns and if they are not addressed the answers have been "take it to the District Court" - like restraining orders or injunctions given the C.F.R. authority. So my answer to your question is "yes, cooperative" but possibly "no" in the way of public standing.

AC Turnipseed called upon John Moran from Silver State Disposal.

John Moran, Jr. asked if Mr. Bob Groesbeck, General Counsel for Silver State Disposal could make a brief comment.

Bob Groesbeck explained Silver State had both practical concerns and legal issues pertinent to the proposed changes. At the February 4 workshop the consensus was "everybody disagreed" and it was our understanding when we left that meeting that, because of the confusion and a fairly intense debate, follow-up workshops would be held. This is not a simple issue and has very serious ramifications for our company, the largest transfer station in the state. There is a big distinction between recycling operation and transfer station. We came to no consensus on February 4 but we are prepared to make comments for the record. However, we would like to see this continued. This is an issue that the industry has every right to participate in because it affects us and other competitors here in the valley. We don't believe we have had an opportunity to provide sufficient input, we don't understand the sense of urgency, and we ask that this matter be continued until after follow-up workshops so we can provide input.

AC Turnipseed asked for specific concerns with the proposed regulations.

Bob Groesbeck explained he would defer to Mr. Moran to address Title IX, the Clark County Code and NRS. Again, recycling centers or operations are very different and distinct from transfer stations, as they are currently permitted to operate. Clark County Health District personnel, here today, were represented at the February 4 workshop and they will confirm there are some disagreements and misunderstanding.

Commissioner Doppe asked Mr. Gould if the public and industry had an opportunity to comment on this proposal.

Mr. Gould disclosed Silver State representatives present on February 4 took the position that there needed to be regulations to address other kinds of facilities and that this regulation, as proposed, did not address recycling or special facilities where they sort out some waste for recycle or reuse and the rest goes to the landfill. We do not have regulations now that adequately address those different scenarios. We agreed that those things need to be addressed and we discussed scheduling workshops for this spring to address the issues of recycling centers and different kinds of solid waste processing facilities that are not just transfer stations. Those workshops have not yet been scheduled but we do intend to schedule workshops. We are trying to incrementally clarify the requirements for different types of facilities and the type of facility we are working on now is for the traditional transfer station that accepts municipal waste and hauls it to a landfill. We intend to address facilities that may be taking only recyclable material separated at the source and facilities that only take a small percentage of the waste stream out, delivering the rest to the landfill. There are questions about definitions for solid waste management and types of standards that should apply for special waste handling facilities and the public will be given the opportunity to ask questions and have their comments heard.

Commissioner Jones asked if proposing the regulations in stages would cause conflict.

Mr. Gould explained the division has the ability and the requirement, as the solid waste management authority, to approve basically any type of solid waste management facility. There is a regulation that addresses "other solid waste management methods" that reads "any facility which proposes to operate and manage solid waste which does not fall into these other categories must apply and get approval to do so from the division". We want standards now for transfer stations and probably other categories will need to be developed in the future.

Commissioner Jones asked if the division would have flexibility under the rules as proposed, to deal with some of these other issues.

Mr. Gould agreed it would give flexibility to the solid waste management authority in terms of the application of the standards.

Commissioner Johnson noted the description of a public storage bin facility in Section 2 is fairly inclusive - his interpretation is that a public storage bin facility means a facility that provides one or more portable waste containers. I understand the conflict between the major operator and the recyclers, an on-going argument and perhaps an unsolvable problem, because I served in the legislature when we passed the original salvage and recycling legislation. I see this as fairly inclusive and not just simply incremental.

Mr. Gould explained the intention of the proposed regulations is to provide a way, especially for the rural communities, to have a site they can inexpensively operate which will accommodate small volumes of waste. This is not intended to address those situations where there may be a commercial enterprise establishing a waste collection facility. If there is confusion over whether or not that issue is too broad then perhaps it does need some further definition to limit it.

AC Turnipseed recognized that Mr. Moran is not in the business of public storage bin facilities, he is a major solid waste handler and called for Mr. Moran's comments.

John Moran, Jr., appearing on behalf of Silver State Disposal, agreed with Mr. Groesbeck's initial comment that there is absolutely no reason why this has to be rushed to judgement. The questions directed to Mr. Gould, just

asked by the Commission created additional thoughts in my mind about the proposed legislation that is being expedited and the questions evidence your duty under state law to be concerned with the environment and laws that protect that environment. Your questions also evidence confusion over what is the intent here of:

1) running this through without ability of the major handler of solid waste in the community having input into it; and

2) not allowing us time to address some of that legislation and some changes which we think are woefully deficient. We must keep in mind here, and I think Mr. Coyner was the one who brought it up and this gentleman confirmed it, that the legislation that is before you here today is for a transfer station. Well, it goes without saying that Silver State Disposal is the only permitted (in Southern Nevada, Clark County) transfer station operator. We are the only one that is authorized by law to be a transfer station. We have three - Shelbourne, Black Mountain and Cheyenne - and we are the only ones, as the exclusive franchisee in Clark County, authorized and allowed to have a transfer station. Now I don't think our operation rises to the level of some of the things that we have seen in this valley that should be concerns of this Commission and should be subject to some expedited legislation but to have legislation that is only directed to the only industry here that is a transfer station, lawful - legal - franchised, does not make any sense and I think puts the cart before the horse as to what we are trying to prevent here.

And what are we trying to prevent? Well, first of all, what we have to look at is the language that we have here, it is woefully - and I must say I appreciate the gentleman who took time to have a couple of workshops and take input and put this together because his job is not easy - this is not an easy body of law, this is not an easy area, this is not an easy industry and there is a complex issue - but the legislation is woefully, woefully, deficient in a lot of respects. If you will look at the document, and I am not going to go through the document exchanges and things, the only person this legislation touches on is us. There is nobody else. Now if you look at the legislation beyond that you look at getting into language in Section 7 about "salvaged for reuse or recycling according to the requirements", and then the next one gives you a little bit of heartburn, paragraph 4 which is salvage of solid waste for reuse for recycling is prohibited and then they go on "unless approved by the solid waste management authority and supervised by the operator". What type of legislation are we going to enact that is going to be supervised by the operator? I am going to show you what happens in the State of Nevada, Clark County more particularly where these photos were taken, when you have supervision by the operator. I want to start at the end and I would like each of you to look at these photos because you will see these photos were taken March 18th of this year - just a few days ago - and you are going to see, for example in the very first photograph, you are going to see a photograph that depicts this kind of a scenario in Clark County and you are going to see this is the recycle center. Now can anyone see any recycling going on in here? I can't. And the reason I can't is because there is no recycling going on there. What we have here is an open air dump where this is being dumped and trucks are coming along and picking it up. This is what we should be talking about. Now you are going to see other photos - I am going to pass these along -and I am not naming who these photos are taken of and what companies but these are recycling and salvage yards and they make you sick when you see what is going on out here. Here is one that is grinding up the stuff and putting it into the soil. While you are looking at these I will continue and I think you will come to the same conclusion that to prematurely jump to pass the legislation here today on a company that is the only one affected by it, that doesn't have this kind of an operation, is putting the cart before the horse and certainly should not be done.

DAG Mischel interrupted, I can reserve my comments regarding these photos for later but I do have some comments regarding the operation that is being referred to here, the subject of a hearing before the Commission. Mr. Moran is comparing apples and oranges. That is a salvage yard, it was determined to be a salvage yard by this Commission and it was held to the standards of a salvage yard.

John Moran: I don't think you have seen all the photographs. That is not just a salvage yard - there are a lot of things going on there and I want these to be made part of my presentation and this is the time for public comment and I

believe that is what I would like to do.

AC Turnipseed agreed it is the time for public comment but you were asked to specifically tell me what part of the regulation you didn't like. If there are several regulations that deal with recycling operators versus solid waste handlers then perhaps we need to be dealing with a different regulation from your comment.

John Moran: And in that regard Mr. Turnipseed I don't like any of the regulation because none of the regulation deals with what the problems are and the legislation that I don't particularly like, that only affects one person and that is us - it also mentions and as I was going through my presentation paragraph 4 which deals with again the supervision of the operator. That particular language is not only weak but is ridiculous. If you look at Section 7, when it talks about salvage for reuse or recycling within the requirements of NAC 444.674 you have photographs here that depict what happens when you just put in a regulation within the requirement of recycle and salvage you have photographs there of what happens when you have that kind of language that is vague, ambiguous, broad, and basically doesn't do anything but create these kind of situations which is what your responsibilities in the State of Nevada are - to prevent this kind of operation that obviously are environmentally unsound. Now, if I can continue on, and I will get to the parts also in addition that I think need to be done, and it is unfortunate that I have to rave in an open meeting here today because I would have preferred to have this continued, but in any event I think I might have answered part of your questions and I hope I can answer the rest in my presentation.

AC Turnipseed asked Mr. Moran to proceed.

John Moran: Thank you. Now the big question here is again, what is a transfer station? And I think that one of the board members - Commissioner - had brought that up himself and the definition that we have here, if you will look at it, just doesn't meet the litmus test. Can anybody here on this Commission tell me by that definition what in the world a transfer station is versus a recycling center, versus a salvage yard, versus an open-air landfill? It says in your definition that materials are going to be transferred by vehicle and then ultimately disposed of. Well we don't need a proliferation in the community of transfer stations that have no criteria, that have no definition, sprouting up everywhere. My concern also is that on October 24, 1997, I corresponded - excuse me - Steve Kailish, the President of Silver State, corresponded with Mr. Vic Skaar, the Environmental Health Supervisor for Clark County, and he referenced there a request to meet and talk about pending transfer station permits, which is the topic we are on today. Mr. Kailish, on behalf of the company I represent, was concerned that there was pending transfer station permits for people who basically were holders of recycling permits and wished to go from recycling and jump into the transfer so they didn't even have to allegedly recycle - some of these photos show there is no recycling going on, they are just merely dump stations - and Mr. Kailish's concern and some of mine also, is that it violates our franchise agreement and also that it runs afoul of a cross section of the Clark County Code. If you look take into consideration the letter of November 17th to Mr. Skaar it was pointed out to him the difference between a recycler and a disposal site posing as a recycler. These are some of the problems that this astute Commission has to address because a lot of that goes on and this legislation does not address that. It does not address these individuals and businesses that pose as a recycler, do no recycling, and then end up to be something else - a transfer station? An unlawful disposal site where materials are buried?

If you will look at Chapter 9 of the Clark County Code, and why I think this legislation runs afoul of the Clark County Code as well, and I don't know if anybody took the Clark County Code where the only licensed transfer station operator - us - and the only franchisee - us - is bound by that code, and held it up to see how it stacks up against the ordinance that is proposed here. And I think that should have been done, and if it was, and I can't believe it was because it does not reflect it anywhere in here. The Clark County Code starts out with a declaration of policy. Wouldn't that be nice? And it says that it is "declared to be a policy of the county to regulate the collection and

disposal of solid waste in a manner consistent with Nevada Revised Statutes" - and also "so that it will protect the public health and welfare, prevent water or air pollution, prevent the spread of disease and the creation of nuisances, conserve natural resources, enhance the beauty and quality of the environment".

When you look at some of those photographs you have to draw a conclusion that maybe some of those lofty ideas and goals aren't being met and that is why it is incumbent that the responsibility not only falls on the shoulders of the county but that it falls on the shoulders of the Commission to promulgate laws that will somehow try to do those things because those are very similar to what I believe would be the goals of the State of Nevada. This regulation does not address that for us and I think it should. If we go on and look at the code and differentiate, it gives you definitions. It tells you who is subject to it and who is the solid waste franchisee and who can haul and dispose of and it provides for penalties and sets out it is unlawful for other people, other than the franchisee, except in certain and limited exceptions, to transport and haul and to deposit, dispose of, and that it is unlawful to dump and bury unless you are a franchisee or at a permitted landfill. What we have to keep in mind is this legislation that is proposed to you Commissioners today is only directed to one person - us. We are the franchisee and we have the only county authorized landfill which is certainly pointed out in Chapter 19 of that County Code that I just mentioned and this solid waste stream cannot be diverted. It can't be placed on site somewhere and held. It can't be placed on site somewhere and buried. It can't be placed on site and then shipped out of town on a railroad car - it can only, as part of the solid waste stream, be deposited if it is not a true recyclable, at the county authorized landfill, which again is us. We pay the county revenues under our franchise agreement for that exclusivity and it helps us run Apex in compliance with federal regulations so we don't have to give our rate-payers large fees. If this process that we are all involved in, again I say a very important process affecting many things, is rushed to judgement and we don't come up with the right laws to protect everybody - industry, the private sector, the citizen, the community - we run the risk of diverting the solid waste stream, having willy-nilly operations throughout, no definitions of what is a transfer station, who is a recycler, who isn't, and we create the situation here depicted in these photographs. That can all be controlled through a process where we get feed-back from the public - like the lady that just spoke before me mentioned, where we get feed-back from industry, the recycling people and all the people in waste management businesses and we take our time and we look at this ordinance, this law, and we make sure that the shoe fits and it does what we want. I've gone over some of the things that I think are important - health and safety concerns are important, cost at cleanup is important. If in fact we allow a transfer station posing as something else, or posing as a transfer station or whatever, and they don't do it right because the necessary enforcement arm isn't there and we leave it up to the supervision of the operator, well I will tell you if that happens the public suffers, the health suffers, the environment suffers and that is why this ordinance has got to have some teeth and it has to be far more broad and should be considered across the board, not just implementing it so that it affects only people that have the transfer station but so that it handles the solid waste stream, and the statute doesn't do that.

In conclusion, I wanted to point out a couple of things, and again it is that the regulations should address everybody, salvage yards, compost facilities, recyclers, and don't divert the solid waste stream by not creating that new class of individuals who are now transfer stations with no guidelines as to who they may be, in violation with the franchise agreement with the county that we have exclusively and in violation of the county codes. We should have some regulations that put some teeth in it. Don't leave it up to the supervision of the operator, put some teeth in it so that you can make people do things. If you are going to create things and regulate this, you have the ability to enforce, to impose criteria and guidelines as to the definitions of transfer stations, recyclers - things like that are important and you can't lump it together. A good question by Commissioner Griswold was shouldn't there be a fee? Well of course there should be a fee. If I file a gaming application for a client the first thing I get asked for is to deposit an investigative fee. If I go and file a cable company application I am going to get asked for a cable fee. If I file any kind of a privilege license, I am going to get asked for a fee. Those privileges are important and you want to make sure that those applicants are duly investigated, are quality people, are people that have no bad track record and that costs money for investigators to do so we put that burden of those fees on the applicant. I could tell you that those

privilege industries are no more or less important than what we have here today in this. Our environment is very important and the people that come before you and are subjected to your laws are people that should be investigated, are people that are coming in to do business here in our environment who have the chance to not do things properly. They can contaminate our environment because nobody is looking - they do it at night -trucks come in and out at night - they dump it over here in the corner and throw some dirt on it or maybe, as we read in the newspaper, pour some concrete over it so nobody can find it. O.K.? Well, this ordinance has to have fees that allow investigation so that the State of Nevada doesn't have to pay to investigate these people but because there are no resources to do that an investigation isn't done. We investigate! We want to make sure that people handling this - this is dangerous stuff, bio-med stuff can be dangerous - it has diseases. We know that our water tables are important to us, we know that there are different types of chemicals that require lined disposable facilities. Well, those kind of people that are charged with operating businesses in that environment should be people that we can count on and that is why these fees are important.

Those are my comments. I hope that you don't act on this today because there is a lot of work that needs to be done. It is very, very important to the state and it is very, very important to the only person, standing before you, that represents a transfer station here today and that is Silver State. I appreciate your time. I took longer than I really wanted to but I do appreciate you bearing with me as I made my record.

AC Turnipseed explained the regulations are not directed strictly at Silver State Disposal, it is a state-wide regulation. I take it you don't have an amendment for it or you would have already provided us with that. I still have not figured out from your comments whether your problem is with this Commission or the DEP. Certainly, we are not here to enforce Chapter 9 of the Clark County Code, that authority is delegated to Clark County Health District to enforce. If your problem is with enforcement, the pictures you showed us had piles of tires, piles of trash, a proposed recycling center that was not a recycling center, you haven't told me whether that is a problem with this regulation or the enforcement of the regulation that already exists.

John Moran replied the problem is that we are dealing with an area that those pictures depict as being a very important area to the community, to the State of Nevada and to the environment and this ordinance doesn't go far enough from the state law concept to cover those different kinds of areas. To just say that somebody can be a transfer station because they have a vehicle that transports the solid waste back and forth, I don't think that really goes far enough for a state law. I don't think that a statute that does not define and enumerate some of these areas goes far enough. I am saying that a statute that doesn't have fees or criteria or things like that does not go far enough. A statute that only talks about the only person here - Silver State - a transfer station, does not go far enough and that is why we should have workshops. We shouldn't jump to pass this until the public has a chance for input, until the industry has a chance for input - and not just Silver State - the recyclers too, the people at salvage yards, all these people. This is a whole start-to-finish area that we should all look at before we just go ahead and adopt it. I don't think two workshops a piece of legislation make.

AC Turnipseed acknowledged the Commission understands your point and asked for questions from the Commission.

Commissioner Griswold asked staff if there is currently a definition of transfer station.

DAG Mischel explained it is currently in the regulations in Section 10, NAC 444.628, on page 6. The only change proposed to that definition is to change the word "bin" to "device" and to add the sentence "the term does not include public storage bin facilities" so that there is a distinction made.

John Moran exclaimed, that is exactly what I was referencing. To say that "transfer station means a solid waste processing site where solid waste is transferred from one vehicle to another vehicle or storage bin device for temporary storage until transferred to a disposal site. Some processing may be included therein" - that does not go far enough. There should be expansion of that definition so that we have a firm picture. Just like some of the people on this Commission are uncertain about who is a transfer station - what is a transfer station. If you walk and quack like a duck is it a duck or is it a salvage yard or recycling? I think this is a good first swing at the pitch but we need to have work done and there is no reason to rush and approve this until we get the input of everybody that is going to be specifically affected by it. I don't know why we would have to rush it.

AC Turnipseed asked if Silver State was in the public storage bin facility business.

John Moran explained we have remote transportation with remote convenience centers with the storage bins in them?

AC Turnipseed asked, and as far as you know those comply with the regulations, whether the old or the new regulation.

Allan Gaddy, Vice-president for Silver State Disposal, explained they do have those types of operations. We have no problem with these regulations except they do not address the recycling operations.

AC Turnipseed stated he understood that. You have said "these may be a good start" and you heard Mr. Gould explain they anticipated workshops in the near future to better define what a recycling center is, what a salvage yard is, versus a transfer station.

John Moran replied, that should not be done Mr. Chairman. I heard him say that and I think you asked him that question and he responded that he was going to do that but why do that in increments? This should be something that is looked at across the board with the participation of each of the different industries that are affected by this. It is like I said, why do you start when you have only one person involved in a transfer station operation when you have so many recyclers - you know all this is inter-related and sooner or later in the county code and sooner or later in the revised statutes just as this whole solid waste stream should be addressed in the regulations at one time so that you can say "O.K., here's the transfer station people, here's the recyclers, they are in agreement - here is the salvage yard people, have the county's input, have Mr. Ravenholt's offices input. If everybody has an opportunity to do that, and I think that the process was started in the 2 workshops. We were very surprised to see this brought back so quickly - we thought that there would be more workshops and more involvement and when it came back on Mr. Groesbeck said " I can't believe this is back on again because we were supposed to have more input into this and we still have some concerns" and that is why he asked for permission and made his presentation before mine.

Allan Gaddy asked to add just one more slight thing to that. These provisions specifically exclude the reprocessing facilities of recycling. If you would like to make the recyclers hold to the same standard, if they have the professional engineer and the design facility for recycling like a transfer station must, then that would be fine. Permit the transfer station rather than just approve a transfer station like a recycler. You have two very different standards and that is what bothers us.

AC Turnipseed thanked Silver State representatives for their comments and called for additional public comment on Petition 98003.

John Wiles, Boulder City, explained he was here to speak out in favor of a balanced and reasonable approach to these regulations. The incremental approach that you are considering today might be a mistake. In my opinion, what you would be doing then is creating a definition that you would be later amending and that could create some problems for you in enforcement. With a changing definition, as your DAG will advise you, you have to figure out exactly what's the applicable definition for any particular circumstance at any given time. So to move forward with this definition and then to later revise it I believe you would be confronted with the problem of when was the transfer station licensed or permitted, were the regulations that were in effect at that time in control or are they superseded by the new definition. I think it creates some problems for you if you are considering moving forward with this regulation and considering alternative definitions for some of the issues that have been raised today. I would suggest that you go ahead with that process, be satisfied in your own mind and be satisfied with the recommendations of your Deputy AG regarding those definitions and then you will be done with it rather than proceeding this way, having a definition that may change within a matter of months. Given the regulatory time-frame, you would be scheduling workshops, noticing those on a 15-day cycle and there would be a regulatory hearing so within another 2 or 3 months you could be looking at a different definition. You might be able to use that time to come to grips with this issue and with a more specific tailored definition based on the comments you have received today.

AC Turnipseed asked the Commission if they wanted to adopt the regulation as a first step, expecting further definition for salvage yards, recycling centers, etc. or to ask the Division to come back with the total package.

Commissioner Griswold stated she believed the proposed regulations were created to solve some problems in areas she is familiar with but in conversations in her rural area she has heard "we don't want a transfer station". I can't believe the definition, as proposed on page 6, would be a problem for anyone in Elko County so perhaps their problem rests mainly in the definition. We are trying to deal with a large spectrum that may result in severe problems without addressing separate problems.

AC Turnipseed recalled the Commission has changed various regulations with the Class I, Class II, and Class III landfills and there was a time period when if they could not meet the monitoring criteria they had to close. If they can't have a landfill areas like Jackpot or Gabbs need somewhere to dispose of their waste and either a storage bin facility or a transfer station are the only alternatives. Are these regulations necessary right now to license those kinds of facilities and then later we will deal with regulations for recycling centers and salvage yards? Mr. Moran is concerned that we are only regulating one portion of the industry, although I think it is needed because they have a franchise and they see an infringement on their franchise. Are regulations needed now for the areas that need to install a transfer station that you want to meet a certain design criteria, to be designed by a professional engineer, because their landfill has gone away?

Commissioner Griswold explained Jackpot is an example. Their problem probably cannot be satisfied with a bin and they do need a transfer station of some kind. I cannot see a problem, under the definition that we are dealing with, particularly if it can be open just certain hours during the day with an attendant during those hours. It would be servicing several hotels and a fair amount of solid waste but Jackpot is certainly not a large producer of solid waste.

Mr. Gould agreed Jackpot is an example of one area this regulation would address. Their landfill has closed, they need to shift to some method of transporting solid waste and they need criteria for transfer stations.

Commissioner Griswold continued, but they call me saying "we don't want a transfer station".

Mr. Gould stated that may be because they want a landfill deep in their hearts. Another option would be direct haul by the garbage company from Jackpot to the Elko landfill.

Commissioner Griswold exclaimed that is economically impossible.

Les Gould agreed it may be, and Jackpot might be where a transfer station is established in the not too distant future. There are other sites where we expect transfer stations to be constructed and these regulations are intended to establish standards for both facilities. The regulations were not developed with Clark County issues in mind because Clark County already has transfer stations that meet these standards.

Commissioner Griswold stated she could understand the gentleman's concern that these regulations can apply to a situation, that they aren't -

Mr. Gould interjected that the concern Mr. Moran expressed was more that they don't apply - they don't have a broad enough application. In other words, there are no standards for different types of facilities. We would like to adopt the transfer station regulations because we feel applicants in other areas of the state need guidance.

AC Turnipseed asked if the facility Mr. Moran mentioned, coming in the back door under the guise of a transfer station, is an enforcement problem for NDEP, Clark County or for this Commission.

Les Gould agreed it is an enforcement problem. A recycling center is defined in the recycling regulations, not in solid waste regulations, and can be applied to situations like this. It means they send it where source separated recyclable material are accepted and processed for market. "Source separated" means that at your house you put the plastic in one bag, the newspapers in another bag, and then the collector comes along and puts it into bigger bins, bales it, and transfers it. We don't see a problem with that issue. The problem is where there is a mixture and where there is some recycling going on and some waste disposal going on. There are regulations that say anyone who wants to process solid waste in some other manner must submit an application to the solid waste management authority for approval and that they must have approval for the design and operation of that facility. So there is a mechanism for establishing case-by-case standards on those sites and once those are in place they can be enforced. In this case we are trying to establish a single set of standards that will apply to everybody for transfer stations.

Commissioner Iverson recalled Mr. Moran indicated that these regulations were specifically aimed at one company in Clark County but we had also discussed something in Lincoln County.

Mr. Gould explained we are talking about two different types of facilities. A transfer station and a public storage bin facility. The facility in Lincoln County is a rural, small-scale outfit that accepts waste in containers. A transfer station is a larger scale waste transfer facility. Lyon County has three - one in Fernley, one near Dayton and one in Yerington and those are the kinds of transfer stations, in terms of design and operation, that we would like to see imitated on a state-wide basis and we are trying to provide a template for doing that.

Commissioner Iverson recalled Mr. Moran mentioned the operator supervising or administering the transfer station and indicated that he felt that was not a good way to enforce.

Mr. Gould explained if people come to scavenge at the transfer station the supervisor or the operator knows that he is responsible to supervise any sorting or salvaging of material. That reference is "A person shall not salvage solid waste from a transfer station unless he is authorized by the solid waste management authority, is supervised by the

operator of the station" that means that the operator is responsible for that activity, and "that it must be stored according to certain requirements".

Commissioner Doppe declared that through the 20 minutes of smoke and obscuration of Mr. Moran's testimony one of the good points that came out was the question on financial where-with-all. I am disappointed in that presentation. A panel sat through an appeal hearing 3 or 4 months ago where the laws did exactly what they were supposed to do to prevent what we determined to be a storage operation under the guise of recycling and we said "put up or shut up". We upheld the laws and I am disappointed that you used that as a basis of your argument here today.

Mr. Moran asked in what regard?

Commissioner Doppe replied passing out these photos and claiming that was the problem. That is not what we are talking about here today.

John Moran explained he passed out those photos for clarification on the record because there was a proposed ordinance that dealt with recycling and salvaging. I wanted to highlight that and put emphasis on the fact that this is the type of salvaging and recycling that is going on in this community and that the language of your own proposed ordinance mentions those type of operations illustrated. That is the reason that I put those in.

Commissioner Doppe explained that is not how he took it. In any case, the one good point Mr. Moran made was the question of financial where-with-all because we did have such an issue where somebody who is operating a de facto transfer station had to come in and clean up his mess. What exists now is we have assurances that a person applying for either a transfer station, a recycle bin or for a waste bin has the where-with-all to clean up their mess if they make one.

Mr. Gould explained that unlike the landfill regulations, there is no requirement to demonstrate financial assurance for other types of solid waste management facilities. The landfill regulations we now have were basically outlined in federal regulations and what we pretty much adopted. As an approved state we really haven't had a choice in the matter. Those regulations specifically dealt with financial assurance for solid waste disposal sites - for landfills with potential for environmental harm had to be addressed at the federal level and there had to be a financial assurance provision for when you put waste in the ground and cover it up.

Commissioner Doppe asked if because this material is not supposed to sit around any longer than 72 hours contribute to the fact that it is a small scale operation?

Mr. Gould agreed. Generally, they are operating in urban areas where the restrictions on size are very obvious, they are under public scrutiny, and there is a limitation on how long that waste can be stored there. If it is stored more than 72 hours they need to contact the Solid Waste Management Authority to say why and to determine a method of dealing with it.

AC Turnipseed observed that in either case, whether it is a public storage bin facility or a transfer station, it is just an intermediate step between collection and final disposal. A Class I, Class II, or whatever class of solid waste landfill is the ultimate disposal site and that is where the environment is likely to be harmed by wind or other factors. Transfer stations are nothing more than a place for the public to dispose of their waste, usually into a concrete vault that gets pushed into a larger truck to take to the ultimate disposal site and the waste is not there very

long - usually less than 1 day.

Commissioner Jones informed the Commission that a transfer station in Washoe County sits on a river and even in a 72 hour period of time major environmental damage could occur and there is no method of assuring it is financially covered.

Commissioner Doppe asked if there had ever been a case where the state had to clean up a transfer station because the applicant defaulted.

Mr. Gould replied he was not aware that ever happening. Generally these transfer stations are managed and operated by the companies who are disposing of the garbage and usually, such as here in Clark County, there is not a problem because they are in control from the first step to the landfill and their objective is to transport it cheaply, efficiently, and in compliance with the regulations.

AC Turnipseed asked if the Bureau could reassure the Commission that future regulations, proposed as a result of upcoming workshops, would take care of Mr. Moran's problem as it pertains to salvage yards versus recycling centers versus transfer stations.

Mr. Gould replied the intent is to do that. There are now some standards that can be applied. It is an enforcement issue as opposed to a regulatory issue but more detailed regulations would be helpful.

Commissioner Doppe observed that a definition of a public storage bin facility, basically a dumpster in an enclosed area, has been added to the existing regulations. Does anything else in this regulation ease the restrictions, ease the process, or ease the operating requirements on the transfer station?

Les Gould answered to the contrary - they are actually being strengthened and clarified. Right now the regulation says that a transfer station must be approved, it must be compatible with its environs and it must have an all-weather access road. It leaves complete latitude to the discretion of the authority as to whether or not to approve such a facility.

Commissioner Griswold reported Elko County is initiating storage bin facilities in some of the remote rural communities. Some communities are very enthusiastic and doing an extremely conscientious job but there is at least one community that is completely ignoring this. Who is the regulatory authority to enforce a storage bin facility?

Les Gould explained it is the responsibility of the Division to ensure that a public storage bin facility is operated according to these standards. Whoever owns the property is ultimately responsible for that and it would be our responsibility to enforce it in Elko County. If it is located in Clark County or Washoe County then it would be Solid Waste Management Authority there, the Health District.

Mr. Gould continued to explain Petition 98003L

Section 12 is a modification of the existing regulation concerning the monitoring of methane gas. The regulation requires quarterly monitoring but it gives the Solid Waste Management Authority, after public review and comment, the ability to approve an alternative frequency - biannually or annually for monitoring landfill gas. In deciding whether to allow such a deviation the Solid Waste Management Authority is to consider the unique characteristics of small communities, climatic, hydrogeologic conditions and whether it would have an adverse affect on human health or the environment. Section 12 was not initiated by the Division but is in response to federal standards that

were proposed to add flexibility to small landfills. In March, 1997, the President of the United States signed the Land Disposal Program Flexibility Act which directed the U.S. EPA to establish alternative standards for small municipal waste landfills in the areas of landfill gas monitoring, daily cover frequency and final cover design. The final Federal Rule came on October 2, 1997, and the Division is now proposing to adopt these regulations for this flexibility for Nevada Solid Waste Management Authorities to allow some deviations from the standards for Class II Sites. Commissioner Griswold will recall that this is partly a result of EPA being petitioned and questioned about the one-size-fits-all standards that were developed and what is appropriate to apply in rural, arid areas of the country, and part of a rifle-shot reform, so-called at the congressional level, to deal with this issue.

Section 13, a Division initiative, is the result of discussions with operators of the two large landfills. The performance standards for daily cover are that it control disease, vectors, fires, odors, and blowing litter. The two largest landfills accept waste and have personnel at the sites on a 24-hour basis and it is our view that they can meet the daily requirement without applying cover material every 24 hours. The proposed regulation will allow the solid waste management authority to approve an extended operating day for the purposes of applying daily cover at continuously operating sites.

Section 13, subsection 7, defines operating day and makes an exception. Operating day means a period, not to exceed 6 days, that ends with the first interruption of operations which lasts 4 hours if:

- (a) the site consistently operates without stopping throughout a 24 hour period;
- (b) the owner or operator demonstrates to the solid waste management authority that:
 - (1) a daily cover requirement would impose a severe operational constraint on the site; and
 - (3) disease, vectors, fires, odors, blowing litter and scavenging will be adequately controlled.

The 2 large landfills argument has been that it doesn't make sense to temporarily stop the operations and spread dirt over a waste cell before it is completed as long as they are controlling the issue that daily cover is meant to address. Section 13 is intended to provide that kind of flexibility.

Section 14 adds a new section 3 to allow the solid waste management authority to allow the owner or operator to deviate from the provisions concerning the infiltration barrier set forth in NAC 444.6891, considering the unique characteristics of small communities, climatic and hydrogeologic conditions and effect on human health or environment.

Section 15 outlines the current federal standards we would like to adopt into state regulations.

Section 16 mimics Section 14 except at cover sites that were closed before October 9, 1997, providing the authority to approve an alternative final cover design.

Mr. Gould read a background statement:

Hazardous waste generated in large quantities are already subject to stringent storage, transportation and disposal requirements under state and federal hazardous waste regulations. Also hazardous waste and waste from conditionally exempt small quantity generators however are not subject to those requirements. The new municipal landfill regulations, Subtitle D of RCRA, were intended to establish standards suitable for the safe management of these wastes. In June, 1997 the U.S. EPA promulgated a final rule which requires non-municipal waste landfills which accept hazardous waste from conditionally exempt small quantity generators to meet some of the same standards which apply to municipal waste landfills. That is certain location standards and standards for groundwater monitoring and corrective action. The purpose of EPA's rule was to ensure the safe disposal of this portion of the hazardous waste stream which had previously been going to industrial waste landfills. Although Nevada already has standards for industrial waste landfills some of the new federal requirements are not currently stated in our regulations. The proposed regulations in Section 17 and 18 intend to do this and they are also intended to establish

waste measurement reporting and record-keeping requirements comparable to those already established for municipal landfills.

Section 17, new subsection 9, establishes location standards for Class III landfills and the referenced NAC's basically prohibits location in wetlands and flood plains.

Section 18 establishes reporting and record keeping requirements for Class III disposal sites which are parallel to those which already exist for Class I and Class II sites.

Section 19 says that the requirements for operation become effective at existing transfer stations 180 days after the effective date of the regulation and that requirements for design and construction become effective within 2 years after the date of adoption.

Commissioner Jones asked if existing transfer stations are grandfathered in.

Mr. Gould explained they are not. There would be a six-month grandfathering period during which time they would need to change their operating procedures as necessary to comply with the operating standards of the new regulation and within 2 years they would have to meet the design requirements and construction requirements of the new regulations.

Commissioner Jones referred to existing language in Section 17, subsection 7 and asked if they would be required to relocate if they were within 1,000 feet of surface water.

DAG Mischel explained that is for Class III sites.

Commissioner Coyner observed you are asking an existing transfer station to submit their modification before construction commences but there does not seem to be any parameters - it would have to be something substantial requiring construction, etc.

Mr. Gould agreed. Although not specifically stated in the regulations, we would refer to these requirements and see if it affects their compliance with these requirements. If they requested to change their operational plan we would ask them to revise their operational plan and if it complied with the regulations I would not expect there to be a problem.

Commissioner Doppe reported he initially thought that we should look at this in a big master plan kind of concept but he now believes what is proposed is simple enough to move ahead on its own without waiting for that effort to take place. **Commissioner Doppe made a motion to adopt Petition 98003 just as it is written.** The Division should be commended because this serves the need that exists in the rural communities and not doing anything to the existing transfer station regulations except strengthening them.

Commissioner Iverson seconded the motion.

The motion carried.

AC Turnipseed recessed the hearing for lunch at 12:40 p.m.

AC Turnipseed resumed the hearing at 2:00 p.m. and moved to Agenda Item IV-D:

Petition 98004 (LCB File No. R-036-97) is proposed to permanently amend NAC 445B.321, minor revisions to Class I air quality operating permits, by clarification of the comment period for Class I minor revisions. This regulation will amend Section 28 of petition 97004, LCB file R-105-97, as adopted by the Environmental Commission January 22, 1998.

Jolaine Johnson, Chief of the Bureau of Air Quality for the Division of Environmental Protection explained at the January 22 hearing we addressed numerous changes to the provision for the way a facility makes modifications to their air quality operating permit and one provision specifically addressed how to make a minor revision to an air quality operating permit. Those regulations were adopted, however, on the way home we discovered an error in LCB's draft that we had missed and it is a fairly significant issue for the stationary sources.

LCB misunderstood and they provided for a public comment period that would last 30 days when there was a minor revision to a permit. The minor source revision is intended to provide a streamlined, almost administrative, process for a source to come in, make an insignificant modification to their facility and get on with their operations and it is not intended, nor required by the federal rule, for the public to comment on these minor modifications. The clarification we request is in Section 3 (d), page 2, line 24. Strike the words "public comment" and add "comment by any affected state concerning" the application. When the BAQ receives these kinds of applications we notify states located within a 50 mile distance from the source and those states, by federal rule, are required to have an opportunity to tell us whether or not they have a concern with that minor revision.

Commissioner Coyner made a motion to adopt Petition 98004 as presented.

Commissioner Iverson seconded the motion.

The motion was approved.

AC Turnipseed moved to Agenda Item V-A - COLORADO RIVER SALINITY CONTROL FORUM STANDARDS ADOPTION

Lew Dodgion, Administrator, NDEP, explained the Forum consists of the seven states that share in the Colorado River Basin Watershed and each state can appoint up to three members to the Forum.

Nevada's members are:

Pete Morros - Director of the DCNR,

Myself - Administrator of the DEP, and

George Kahn - the Director of the Colorado River Commission.

A treaty with Mexico guarantees Mexico water from the Colorado River of a certain quality with respect to salinity. Every three years water quality standards are to be reviewed and revised as necessary so the Forum looks at salinity in the Colorado River, makes recommendations for salinity standards at various points in the river and reviews various salinity control programs that are implemented by federal agencies, such as the Department of Interior, the Bureau of Land Management and the Department of Agricultural. The Forum also looks at NPDES permits issued by the seven states under the Clean Water Act to see that they conform with the policies of the salinity forum to limit salt discharges back to the Colorado River. The Forum has not recommended any changes in the numeric salinity standards on the Colorado River since 1981 and the 1996 review recommends retaining the same standard. The Forum requests that each of the states adopt this review, a non-regulatory document, used as reference material for when the respective jurisdictions do the actual numeric review of the salinity standards on the river.

Mr. Dodgion explained the Division will appear before the SEC in June to review all the water quality standards on Lake Mead and parts of the Colorado River, including the salinity and TDS standards.

Commissioner Jones made a motion the Commission approve this report.

Commissioner Griswold seconded the approval.

The approval carried.

AC Turnipseed moved to agenda item VI. Settlement Agreements on Air Quality Violations

A. Continental Lime, Inc.; Notice of Alleged Violation # 1289 and 1290

Eric Taxer, Supervisor of the Compliance Branch, BAQ, reported Continental Lime is a anhydrous lime manufacturer located in Wendover. A compliance inspection was performed at the facility in September and two opacity (basically a measure of smoke emissions) violations were noted - they exceeded their permit by 19% on one process and by 25% on another process. It was determined at the enforcement conference that the violations were minor and administrative fines were appropriate at the level of \$250 for each violation.

As part of the corrective action they were requested to perform opacity readings at the facility until they can get their opacity monitors back on line and they are complying with that corrective action measure.

Commissioner Doppe made a motion to accept the penalty.

Commissioner Griswold seconded the motion.

The motion carried.

Eric Taxer explained Arimetco, Inc. is a copper mining operation located in Yerington. As a result of a fugitive dust complaint a compliance inspection was performed. At the facility inspectors observed a fugitive dust minor violation and found two additional violations, failure to operate their baghouses and failure to install fogging sprays on their process. An administrative penalty of \$12,000 was agreed upon for major violations #1293 and #1294. The determination was considered major due to potential harm and major deviations from the permit requirements. A \$125 fine was issued for the minor violation. Corrective action included repair to the baghouses and installation of water nozzles as required by their permit and they are now operating in compliance with the regulations.

Commissioner Coyner expressed surprise at the difference in Continental Lime's fine versus Arimetco but he also understood why that was moved into a major category. Arimetco is financially troubled and times are tough in the mining industry so we want to make sure that compliance is attained without a heavy stick but agreed the penalty is justified.

Commissioner Jones made a motion to accept the settlement.

Commissioner Coyner seconded the motion.

The motion carried.

Eric Taxer continued, A & K Earthmovers is a facility that operates a portable asphalt plant and a small crushing plant. While conducting a compliance inspection to permit the facility, fugitive dust was noted as a minor violation. They were also operating without their pollution controls or their water sprays which increased the fugitive dust emissions and operating without a site-specific permit. NOAV's were issued for the three violations but operating without a site-specific permit was changed to a warning. Their original permit had expired and they neglected to submit their permit modification. BAQ thought it was warranted to turn that violation into a warning and allow them to submit their permit modification which they have since done. Administrative penalties of \$1500 for the major violation and \$125 for the minor violation were agreed upon at the enforcement conference. As corrective action, they agreed to develop employee procedures on how to control fugitive emissions when water controls are not functioning. They have not submitted those procedures yet but they have submitted their permit modification and the \$1,625 fine.

AC Turnipseed noted for the record that they have a past record of violations - 1989, 1990, 1991, 1993 and 1997.

Commissioner Griswold made a motion to accept the settlement.

Commissioner Doppe seconded the motion.

The motion carried.

Eric Taxer reported Granite Construction Co., NOAVs # 1301, 1302 and 1303, is a construction company that operates various highway projects throughout the state. As a result of a complaint, the Division conducted an investigation at their facility in Dayton and noted fugitive dust at the site, their fourth fugitive dust violation in the previous 16 months which constitutes a major violation. They also exceeded their opacity at the facility and they were found to be operating without their air pollution controls, basically adding moisture to the process to decrease the fugitive dust emissions. NOAV 1302 was issued for the major violation to prevent fugitive dust; NOAV 1302 was issued for exceedence of opacity, and NOAV 1303 was issued for operating without air pollution controls. Corrective actions were discussed at the enforcement conference: they agreed to submit a permit modification to clarify which processes are controlled by which baghouse and it was specified that they can not operate until repairs are completed and a smoke filter is installed on the facility; they must notify the Division when they continue operations at the plant, sometime this spring; they must repair the air pollution control equipment; and have their personnel certified to any visual opacity measurement certifications. The fine for the fugitive dust emission was \$1,000; the excess opacity fine was \$3500; and the fine for operating without the controls was \$3500, determined appropriate due to the moderate environmental impact made to the surrounding environment and to the major extent of the violation of the existing permit. The total fine was \$8,000. Their last violation, presented to the Commission in January, was \$12,000 - calculated at \$1200 per day for a 10 day period. This violation was calculated at \$3,500 for the one day they were in violation.

Commissioner Coyner asked if fugitive dust violations drop off after 3 years.

Eric Taxer explained they drop off after 5 years. Theoretically, the fourth violation in that 5 year period is subject to major violation fine amounts.

Commissioner Johnson noted most violations seem to come as a result of complaints and asked if inspection of major operations are regularly scheduled.

Mr. Taxer explained all Class I facilities are inspected every other year and all Class II facilities are inspected every 5 years.

Commissioner Johnson observed so unless there is a complaint filed, the 3 or 4 year absence from violation is simply in inspection.

Eric Taxer agreed.

Commissioner Doppe made a motion to accept the settlement.

Commissioner Johnson seconded the motion.

The motion carried.

AC Turnipseed moved to Agenda Item B: REGULATORY WORKSHOP & REVIEW PURSUANT TO NRS 233B.050(d)

David Cowperthwaite, Executive Secretary of the SEC reported NRS 233B.050 (d) requires the Commission to "review its Rules of Practice at least once every three years and file with the Secretary of State a statement setting forth the date on which the most recent review of those rules was completed and describing any revisions made as a result of the review".

Mr. Cowperthwaite referred to the table in the packet, and reviewed the citations:

- NAC 445B.875 definitions - needs to be amended to include reference to NAC 459, 486A, 519A and 618;
- NAC 445B.877 "Appellant" defined - no amendment is necessary;
- NAC 445B.879 "Commission" defined - no amendment is necessary;
- NAC 445B.881 "Department" defined - no amendment is necessary;
- NAC 445B.882 "Director" defined - no amendment is necessary;
- NAC 445B.884 "Person" defined; - no amendment is necessary;
- NAC 445B.886 Petitions to adopt, amend, file or repeal regulations - no amendment is necessary; this is functioning well in terms of efficiency for the Commission.
- NAC 445B.888 Declaratory orders, advisory opinions - no amendment is necessary;
- NAC 445B.890 Request for hearing - the zip code needs to be updated to reflect the current address of the Environmental Commission.
- NAC 445B.891 Notice of hearing - a sensitive point in this process.
Mr. Cowperthwaite explained Practices Before The Commission follows NRS 233B that lays out a very clear protocol of noticing hearings. There is a chronic need for a process to define how continuances are to be established, how they are to be managed, and to allow for more flexibility in the process. Although do-able, it is difficult to procure a panel on a 20-day clock and often, the parties are still trying to work negotiate and are not ready for a hearing. We will address this issue in a future meeting and discuss how we can potentially develop some processes to provide more regulatory flexibility and relief to make it very clear to appellants how a continuance process would function so I am not proposing a statement to the Secretary of State in this regard, I only bring it to your attention.
- NAC 445B.892 Subpoenas - Was last amended in 1994 and is well laid out. It is also well laid out in the statutes as to what the Commission can do in terms of subpoenas. The issue is, does the Executive Secretary have a role in this moving that process along? I would like to come back with a proposal on how to make that process very clear and very expeditious. We are looking at timeliness and we have to move quickly to make sure that the rights of the appellant and the states privileges are both concurrently protected.
- NAC 445B.893 Panel to conduct hearings; decision of panel. Needs no amendment;
- NAC 445B.894 Vacation of hearing; transfer of place of hearing informal disposition of case - Needs no amendment;
- NAC 445B.895 Conduct of hearing - Needs no amendment;
- NAC 445B.896 Findings of commission - Follows the 233B requirement and needs no amendment;
- NAC 445B.897 Transcripts - The Recording Secretary prepares the finding for the AG within a 30-day period. There is no requirement for fees defined in the regulations so we don't charge for transcripts. Once you establish fees you have to work with the budget office, set up a category for budget accounts and general ledgers and it gets incredibly complicated. I try to avoid complications with Commission's budget.
- NAC 445B.899 Petitions for reconsideration or rehearing - Adopted in 1995 after the issues of the Coastal Chem and the Triton experience of how we deal with people wanting to come back and revisit issues of

decisions by the Commission regarding appeals. As a result, the Commission adopted a regulation that clearly defined how there would be a process for reconsideration, what the grounds for reconsideration were, and how a rehearing would function. No amendment is necessary because we have not had to trigger that process. We will have to wait until the process is triggered before we make a decision on amending it.

Mr. Cowperthwaite asked the Commission for permission to draft a regulation to amend NAC 445B.875 and NAC 445B.890.

Commissioner Iverson asked what is the procedure with NAC 445B.891.

Mr. Cowperthwaite explained if the appellant requests a continuance in the beginning, I inquire as to how many days they want, I obtain the Bureau's concurrence, and the continuance results in negotiations and then the appeal usually goes away. Many appeal requests to the Commission go away because communication between the parties is established. I try to deal with that issue in the most diplomatic way possible.

Commissioner Jones suggested that the date when the rules of practice were reviewed be placed in the NAC.

DAG Mischel explained Mr. Cowperthwaite would send the review date report to the Secretary of State.

Mr. Cowperthwaite concluded he would draft proposed regulations to correct those few minor issues, the clock will be re-set, and we won't have to deal with this issue for three years because I will file the whole package with the Secretary of State when the SEC adopts the changes. There is a three year time sensitiveness but if you have demonstrated action that issue goes away. The Secretary of State will not see anything until mid-July at the very earliest and a resolution at this time would indicate that the Commission has in fact reviewed the Rules of Practice and concur with the findings of the Executive Secretary to amend 445B.875 and 445B.890.

Mr. Cowperthwaite informed the group that he is allowed to hold a public workshop back-to-back with any regulatory change at the hearing and satisfy that requirement.

Commissioner Jones moved for a resolution.

Commissioner Iverson seconded the resolution.

The resolution carried.

Commissioner Johnson clarified this is just enabling you to proceed and present to us proposed regulations and that we have reviewed the NAC's.

AC Turnipseed moved to Agenda Item VII. Discussion Items

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

Low Dodgion, Administrator, DEP reported that he and Deputy Administrator Allen Biaggi are serving as members of the Clark Commission investigating the explosion at Sierra Chemical. Out of that commission will come recommendations requiring action by the Environmental Commission, dealing with either our Chemical Accident Prevention Program (CAPP), including explosive manufacturing in that program or perhaps taking over part of the OSHA PSM Program. The Clark Commission asked us to have recommendations by June 1. We will appear before the SEC at the June meeting regarding the CAPP and the incorporation of the Clean Air Act 112R Program, also dealing with prevention of accidents and spills from handling of hazardous chemicals.

Commissioner Jones asked why that tragedy was determined to be a Workman's Comp issue.

Lew Dodgion reported there were work-related injuries and work-related deaths so Workman's Comp seemed appropriate.

DAG Mischel explained they provide the exclusive remedy unless there is a reason not to proceed under Workman's Comp, but it is limited.

Commissioner Jones asked, when the investigation is finished if it is found that there was negligence, that could be criminal in essence. For example, if a crook enters a AM/PM Market and puts a gun in the clerks face and they are injured in that process that is a Workman's Comp issue. If the company rule says "don't try to stop that, just give the crook the money" and the clerk tries to stop that robbery it is now determined to be a breach of conduct on the part of the employee and not Worker's Compensation. That is an example to differentiate between what is Workman's Comp and what is maybe a breach of quality or an illegal act when the explosion occurred.

Lew Dodgion explained even if it was due to employer negligence the employees are entitled to compensation. In this case it will probably never be determined what actually happened, there is not enough evidence left. Investigators for the Sheriff's Office, The Bureau of Alcohol, Tobacco & Firearms and the CAPP Board seemed to come to an agreement and laid out a scenario of where it happened, which explosion happened first, etc. On April 16 The Federal Chemical Accident Prevention Board will hold a hearing in Reno to air their draft report and their findings.

AC Turnipseed asked Mr. Dodgion for an update on the health of Wendell McCurry.

Lew Dodgion reported Wendell, diagnosed with multiple myeloma - cancer of the bone - was off for 13 months. He has made an exceptional recovery, is working part-time and NDEP is very pleased to have him back.

Commissioner Johnson referred to the letter received from Clark County listing all those future considerations and requested continuing that issue on future agendas because some of those proposals are fairly rigorous and would probably require legislative action.

Mr. Dodgion agreed legislative action and changes in the statutes would be required and explained a committee set up by statute deals with the I/M programs in both Clark and Washoe County. The committee includes the DEP, the two district air pollution agencies and the DMV, who will make the final recommendations of what to do with the I/M program. The counties tend to look at carbon monoxide as the least expensive, most cost effective control program.

AC Turnipseed called for public comment. There were no comments.

AC Turnipseed adjourned the hearing at 3:00 p.m.

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STATE ENVIRONMENTAL COMMISSION
EXHIBIT LOG

Hearing Date: March 25, 1998

Location: Las Vegas, Nevada

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	Letter dated October 3, 1997	1 page letter from Nevada Asscoiation of Counties, Robert Hadfield, Executive Director	98002	YES
2	Memo dated February 11, 1998	1 page memo from Adele Basham requesting the SEC to consider the Colorado River Salinity Control Corum's 1996 Review of Water Quality Standards for Salinity, Colorado River System at their March 25, 1998, hearing	----- -----	YES
3	Letter dated February 17, 1998	2 page letter from Yvonne Atkinson, Chair, Clark County Board of County Commissioners 1 page Resolution of the Clark County Board of County Commissioners 1 page Clark County Board of County Commissioners recommended improvements to strengthen the States Motor Vehice I/M Program	98001	Yes
4	Undated Package 3/18/98	Washoe County letter, proposed amendments by NDEP and 40 CFR 51.360 guides	98001	Yes