NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF April 4, 1995

HELD AT: Reno, Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

A G E N D A

NEVADA STATE ENVIRONMENTAL COMMISSION
PUBLIC HEARING

The Nevada State Environmental Commission will conduct a hearing commencing **8:30 a.m., on Tuesday, April 4, 1995** at the Division of Wildlife's Conference Room A & B located at 1100 Valley Road, Reno, Nevada.

This agenda has been posted at the Division of Environmental Protection Office in Las Vegas, Nevada, the Washoe County Library in Reno, Nevada; the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this hearing was published on March 3, March 16, and March 27, 1995 in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

I. Approval of minutes from the February 16, 1995 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. **Petition 95006** temporarily amends NAC 445A.243 and 445A.244 of the water pollution control regulations to make existing regulations be consistent with current federal EPA regulations. NAC 445A.243 is proposed to be amended by deletion of the requirement that effluent limitations be expressed by weight in discharge permits. NAC 445A.244 is proposed to be repealed and supplanted with amendments to provide specific authority for the water pollution discharge permits to include compliance schedules. NAC 445A.297(b) is proposed to be amended to delete the requirement that U.S. EPA's Regional Administrator provide prior approval of point source discharge mixing zones.

B. **Petition 95007** temporarily amends the State's hazardous waste regulation NAC 444.8427 "Facility for community recycling" and NAC 444.84275 "Facility for community storage" by updating references that directly relates to 40 C.F.R 262.41 as those federal regulations existed on March 1, 1995. In addition NAC 444.850 "Definitions" and 444.8632 "Compliance with federal regulations adopted by reference" are also amended to reflect federal regulations as existing on March 1, 1995. The cost of federal publications referenced in NAC 444.8632 have been updated.

C. **Petition 95008** temporarily amends NAC 444.570 to 444.7499 the solid waste regulations to extend the date by which disposal sites must obtain financial assurance from April 9, 1995 to April 9, 1996. In addition reference to incorrect citations of the Nevada Administrative Code in NAC 444.684, 444.6852 and 444.731 are corrected. NAC 444.692 is amended to remove a inappropriate reference to the term "solid sewage". NAC 444.711 and 444.7481 are also proposed to be amended to clarify the criteria to comply with ground water monitoring requirements for Class II disposal sites.

D. **Petition 95009** temporarily amends NAC 445A.070 to 445A.348 to revise and establish water quality standards for the lake and tributaries of the Nevada portion of the Lake Tahoe Basin. The new standards prescribe the beneficial uses and numeric criteria for; total nitrogen, nitrite, temperature, a biological "escherichia coli" value, total dissolved solids, sulfates, turbidity, sodium absorption, ph, total phosphates, ammonia, and chloride. NAC 445A.122 is proposed to be amended to add extraordinary and aesthetic value and enhancement of downstream waters as standards applicable for beneficial uses.

E. **Petition 95010** is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution regulations. The proposed amendments modify and clarify references to "air contaminant" or "air pollutant" to address "regulated air pollutant". In addition references to "source" are proposed to be changed to "stationary source" or "major source". The term portable source in NAC 445B.137 is proposed to be deleted and substituted with "temporary source". Other definitions clarified include "regulated air pollutant" and "stationary source". The reporting of excess emissions in NAC 445B.232 is clarified and various provisions in the regulations are extended beyond current sunset dates. NAC 445B.327 is proposed to be clarified such that service and maintenance fees are charged by emission units and not by permitted sources. NAC 445B.295 is proposed to be amended to provide authority to the Director to establish a list of insignificant activities based upon "de minimis" emissions.

III. Settlement Agreements on Air Quality Violations * ACTION

A. Desert Lakes Subdivision: Notice of Alleged Violation # 1151
B. Advanced Scientific Solutions: Notice of Alleged Violation # 1152

IV. Discussion Items

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

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 no later than **5:00 p.m. March 29, 1995.**

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **8:30 a.m. on Tuesday April 4, 1995**, at the Division of Wildlife's Conference Room A&B, located at 1100 Valley Road, **Reno**, Nevada.

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

1. **Petition 95006** temporarily amends NAC 445A.243 and 445A.244 of the water pollution control regulations to make existing regulations be consistent with current federal EPA regulations. NAC 445A.243 is proposed to be amended by deletion of the requirement that effluent limitations be expressed by weight in discharge permits. NAC 445A.244 is proposed to be repealed and supplanted with amendments to provide specific authority for the water pollution discharge permits to include compliance schedules. NAC 445A.297(b) is proposed to be amended to delete the requirement that U.S. EPA's Regional Administrator provide prior approval of point source discharge mixing zones.

2. **Petition 95007** temporarily amends the State's hazardous waste regulation NAC 444.8427 "Facility for community recycling" and NAC 444.84275 "Facility for community storage" by updating references that directly relates to 40 C.F.R 262.41 as those federal regulations existed on March 1, 1995. In addition NAC 444.850 "Definitions" and 444.8632 "Compliance with federal regulations adopted by reference" are also amended to reflect federal regulations as existing on March 1, 1995. The cost of federal publications referenced in NAC 444.8632 have been updated.

3. **Petition 95008** temporarily amends NAC 444.570 to 444.7499 the solid waste regulations to extend the date by which disposal sites must obtain financial assurance from April 9, 1995 to April 9, 1996. In addition reference to incorrect citations of the Nevada Administrative Code in NAC 444.684, 444.6852 and 444.731 are corrected. NAC 444.692 is amended to remove a inappropriate reference to the term "solid sewage". NAC 444.711 and 444.7481 are also proposed to be amended to clarify the criteria to comply with ground water monitoring requirements for Class II disposal sites.

4. **Petition 95009** temporarily amends NAC 445A.070 to 445A.348 to revise and establish water quality standards for the lake and tributaries of the Nevada portion of the Lake Tahoe Basin. The new standards prescribe the beneficial uses and numeric criteria for; total nitrogen, nitrite, temperature, a biological "escherichia coli" value, total dissolved solids, sulfates, turbidity, sodium absorption, ph, total

phosphates, ammonia, and chloride. NAC 445A.122 is proposed to be amended to add extraordinary and aesthetic value and enhancement of downstream waters as standards applicable for beneficial uses.

5. **Petition 95010** is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution regulations. The proposed amendments modify and clarify references to "air contaminant" or "air pollutant" to address "regulated air pollutant". In addition references to "source" are proposed to be changed to "stationary source" or "major source". The term portable source in NAC 445B.137 is proposed to be deleted and substituted with "temporary source". Other definitions clarified include "regulated air pollutant" and "stationary source". The reporting of excess emissions in NAC 445B.232 is clarified and various provisions in the regulations are extended beyond current sunset dates. NAC 445B.327 is proposed to be clarified such that service and maintenance fees are charged by emission units and not by permitted sources. NAC 445B.295 is proposed to be amended to provide authority to the Director to establish a list of insignificant activities based upon "de minimis" emissions.

Persons wishing to comment upon the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada. Written submissions must be received at least 5 days before the scheduled public hearing.

A copy of the regulations to be adopted and amended will be on file at the State Library, 100 Stewart Street, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada, Division of Environmental Protection, 555 E. Washington, Suite 4300, Las Vegas, Nevada for inspection by members of the public during business hours.

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

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 extension 3118, no later than 5:00 p.m. on **March 29, 1995**.

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

STATE ENVIRONMENTAL COMMISSION
Meeting of April 4, 1995
Division of Wildlife
1100 Valley Road - Reno, Nevada
Adopted Minutes

MEMBERS PRESENT:
Melvin Close, Chairman
William Molini
Harold Ober
Russell Fields
Mike Turnipseed
Robert Jones
Marla Griswold
Fred Gifford
Roy Trenoweth
Joseph Tangredi
Jack Armstrong

MEMBERS ABSENT:

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

The meeting convened at 8:30 a.m.

Chairman Melvin Close read the public noticing as defined in the agenda for April 4, 1995.

I. Approval of minutes from the February 16, 1995 meeting.

Commissioner Ober moved for approval of the February 16, 1995 minutes as presented.

Commissioner Gifford seconded the motion. The motion carried.

II. Regulatory Petitions

A. **Petition 95006** temporarily amends NAC 445A.243 and 445A.244 of the water pollution control regulations to make existing regulations be consistent with current federal EPA regulations. NAC 445A.243 is proposed to be amended by deletion of the requirement that effluent limitations be expressed by weight in discharge permits. NAC 445A.244 is proposed to be repealed and supplanted with amendments to provide specific authority for the water pollution discharge permits to include compliance schedules. NAC 445A.297(b) is proposed to be amended to delete the requirement that U.S. EPA's Regional Administrator provide prior approval of point source discharge mixing zones.

Jim Williams, Chief, Bureau of Water Pollution Control, requested the Commission to refer to the document distributed to them this morning, proposed amendments to original Petition 96006. Mr. Williams explained, this regulation speaks to schedules of compliance which includes permits. EPA recently took the position that we do not have the authority to include schedules of compliance in permits. We felt we had authority because we have included schedules of compliance, without objections, for a number of years. To avoid conflict, and as a result of comments from EPA, we decided to amend our regulations. EPA also suggested different wording. We agreed the new wording was superior to our previous proposal. The amended language is presented to you in amended Petition 95006.

Chairman Close requested copies of amended Petition 95006 be distributed to the public.

Chairman Close asked Mr. Williams to walk the Commission through the amended proposed regulation.

Mr. Williams explained:

NAC 445A.243: Has word changes and we eliminated the need to specify effluent limits by weight.

NAC 445A.297: We removed the requirement that EPA's regional administrator give prior approval to the mixing zone permits, an initial requirement of the program, because prior approval is no longer necessary for compliance.

Paragraph 1: Provides authorization for a schedule of compliance in our discharge permits.

Paragraph 2, Subsection 1: Re-written to remove redundant language.

Chairman Close asked if the change made a substantive change in the regulation. Jim Williams replied the Bureau will operate the same but we now have more specific language in the regulation.

Mr. Williams continued:

Paragraph 4: We have a memorandum of understanding with EPA that states the reporting requirement so language that alludes to reporting to EPA was removed.

Chairman Close asked for questions.

Commissioner Fields asked Mr. Williams to give the Commission an example of a compliance schedule. Mr. Williams explained that from time-to-time the Bureau revises the water quality standards. A water treatment plant that discharges into the body of water with the new standards can't immediately meet those standards so a schedule of compliance allows them time to inspect

the treatment units and fulfill whatever they need to meet the new requirements.

Chairman Close asked for questions from the public.

Lynn Giraudo, Barrick Gold Strike Mines, commented, Barrick recognizes that EPA review all NPDES permits and comments to them prior to issuance. The Division of Environmental Protection's efforts to eliminate duplicate provisions in the regulations are commended. In reference to the last line that is requested to be removed, regarding written response from EPA on the mixing zone, Barrick recommends that the Division continue its present practice of involving the EPA in the permit process early on, particularly in respect to permits that would include a mixing zone. We don't feel that language needs to be culled but we encourage the Division to continue its practice of getting comments from EPA early so that it does not delay the process.

Commissioner Griswold asked Ms. Giraudo if she had reviewed the amended proposed petition 95006 passed out today and if not, would she like time to review the amended language. Ms. Giraudo replied she had a copy but had not had a chance to review it prior to the meeting and she would like to have a few minutes to review it. Commissioner Griswold suggested to Chairman Close that the meeting continue to the next agenda item and return to Petition 95006 after Ms. Giraudo had a chance to review it.

Chairman Close asked for additional comments on Petition 95006. There were no comments.

Chairman Close continued to Petition 95007.

B. **Petition 95007** temporarily amends the State's hazardous waste regulation NAC 444.8427 "Facility for community recycling" and NAC 444.84275 "Facility for community storage" by updating references that directly relates to 40 C.F.R 262.41 as those federal regulations existed on March 1, 1995. In addition, NAC 444.850 "Definitions" and 444.8632 "Compliance with federal regulations adopted by reference" are also amended to reflect federal regulations as existing on March 1, 1995. The cost of federal publications referenced in NAC 444.8632 have been updated.

David Emme, Chief, Bureau of Waste Management explained that the proposed regulatory changes will update the State Hazardous Waste Regulations to incorporate, by reference, federal regulatory changes that have taken place since July 1, 1994 and through March 1, 1995.

Mr. Emme continued, a recent federal regulatory change left a significant conflict with our current regulations. This new federal regulation, which became effective in December, significantly changes the treatment standards requirement in the land disposal restrictions. Some

of the changes are more stringent than the standards under previous regulations and some are less so. The overall intent of the changes in the federal rules simplify the treatment standards. Currently, the regulated community must evaluate both sets of standards and comply with the most stringent. In order to eliminate this conflict and simplify compliance we propose to adopt these federal treatment requirements by reference. The proposed updates for adoption by reference also include other technical changes to the regulations.

1. New organic air emission standards designed to reduce the organic emissions from hazardous waste management activities. These regulations apply to owners and operators of hazardous waste treatment storage and disposal facilities subject to RCRA (Resource Conservation and Recovery Act) permitting requirements and also to certain hazardous waste generators accumulating waste on site in tanks and containers.
2. There has been an update to EPA's Test Methods Manual.
3. A regulation which eliminates the exemption from RCRA hazardous waste regulation for certain slag residues from high temperature metal recovery processes, adopted federally, and a couple of technical corrections adopted by EPA. We are updating our adoption of the federal regulation.

Chairman Close asked for questions.

Commissioner Fields asked David Emme to explain slag related to high-temperature metal recovery and asked if that was a new addition. Mr. Emme replied it is a federal regulation so we are simply being consistent. The summary from EPA reads "EPA is amending federal regulations which contains provisions for conditionally exempting hazardous waste derived products used in a manner constituting disposal, that is applied to or placed on the land from RCRA Subpart C regulations. Certain uses of slag residues produced from a high-temperature metal recovery treatment are not exempt from RCRA Subpart C regulations. This rule also clarifies the definition of non-encapsulated uses of high-temperature metal recovery slags."

Chairman Close asked for public comment. There was no public comment.

Commissioner Fields made a motion to adopt Petition 95007.

Commissioner Turnipseed seconded the motion. The motion carried.

Chairman Close returned to **Petition 95006**.

Chairman Close asked Lynn Giraudo if she had reviewed the changes to Petition 95006 presented today. Ms. Giraudo replied that she had reviewed the changes and they were fine.

Chairman Close asked for additional comment on Petition 95006. No comments were received.

Commissioner Turnipseed made a motion that amended Petition 95006 be adopted as presented.

Commissioner Griswold seconded the motion. The motion carried.

C. **Petition 95008** temporarily amends NAC 444.570 to 444.7499 the solid waste regulations to extend the date by which disposal sites must obtain financial assurance from April 9, 1995 to April 9, 1996. In addition, reference to incorrect citations of the Nevada Administrative Code in NAC 444.684, 444.6852 and 444.731 are corrected. NAC 444.692 is amended to remove an inappropriate reference to the term "solid sewage". NAC 444.711 and 444.7481 are also proposed to be amended to clarify the criteria to comply with ground water monitoring requirements for Class II disposal sites.

David Emme, Chief, Bureau of Waste Management explained the first proposed change in the solid waste regulations is to adopt an extension to the effective date for financial assurance requirements which are currently slated to take affect on April 9, 1995. In October of 1994, U.S. EPA published a draft proposal to extend the effective date by one year. Bureau staff contacted EPA headquarters in Washington yesterday and learned that the final extension will be for two years. Therefore, we would like to amend the proposed date change in sections 3 through 8 of Petition 95008 from April 9, 1996 to April 9, 1997. In addition, we are proposing to correct cross-reference errors in Section 1 through 11, deletion of the terms "solids" in Section 9 and clarification of ground water monitoring requirements in Class II sites in Sections 10 and 12.

Chairman Close asked, in extending the requirement for financial assurance, what assurance is there, if corrective action is required, from a person who has violated the regulation. David Emme explained, landfills are long-term operations and financial assurance is a mechanism that is intended over the long haul. Financial assurance basically covers the cost of closure and the cost of maintenance for a landfill after it is closed. It is not intended to provide a source of funding in the event that there is contamination and it is not an insurance fund. Chairman Close asked if any landfills will be closing within the time-frame this regulation is being extended to. David Emme replied, a number of small landfills will be closing to get out from under these regulations, but these regulations do not apply to those.

Chairman Close asked for questions. There were no questions.

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

Commissioner Turnipseed made a motion that Petition 95008 be approved as amended, with the 1997 date change in Sections 3 - 6. Commissioner Griswold seconded the motion.

The motion was approved.

D. **Petition 95009** temporarily amends NAC 445A.070 to 445A.348 to revise and establish water quality standards for the lake and tributaries of the Nevada portion of the Lake Tahoe Basin. The new standards prescribe the beneficial uses and numeric criteria for; total nitrogen, nitrite, temperature, a biological "escherichia coli" value, total dissolved solids, sulfates, turbidity, sodium absorption, ph, total phosphates, ammonia, and chloride. NAC 445A.122 is proposed to be amended to add extraordinary and aesthetic value and enhancement of downstream waters as standards applicable for beneficial uses.

Wendell McCurry, Chief, Bureau of Water Quality Planning introduced Adele Basham, Bureau of Water Quality Planning and Dr. Tom Gardner from EPA Region 6 in Dallas. Mr. McCurry explained, when the tributary rule was adopted in the regulations several years ago, we over-looked the Lake Tahoe tributaries and, as a result of strict standards for Lake Tahoe, inappropriately applied those standards to all the tributaries that drain into the lake. When LCB (Legislative Counsel Bureau) originally codified the regulations the beneficial uses for the Lake Tahoe Basin were somehow dropped out of the regulations so they don't appear in the current regulations. The proposal before you today corrects these two problems and makes minor revisions in the beneficial use of water quality standards for Lake Tahoe. The proposal applies only to the streams located on the Nevada side of the Lake Tahoe Basin and not to any other streams in Nevada.

Dr. Tom Gardner, EPA Water Environmental Scientist, on loan to the Nevada Division of Water Quality Planning for the past 11 months, explained he worked on the development provision of these standards. Authority to build water quality standards comes from both state and federal law. Section 303 of the Clean Water Act gives the state responsibility for establishing, reviewing, or revising water quality standards. To dispel a common myth, a water quality standard is not like a single number but actually consists of 3 parts. Beneficial use, the water quality criteria that protects that beneficial use, and the third part is referred to as an anti-degradation clause. Beneficial uses for water are contact recreation, water supply, irrigation and protection of aquatic life.

Criteria are generally the number part of the standards but criteria can also be narrative criteria. A typical narrative criteria would be "the water shall be free from toxic materials in toxic amounts. The criteria developed specific designated use based on scientific information and are reviewed and published periodically by EPA. Those restrictive criteria of a given set of

beneficial uses become the beneficial use criteria. These two elements, when coupled with the anti-degradation policy, constitute the water quality standard.

The anti-degradation policy addresses the maintain requirements that are in the Clean Water Act. They ensure that waters that are already of higher quality than is required to meet a beneficial use standard are not degraded.

The minimum level of anti-degradation requires that all the existing uses be protected.

A second level in anti-degradation requires the state to involve the public if a higher quality water is to be degraded in any way.

A third level of anti-degradation applies to waters that the state has designated outstanding natural resource waters. This allows no degradation what-so-ever. Nevada statutes require that surface waters whose water quality is higher than the applicable beneficial use standard be maintained at their higher quality. We do this through something called a "requirement to maintain existing higher quality" or RMHQ. When that water is of a significantly higher quality than necessary to meet the beneficial use standard, and by that we define the beneficial use standard is violated less than 5% of the time, we develop an RMHQ. This RMHQ is usually developed on the 95th percentile of all the measured values that we have for that parameter at that control point. Thus, the beneficial use standard is always greater. On a case-by-case basis, RMHQ's may be adjusted for fluctuation.

Dr. Gardner continued, the proposed beneficial uses for Lake Tahoe are: irrigation, watering of livestock, recreation not involving contact with the water, recreation involving contact with the water, industrial supply, propagation of wildlife, propagation of aquatic life, including a cold water fishery, municipal or domestic water supply, and a new use of "water of extraordinary ecological and/or aesthetic value".

Chairman Close asked Dr. Gardner to explain the last term.

Dr. Gardner stated that we are proposing this new beneficial use to actually back up the policy that already exists at Lake Tahoe, that any degradation of Lake Tahoe affects its beneficial use. We are proposing this use to reflect Tahoe's unique nature and also to achieve some parity with California's standards.

Chairman Close asked if California uses the same language. Dr. Gardner replied that it was his belief that the language was identical. Wendell McCurry interjected that California has also designated Lake Tahoe as "an outstanding natural resource water".

Commissioner Molini asked, if you are going to have recreation involving contact with the water

as a beneficial use, which would indicate a higher standard, is it necessary to have recreation not involving contact with the water as a beneficial use? Wendell McCurry replied that you can look at a list of beneficial uses and obviously, if it is going to protect cold water fishery, we can assume it is safe for industrial use also. 99% of the time that is true, but when you have a list of criteria to protect those uses the most restrictive criteria is not always in a certain use. In some cases criteria for drinking water would be the most severe, in other cases the criteria for protection of aquatic life would be the most severe. The way you can be sure you are protecting for everything is to designate all the uses you want, look at all the criteria, and then select that criteria.

Dr. Gardner continued, we are proposing to add a total nitrogen standard, a standard for nitrite, ionized ammonia, a standard for escherichia coli bacteria, and proposing to add seasonal temperature standards for the lake, numbers obtained by consulting with the Division of Wildlife. We are proposing total dissolved solids standards, a sulfate standard and a standard for the sodium adsorption ratio. Under clarity standard, we are cleaning up language to define the vertical extinction coefficient of how fast light can disappear in the lake. In turbidity, we are switching from the older Jackson units, no longer recognized, to the Nephelometric units which are commonly used now.

Dr. Gardner continued, we are also proposing to add the following beneficial uses to Nevada streams that terminate in Lake Tahoe. Irrigation, watering of livestock, recreation not involving contact with the water, recreation involving contact with the water, industrial supply, propagation of wildlife, propagation of aquatic life, and municipal water supply. Enhancement of downstream water quality is a new beneficial use. We are proposing to add a litany of additional criteria to protect those beneficial uses for pH, dissolved oxygen, total phosphates, nitrates, nitrites and ammonia, total suspended solids, turbidity, color, total dissolved solids for TDS, chloride, sulphate for sodium adsorption ratio, temperature and escherichia coli. Those are beneficial use standards, water quality standards that are developed to protect those beneficial uses. For waters in the Tahoe Basin that are of higher quality than that, we are adding this requirement to maintain higher quality "any tributary water to Lake Tahoe whose water quality is higher than the applicable standards will be maintained at that higher quality".

Dr. Gardner continued, at the control points listed in the table on page 7, the following requirements to maintain existing higher quality will apply. Those are based on data that we obtained from both our own sampling program and from the U.S. Geological Survey sampling

program. Again, this generally represents the 95th percentile of past data, going back to 1966 for some of the parameters. Those points not listed and not given a specific requirement have the narrative requirement "any tributary water to Lake Tahoe whose water quality is higher than the applicable standards will be maintained at that higher quality". That narrative criteria protects the points in the basin that are not in the table on page 7.

Chairman Close asked, if this is adopted are there are any tributary streams that will not meet the standards at the present time? Dr. Gardner replied that all the streams in Tahoe are meeting these beneficial use standards but for the specific control points we have proposed the requirements to maintain a higher quality, that it is the point where the stream violates the standard 5% of the time. Chairman Close asked, are those control points listed on the chart not in compliance at the present time? Dr. Gardner replied, the number on the chart means that is the 95th percentile of the data that we have. 5% of the time, at those control points in the stream, will be higher or violating the standard, but that is in compliance with the higher quality numbers.

Commissioner Gifford requested clarification, do you really mean 5% of the time or do you mean 5% of the samples? Dr. Gardner replied that he meant 5% of the samples are greater than that.

Chairman Close asked, do the tributaries presently meet the standards that we are going to be adopting or are there any that do not meet it and will have to take corrective action? Wendell McCurry replied, based on the data that we have, the streams are in compliance. We have no data on certain streams in the Douglas County portion. Our goal is to expand our monitoring to include gathering additional data on the Douglas County streams.

Deputy Attorney General Jean Mischel stated that the narrative would apply to the streams that have no data.

Chairman Close asked, is it correct that those streams on which there is no data are not required to meet a higher standard than we may be adopting today? Wendell McCurry replied they would comply with the narrative statement.

Commissioner Tangredi asked, regarding E. coli organisms at Sand Harbor, where is the nonapplicable, N/A, in reference to that area? Dr. Gardner replied that currently, for those points, there are no standards and that is why we are proposing today's present action.

Commissioner Tangredi noted that the percentage of violations is 92%. Dr. Gardner replied that was based on the current standards and the reason there are so many violations there is the test

for E. coli has a sensitivity of 10 organisms per 100 mls, so literally everything that shows up less than 10 is violating, in terms of the data, basically a sampling artifact. The standard is lower than the detection level for that. Commissioner Tangredi stated that was confusing, how can the standard be lower than the detection? Is the standard the same standard that Louisiana would use? Are the standards different in every state or are there federal standards which all states must adhere to? Dr. Gardner replied there are federal recommendations but the states do not necessarily have to adhere to them. The current standard for fecal coliform is much stricter than any federal recommendation.

Chairman Close requested clarification of what was just said, if the standard is lower than the detection level then it is always in violation. Dr. Gardner replied that he could not speak to setting the current standards but this actually does come up often for toxic trace elements, where the standards are developed using a complex series of equations that can actually predict an effect at a concentration lower than we can measure with our technology. Our laboratory sends back a report saying less than half. When I constructed that 92%, and I could have avoided a lot of confusion, by assuming that our analysis was saying less than 10 means 10. I could have said that less than 10 means zero and violations would have gone to zero. Wendell McCurry stated that in effect it is the way the analysis was performed. If it was reported less than 10, in cranking the number through the analysis, evidently 10 was put in as the number. Chairman Close stated he did not understand the analysis nor the form but is disturbed by the comment that the standard is lower than the detectable level. How we can impose that standard upon somebody, if you can't detect it, how do you make that standard? Commissioner Tangredi stated that E. coli is permitted, up to a certain percentage, after that standard is reached it becomes lethal for infection and endemic. Wendell McCurry replied that this particular standard is one that has been on the books for over 20 years but it is for Total Coliform, not E. coli. In the new standards we propose to add E. coli of 126/100 ml. We are talking about Total Coliform, which is the set of numbers both Nevada and California adopted for Total Coliform. Commissioner Griswold asked if that 92 could be changed to zero. Dr. Gardner explained this is a working document, not part of the standards, all we would have to do to change that 92 to zero would be to interpret a less than 10 as a zero and it would drop to essentially zero. Commissioner Tangredi stated if the figure were changed to zero, and that is in conformity with the standard, then it would be more appropriate to change the 92% because it appears as if we are way out of line with the amount of E. coli and other Enterocci than the standard. Dr. Gardner agreed that could certainly be done but again,

this is Total coliform, not E. coli and it is merely an artifact of the fact that the standard is below the detection level. Chairman Close stated that he had a hard time comprehending exactly how we have a standard below detection. Commissioner Molini asked if the Commission could be walked through the proposed standard. Does it change from a current standard which is shown on this working document for Total Fecal Coliform? If the single value current standard is 32 and this medium of 5 in the proposed standards, does it change? Dr. Gardner replied there is no change proposed to the Total Coliform organism standard. Deputy Attorney General stated that it was at the top of page 3 of Petition 95009. Commissioner Molini asked how that relates to some other standards, is that good, a high quality standard of Escherichia Coli and is this the actual number of organisms per 100 milliliters of the sample? Dr. Gardner replied yes, this is the federal recommendation for E. coli. Commissioner Molini asked, does that mean drinking water quality if you have 126 per 100 milliliters? Wendell McCurry replied no, if you are talking about water quality that comes out of the tap, that would be zero. This is for protection of contact recreation. EPA came up with this a few years ago, and they have been encouraging all states to go to that standard. We have been double-sampling when we do samples around the state. We are running a sample for E. coli plus Fecal Coliform to try to develop a data base. We decided to propose the E. coli as the additional standard for Lake Tahoe in the proposed standards.

Commissioner Turnipseed asked if the sampling frequency was on a regular basis or do you sample more often in the spring run-off than in autumn? Dr. Gardner replied, currently we sample 4 times a year and are moving to a 6 times a year sampling regimen. Commissioner Turnipseed asked if, in the 5% failure 95% percentile passing rate, some of these units would be adjusted for volumes of water, some are essentially a percentage and others are hard units. If 90% of the water that is in these tributary streams enters Lake Tahoe in April, May and June and you only sampled one time during that period you are really not giving a true picture of the quality of water entering Lake Tahoe. Dr. Gardner replied, our sampling regimen is at regular intervals, U.S.G.S.'s sampling program is geared to sampling more during flow events and that data is just part of the data-set we used to develop the standards.

Commissioner Griswold asked if the Division could foresee any immediate hardship if these regulations, as presented, are passed and are there any danger zones out there? Wendell McCurry replied no, it has been a long time since we have taken any action on the Lake Tahoe standards, plus, we never adopted any standards for tributaries. 20 years ago, when we adopted water quality standards, we looked all around the state to see if there was an affect but I did not

look at Lake Tahoe. Consequently, when TRPA analyzed the results at Tahoe, they looked at Nevada streams and said Nevada streams are in gross violation because they were comparing the Lake Tahoe data to Nevada streams. California, with some of their streams with higher numbers than what we have, show compliance and ours show non-compliance. Mainly, we are applying this tributary rule up in the streams and they are naturally occurring worse than what is in the lake.

Commissioner Griswold asked, do you anticipate any immediate hardship. Wendell McCurry replied no.

Commissioner Molini asked how these standards influence TRPA regulations relative to nutrient loading, ground disturbance, building, etc.. Is there a strong relationship? Wendell McCurry replied that TRPA used the standards when they were developing thresholds and the goals for Tahoe. The amendments to the Tahoe standards we adopted years ago added about three paragraphs in TRPA's rules, in terms of placing materials near the stream or lake or where it could be washed into the lake. We put the prohibitions in about moving material so it would be washed into the stream and we wound up taking action against one company that did just that. They dredged material up, but placed it where the bad stuff could be washed right back into the lake. TRPA uses our, and California's, standards in developing and evaluating their programs.

Commissioner Molini asked, so the standards like phosphorus and nitrogen standards that we are considering, are there implications for TRPA building regulations? Wendell McCurry replied that he could not think of any implications.

Commissioner Jones asked, referring to the beneficial use categories for both the stream environment and the lake - would you consider, quantitatively, that "waters of extraordinary, ecological and aesthetic value" to be the most severe beneficial use criteria among the beneficial use and the same with the enhancement of the water quality in the streams. Are those more severe than any of the other beneficial uses if you could put them on a quantitative basis? Dr. Gardner replied, again, you have to be careful about saying that any one particular beneficial use can be the most severe because that will vary by parameter. So, off-hand, I can't say that would be the most severe, it would depend on the parameter. Commissioner Jones stated that both of them seem a bit subjective and it worries me, when you are putting regulations together, the kind of subjectivity with regard to the analysis. Dr. Gardner replied that is a point. California and other states have similar terminology in their regulations for this type of water. We want to bring Nevada into parity with California and several other states on that issue to demonstrate our need

for the importance of the protection of Lake Tahoe. Wendell McCurry stated that the "waters of extraordinary ecological and aesthetic value" is comparable, but not the same words as EPA's or the federal term which is "outstanding natural resource waters". If we adopt "outstanding natural resource waters" that triggers in another set of requirements that the federal government, or EPA, could impose. We have been pressured to use the term "outstanding natural resource waters" but we said no, we have no intention whatsoever of proposing that, but we will propose terminology using state law that can protect Lake Tahoe to the same level.

Commissioner Jones asked, regarding thresholds, if an individual dwelling is constructed within some sort of a stream threshold area, would they have to prove to you these entire criteria in the same manner as a major development would? Is the same level of responsibility placed on an individual building site? Wendell McCurry replied, I would not see any additional impact than already what is being applied to them by the TRPA.

Commissioner Gifford asked Wendell to review the lake values and stream values criteria. Wendell McCurry explained that 20 years ago we revised our state regulations and at that time we adopted what was called the "tributary rule". For instance, you have a control point on the stream and the standards apply from that point back up to the next control point. If there is no control point it would apply up to where this is a class water, and if there is nothing downstream of that, they require down to the next control point or a class water. For Lake Tahoe we have the standards on the lake itself, which is the control point and none of those tributaries were designated as class waters and there weren't any numerical numbers put on those. So the standards for Tahoe, by the "tributary rule", apply straight up those streams. If you had, for Soluble Phosphorus 7 in the lake, you turned around and applied that up the stream that might have 50 in it, then that would wind up showing that there is a great violation and that is how the tributary rule works. With no standards on those streams that standard at the Lake applies right up those streams. Commissioner Gifford stated, on the surface that seems artificial. We are talking about a system, individual watersheds that terminate at the lake. I am uneasy that we are talking about a lake system, then we talk about the tributaries as something entirely different and they are all one system. Can you set my mind at ease in that regard because I have a problem talking about them as though they are separate entities and they are definitely not. Wendell McCurry replied the basin is one entity, but the water quality in the lake and the water quality of the various streams are different entities, in terms of quality. We have the real small numbers for the lake, which is appropriate for protecting the lake, then propose numbers on the streams that

will be protective of the streams plus now the streams will also be protective of the Lake. Commissioner Gifford noted, in terms of lake clarity, it is decreasing at the rate of a foot or two a year, what you are telling me does not quite jive with that fact. The assumption is that you are protecting the system and you obviously aren't, it has been going downhill for 20 years. If that is the case, how can we divorce the lake from the stream system and have a "grand resource" if we don't carry the philosophy of the lake back into the headwaters of the watershed. Although the lake is a great integrator, for example the turnover rates for nitrates, etc. being 700 years because of the immense volume in the lake, eventually that will catch up with us. If we are going to protect a resource which is at the bottom end, how can we have standards that exceed the lake values for whatever element we are talking about, as criteria for the contributing streams, without having those values rise in the lake affecting the clarity and the values that we all appreciate. This may not happen in our life-time, but there has been a distinct clarity decrease over the last 20 years. Wendell McCurry replied it really boils down to the quality in the streams is a lesser quality than what is in the lake. That has occurred in the lake over time, in terms of settling out or removing an atmosphere that pulls these numbers down to that level. Before development occurred near some of the streams the numbers in those streams were much higher than the numbers we want to attain in the lake. But it is not a given that we are going to degrade those streams. TRPA is requiring mandatory BMP's in terms of retrofitting projects. We use the litigation funds that TRPA is paying, and whatever federal funds we can obtain, for projects that control erosion run-off into the lake. There is a proposal for another bond issue that gives more state money for erosion control in the Tahoe Basin but to arrest and reverse the trend that has been occurring for the past few years is a very long-term, on-going process.

Commissioner Gifford noted one other troubling detail. I am not sure how we put criteria on a system like Lake Tahoe without having some element of sampling frequency, more than the 6 times per year Dr. Gardner alluded to. I do not know how that sampling is concentrated but, referring to Commissioner Turnipseed's earlier comment, 80% of the total flow into the lake occurs during the snow-melt run-off period. By spacing sampling throughout the year you may have only 1 or 2 samples during the big run-off period and 4 samples during the low-flow period. If a particular stream is in violation of a standard there could be an immense proportion of the flow for the total year that actually exceeds the standard but the sampling doesn't look bad until you compare that with the scheduling. I have a hard time coming up with a standard without some kind of a sampling frequency. Because something was exceeded for percent of the samples,

not the time, but the samples, does not convey much information, in terms of how bad of a problem we really have and it would make sense that we state something that would help the Commission to understand the proposed sampling frequency schedule, to give us an average time so we would have a better idea of what an exceedence really would mean. I am having trouble divorcing the two, having the standard and not having a sampling frequency. You sample 6 times per year now but maybe more money will be available next year and you will sample 8 times, then the next year no money is available so sampling drops to 4 times a year. Presently, sampling depends on the money available for collecting and analyzing those samples. Wendell McCurry replied that Commissioner Gifford had defined the problem, in terms of resources. He reminded the Commission that the Division will be coordinating with other entities, U.S.G.S and other research groups, to coordinate sampling and assimilating the data. Commissioner Gifford noted both Davis University and the U.S. Forest Service conduct sampling and perhaps there are other databases with reliable figures.

Commissioner Molini stated that he understood Commissioner Gifford's concerns and basically agrees with them. I understand your explanation to mean it is really the hydro-dynamics of the two systems. Would it be fair to say if the stream systems were undisturbed by man that their quality would still not be equal to that of the lake system. Wendell McCurry replied in general, yes. Years ago, before there was development on those streams, the quality was real high in terms of nutrients. Commissioner Molini stated that 2 or 3 years ago he saw a presentation by the Davis University group regarding the long-term trend in phytoplankton blooms and there had been improvement recently as compared to past years, for example when the basin was deforested many years ago, so I thought that the clarity problem was improved. Wendell McCurry replied there was some improvement but there is a question if the improvement is a result of the drought situation that allows less material flushing into the lake. Commissioner Molini replied that the Davis group presentation showed improvement of phytoplankton blooms, indicative of retardation of nutrient loading in the lake but that was a couple of years ago and I don't know what it is right now. Wendell McCurry replied that some of the projects we funded required monitoring for erosion control and those projects showed that there was a reduction in materials down to the lake. In terms of sediment, there is a huge project on Kingsbury Grade with water erosion control structures, catch-basins and settling basins. Douglas County hired U.S.G.S. to monitor, both up-stream and down-stream, that location and that study showed reduction.

Chairman Close asked for additional questions. There were no additional questions.
Chairman Close asked Dr. Gardner to continue with his presentation.
Dr. Gardner noted the proposed regulations had all been discussed except for the last item in Section 6 on page 9, which is putting those two definitions into the regulations.
Commissioner Molini asked Wendell McCurry if this is the first time Nevada has used the definition "waters of the extraordinary and/or aesthetic value". Mr. McCurry replied yes, and it only applies to the Tahoe Basin. Commissioner Molini stated, while the actual wording is different than the Federal EPA language, "outstanding natural resource", in essence it means the same thing but we keep our Nevada independence by not acquiescing to EPA. Commissioner Ober asked, if we took a sample in the lake today would the sample meet the proposed standards? Wendell McCurry replied that he would expect it to meet the standards.
Commissioner Gifford asked Wendell McCurry to elaborate briefly on the difference in terminology, between what is proposed and the term "outstanding natural resource water". Wendell McCurry replied, the way I view it, the designated language "outstanding natural resource water" would give EPA authority to dictate to us what will be done to protect those "outstanding natural resource waters". Commissioner Gifford stated, EPA dictates everything else so why do you object to this? What is your rationale, all of a sudden being protective of these tributary stream criteria. Wendell McCurry replied, in Nevada our approach over the years, in respect to water quality, is keeping EPA out of regulating as much as possible and I do not feel we should give EPA an additional club to use. Commissioner Gifford asked if EPA would be more restrictive or less restrictive than the state. Wendell McCurry stated he felt EPA would to be more restrictive.
Commissioner Gifford asked, states rights aside, and given the long-term, using clarity as an indicator of a general lake quality, do you feel we need to be more stringent or less stringent and are we on the right track? I would not argue the point of maintaining states rights but in terms of the resource, I would rather look at the resource than I would get in a hassle over states rights. Wendell McCurry replied we are on the right track to protect the lake. It is a long-term effort with estimates of 300 or 400 million dollars, just for erosion control projects. We are investing in several projects, with different entities on the Nevada side, to protect the Lake. I think with what we have proposed, we would still provide the same protection but we will be calling the shots instead of EPA.
Chairman Close asked for additional questions. There were no questions.

Chairman Close called upon Lynn Giraudo.

Lynn Giraudo, representing Barrick Goldstrike Mines, stated Barrick understands that the new classifications, outlined in Petition 95009, intended to protect the exceptional pristine waters in the Lake Tahoe Basin but requests additional clarification. The two new beneficial uses would classify waters which either:

(1) possess unique ecological or aesthetic characteristics; or

(2) support natural enhancements or improvements.

Barrick supports the Division's efforts to protect the pristine waters in Nevada. The extensive list of beneficial uses in the existing regulation appear to provide adequate flexibility to account for all types of beneficial uses. Consequently, in order to avoid confusion regarding the intended application of the new classifications, Barrick requests that the Division clarify the unique circumstances justifying the new classifications. We want to make sure that it is clear, at this point, that these are for Lake Tahoe and that they will not try to apply them to other rivers and lakes in Nevada that do not have the same pristine characteristics.

Chairman Close asked for questions.

Commissioner Griswold asked Ms. Giraudo if she would make a suggestion as to how to accomplish this. Ms. Giraudo replied, I think that is what the Petition says but sometimes things can get interpreted otherwise. We just want it on the record that was the Commission's intent.

Commissioner Griswold asked if Ms. Giraudo would be satisfied with having her statement on the record. Ms. Giraudo replied yes. Barrick is not requesting any changes but we just want it on the record that is the intent of the Commission. Chairman Close asked that Ms. Giraudo's statement be made a part of the record.

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

Chairman Close recognized a letter from the California Regional Water Quality Control Board, Lahontan Region and asked that the letter be included as part of the record.

The letter reads:

"Thank you for providing Lahontan Regional Water Quality Control Board (RWQCB) staff with copies of your staff report *Lake Tahoe Water Quality Standards Rationale* and your draft response to our comment letter of February 17, 1995. We understand that the only change being proposed in the standards previously circulated is the addition of a statement that "Any tributary water to Lake Tahoe whose water quality is higher than the applicable standard will be maintained at that higher quality."

The addition of this statement is a definite improvement. However, we are still concerned that many of the proposed "Beneficial Use Standards" for tributary streams, based on nationwide USEPA criteria, involve constituent concentrations much higher than those measured historically in California and Nevada streams in the Lake Tahoe Basin. In particular, we are concerned about the continued proposal to set tributary nitrate standard at 10 mg/l, the drinking water standard. The staff report (page A-13) summarizes tributary monitoring data which show that several streams for which this standard is proposed have mean nitrate concentrations near 0.10 mg/l, 1/100 of the drinking water criterion. As stated in our earlier comments, we believe that maintenance of oligotrophic aquatic life, not drinking water quality, is the most sensitive beneficial use of Lake Tahoe Basin waters.

The proposed additional wording on maintenance of higher quality may, if adequately enforced, prevent degradation of stream quality and increased nutrient loading to Lake Tahoe. However, the adoption of standards involving chemical concentrations much greater than existing quality contradicts the spirit of this antidegradation language, and may, to the casual reader, appear to invite degradation. Nevada's proposed response to our comments acknowledges the continuing deterioration of Lake Tahoe's quality, but cites the increasingly documented importance of atmospheric nutrient deposition in the Lake's decline. Regardless of the relative importance of various nutrient sources, it is important to control <u>all</u> controllable sources in order to maintain and enhance the quality of Lake Tahoe. Because nutrient loading from streams is easier to control than atmospheric deposition, it is important that stream standards be set at levels which will protect the beneficial uses of Lake Tahoe, as well as the streams themselves.

Regarding our earlier comment on the need to use all available data, the draft response supports the continued use of limited historical STORET data in developing standards. We continue to believe that the Tahoe Research Group's long-term monitoring data for Lake Tahoe are the best available data. Even if these data have not been entered into STORET, they are still the result of rigorous Quality Assurance/Quality Control procedures and they have been statistically manipulated in a number of Lake Interagency Monitoring Program and Tahoe Regional Planning Agency annual reports and scientific publications.

Please include these comments in the record of your agency's April 4, 1995 public hearing on proposed changes in water quality standards for Lake Tahoe and its tributaries. Please contact Judith Unsicker of my staff at (916) 542.5417 if you wish to discuss these comments."

Signed: Ranjit S. Gill, Ph.D., Chief, Planning and Toxic Unit.

Chairman Close asked Mr. McCurry to respond to the letter.

Wendell McCurry replied the letter is the result of a response back to Lahontan's desk after workshops were held. We presented our original draft of the proposed changes in these workshops. The biggest concern to come up in that meeting was they were afraid that the public might get the impression that we were not setting specific numerical RMHQ's. To resolve the comment that came from two or three different directions, we included the language "any tributary waters to Lake Tahoe that include water quality higher than the applicable standard will be maintained at that higher quality".

Chairman Close asked for clarification regarding the second paragraph in the California Regional Water Quality Control Board's letter that suggests that your nitrate standard is to high, using a drinking water nitrate standard. Wendell McCurry replied, in respect to that comment, I still feel it is a lack of knowledge in how we develop our standards of setting beneficial use standards, that is what the 10 is, then setting RMHQ's which is our antidegradation part of the standard. The normal procedure we follow in setting standards is adopt the beneficial use numbers, then the water is much better, and then we adopt the RMHQ's. On the surface, it looks like it is going to be gross degradation when in fact it is not because it is coupled with the antidegradation provision.

Chairman Close asked for additional questions. There were no questions.

Chairman Close asked for public comment. There was no public comment.

Commissioner Gifford stated that before we vote on this petition he would like to see incorporated in the petition, a frequency schedule for sampling, for whatever number of samples that are deemed appropriate for any given year, that they be taken in proportion to when the flows are occurring and the volumes at that particular time.

Chairman Close asked Wendell McCurry to comment. Wendell McCurry stated that he did not have an objection to that but asked the Commission not to attach it to the standards. We have increased our frequency of sampling and we will also be working with U.S.G.S., the Forest Service and TRPA. Chairman Close asked Mr. McCurry if he had any objection if, in adopting this regulation, the Commission added, not to the regulation, but something that says such recommendation should be followed?

Commissioner Turnipseed asked Wendell McCurry, of the criteria that are listed, and of the ones that the U.S.G.S. measures, how many can be measured by continuous recorder? Wendell McCurry replied that TDS and pH could but I don't think the nutrients can be measured by

continuous recorder. Dr. Gardner stated it would be limited to temperature, pH, VO and flow. Commissioner Turnipseed asked, based on the ones that can be measured on a continuous flow, can they be correlated to some of the other constituents, are there indicators in the ones that can be measured with a continuous flow as to what some of the other constituents are? Wendell McCurry replied, not really. If you have a hard flow that indicates more possibility of erosion material the reverse of this is that also you would have higher flow from snow melt and it depends on the situation up there, as to where that higher flow is coming from. Commission Tangredi asked, based on a continuous flow, if you suddenly see high percentages of contaminants in the continuous flow, if the pH goes up or down or temperature goes up, are those indications to measure far beyond the number of normal measurement for the other constituents such as the coliform and if the continuous are high, would that be an indicator that you should measure for other contaminants? Wendell McCurry replied no, if the sampling is more related to the flow then we would have a more accurate picture of what is being discharged into the lake. It takes continuous measuring parameters to predict or relate to one of the other, say nutrients. Nutrients is one of the main things we are concerned entering the lake and you can't really relate any of those to nutrients. Dr. Tangredi asked if there were any new devices or new break-through in computer technology for detection that would solve this dilemma by giving an immediate result or an immediate count? Wendell McCurry replied no, there has been some recent technology with respect to bacteriological but that is in the lab. We are working with the lab, looking at how we can convert over to using these new procedures because it saves time in the lab.

Chairman Close asked Commissioner Gifford, if we had a resolution going along with your thought, would that accomplish your purpose? Commissioner Gifford replied yes.

Commissioner Fields stated that as Chairman Close earlier suggested, maybe we can go ahead with these regulations but ask the Division to provide us with a policy or protocol that addresses Commission Gifford's concerns about sampling volume and sampling technique. Commissioner Fields suggested, perhaps the appropriate time to bring that back to us will be later in the year because these are temporary regulations that we will be revisiting in August or September. Chairman Close asked Wendell McCurry if that would be possible. Wendell McCurry replied yes. Chairman Close requested the Division to provide that protocol to meet Commissioner Gifford's comment at the time these regulations come back before the Commission for final adoption.

Commissioner Griswold asked if, on page A-21, the Commission was going to consider changing the 92 to 0. Wendell McCurry reminded the Commission that has nothing to do with the standards themselves but we will go back and where we are using less than 10, put that as 1 which will change that. Chairman Close asked that the record show this. Chairman Close asked Wendell McCurry if he was suggesting that the Commission adopt this the way it is, with the 92. Wendell McCurry replied that was confusing. The 92 was backup data information that does not appear in what the Commission is actually adopting.

Chairman Close asked for additional questions or comments. No questions or comments were received.

Commissioner Molini made a motion that Petition 95009 be adopted.

Commissioner Tangredi seconded the motion. The motion carried.

E. **Petition 95010** is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution regulations. The proposed amendments modify and clarify references to "air contaminant" or "air pollutant" to address "regulated air pollutant". In addition references to "source" are proposed to be changed to "stationary source" or "major source". The term portable source in NAC 445B.137 is proposed to be deleted and substituted with "temporary source". Other definitions clarified include "regulated air pollutant" and "stationary source". The reporting of excess emissions in NAC 445B.232 is clarified and various provisions in the regulations are extended beyond current sunset dates. NAC 445B.327 is proposed to be clarified such that service and maintenance fees are charged by emission units and not by permitted sources. NAC 445B.295 is proposed to be amended to provide authority to the Director to establish a list of insignificant activities based upon "de minimis" emissions.

Jolaine Johnson, Chief, Bureau of Air Quality noted that on January 4, 1995 the Nevada Mining Association along with the Air Quality Subcommittee committed to a detailed evaluation of air quality permit issues and recommended revisions to the NAC regarding the permits. NDEP developed the following proposed amendments to NAC 445B based upon our consideration of the Air Quality Subcommittee's Issues document and upon other issues that we identified in our review of the regulations. The Division appreciates the effort to clarify the language in the regulation put forth by the Nevada Mining Association and the Air Quality Subcommittee in the development of these proposed amendments. The Division has also reviewed these proposed changes with the Nevada Manufacturers Association and numerous other interested parties.

Ms. Johnson noted the authority for these changes is established in NRS 445.461 which allows the State Environmental Commission to adopt regulations to prevent, abate and control air pollution. Also NRS 445.491 specifically establishes the State Environmental Commission authority regarding operating permit requirements for sources of air contaminants.

Ms. Johnson continued, the proposed amendments have been organized in a table provided to you in your packet. Ms. Johnson explained that Table 2 provides a list of all citations that are being changed to address "regulated air pollutant". When we reviewed these regulations we found that the terms "air pollutant", "air contaminant" and "regulated air pollutants" "contaminant" and "pollutant" were all used interchangeably. We recognize that there is a significant difference between an air contaminant and regulated pollutants that we are trying to address through the permitting process. 445B.010 defines air contaminant as any "substance discharged into the atmosphere except water vapor and water droplets". That is a very broad definition of something that may be emitted into the air from facilities that exist in the State of Nevada. In reality, we only regulate or permit facilities that emit pollutants of concern and the universe of those pollutants is much smaller than what the statute has defined as an air contaminant. Table 2 lists all the sections that change all of those references to what we want to call a regulated air pollutant. To make Table 2 consistent with the proposed amendments it should include a reference to Section 66, where we are also adding the word air to the statement. Section 70 should be deleted because we don't make this kind of change in Section 70. Section 89 should be added to the list because we do make that kind of change in Section 89, Sections 95 through 100 in Table 2 should be deleted because we are doing something a little bit different in those sections which I will address later. I would like to request that we remove our suggestion for amendment of Section 3. In my review of this document, I have found that term is defined in statute and we cannot change the definition of the term at this point.

Ms. Johnson explained, Table 1 addresses a long list of sections where we have changed the word "source" or the words "major source" to address what we want to call a "stationary source". The statutes define source as a "facility that emits an air contaminant" which is a broader definition. We would like to clarify the regulations by changing all references to source to "stationary source". Again, we are narrowing in on facilities that emit regulated air pollutants.

Ms. Johnson continued, Section 101 includes the addition of stationary source so it should be added to Table 1.

Commissioner Jones asked, if you change the definition of air pollutant in Section 3, isn't that the

same reference you are changing throughout. Ms. Johnson replied no, throughout, we are changing everything that we refer to, making it a regulated air pollutant, not air pollutant.
Ms. Johnson explained, Table 3 lists all the other changes proposed by this petition and these are not as general in nature as the first two tables listed.
I also have some minor modifications that I would request at this time to the proposed amendments and as we review these, I would like to skip all the references to just changing "source" to "stationary source" and "air pollutant" to "air contaminant", as it is all the same issue.
Section 2:
We ask that you just change that simply to refer directly to the statute to make it clear that this term is already defined in statute.
Section 3:
I request that we withdraw those proposed changes. The term is defined in statute and we do not want to ruffle feathers at LCB by trying to change these.
Section 13:
Remove the language "or portable". You will find, as we go through this, we have excluded the temporary source in the definition of stationary and we are changing the word portable so we ask that be deleted.
Section 13, line 27:
This is not in the petition right now. I ask that the last words of that paragraph "pollutant under the act" be deleted and changed to read "regulated air pollutant" . This will make it more consistent throughout the regulations to use the same term.
Commissioner Jones asked if the new changes being made today are substantive and would require more public hearings. Ms. Johnson replied she did not believe so.
Ms. Johnson continued, the next change is:
Section 15:
Delete the words "or portable".
Section 28, page 9:
Remove the word "portable" and refer to it as a "temporary" source. I believe it creates confusion when we talk about portable or stationary sources because a temporary source is equipment brought to a certain location that may operate there for a one year period. Those facilities are subject to permitting requirements and we want to clarify that through this change. We want to call it temporary because temporary is not conflicting to the word stationary. Our stationary

sources encompass these temporary sources. Commissioner Tangredi asked if you can have a permanent portable existing facility? Does portable, in general terms, means you can transfer it? To be defined as portable does it have to look like a portable? Ms. Johnson replied no. For example, asphalt batch plants move around from highway job to highway job. They are brought in, set up but they will be moved in 6 months. We will permit the process, then reconsider their new location to assure that their emissions won't cause any health concerns in a new location. Commissioner Tangredi asked what extent of time do you allot in the definition of something being portable, to remain in a location. Ms. Johnson replied that is defined in Section 28, Item 3, located or operated in a location for a period of less than 12 months.

Ms. Johnson continued, we have, in the past, referred to source facility, stationary source and single source. Single source has been something that we have tried to point to as one piece of equipment within a process. We ask that any reference to a "single source" in these regulations be changed to "an emission unit". That distinguishes between a source and the parts of the source which we want call "emission units".

Section 30:

Change "single source" to "an emission unit".

Commissioner Turnipseed asked would you have to permit the grizzly and the crusher and the separator and the plant separately or would this all be called an "emission unit". Ms. Johnson replied, we call that a source and each of those separate pieces of equipment that come together that make up that source is called an "emission unit". We write the permit for the source, but within that permit we address each of the emission units that they are bringing together.

Ms. Johnson addressed the next change:

Section 32:

We ask that the definition of "regulated air pollutant" include Item C, a standard established by Nevada Administrative Code 445B.391. This brings anything that we have established a State ambient standard for into the definition of regulated air pollutant so that we can include those in our permitting process.

Section 34:

Again, we ask that the definition be changed to directly reference the statute so it is clear that is established in statute.

Section 36:

We request that the term "stationary source" be changed to include "temporary sources" so that

those sources are also subject to the permitting requirement.

Section 37:

We are changing the definition of stationary source to include a temporary source.

Section 45: Paragraph 3, line 7; we are changing the Standard Reference Manual that we use for emission factors from the 1972 version to the latest version established in 1977.

Section 47:

Previous action established that this provision would go away when the EPA approved our program and we ask that this provision be kept in our State regulation. That is, we are asking that subset provision be removed and that we maintain this section of the regulation. This allows us to consider the causes of excess emissions as we enforce the regulation. If something is, because of routine maintenance that we have been notified in advance of, or start-up and shut-down procedures may cause very short term excess emission, we want to be able to accommodate that in the enforcement of these rules.

Section 57, Page 31:

We are asking that those provisions not sun-set. We ask that we be allowed to provide for schedule of compliance. We recognize, when writing up the permits, that a facility is not in full compliance with current rules that we be allowed to write a schedule of compliance to bring that facility into compliance over a specified amount of time. Commissioner Jones asked why these were sun-setting before? Ms. Johnson replied that the Division went through some major revisions in these regulations in late 1993 to make our regulations more consistent with the federal program. At that time, many of these regulations were changed to sun-set and become effective upon federal approval. In retrospect, we have looked at three of these provision and believe that they really are very helpful to implementing the program.

Section 60:

Remove the reference to "a separate operating permit". Previously, we permitted almost every piece of equipment or sub-units of the source. At this point we are permitting the source of regulated air pollutants.

Similarly, on the top of Page 34: Take out the separate modification requirement, delete the word separate.

Commissioner Tangredi asked if a time limit to correct a violation at a source is according to who allots the time limit and is it based on criteria and when will it be corrected? Ms. Johnson replied it will be corrected as soon as possible and practical. Some facilities may need major

capital expenditures for correction of air emissions and depending upon, a specific situation at each site, how serious those emissions are to public health and safety will affect the time frame. A compliance schedule gives us flexibility to acknowledge specific circumstances associated with non-compliance. Dr. Tangredi asked, would you allow some violations to exist for years because they are going to wait for a year to purchase new equipment. Ms. Johnson replied that "years" is a lot longer time-frame than I would anticipate these compliance schedules taking. Perhaps a year, again it would depend on the circumstances at the facility. Dr. Tangredi replied, and it would depend on the contaminant and the emission. Ms. Johnson replied it would depend on contaminant emissions at the location of the facility, is it a threat to community at this specific location, all of these would have to be considered as we develop schedules of compliance. A total shutdown may be necessary for public health and safety. These schedules of compliance give us flexibility to work with a facility to bring it into compliance.

Ms. Johnson addressed the next change:

Section 62:

Line 12: We add the words "as used in Nevada Administrative Code 445B.322. This just provides a direct reference to where significant modifications are addressed in these regulations.

Lines 14 and 15: We request the word "major" be placed in front of the word "source". A major source is subject to the new Title V requirements and we want to make it clear that this section applies to that.

Line 17: We request that it read "a proposed new stationary source" to make it consistent with the regulations.

Section 63:

Line 5: We request that the statement be "if an owner or operator of an existing stationary source"

Lines 13 and 14 on page 37: We ask that "single sources" be deleted and "emission units" be substituted. Also, delete "do not require" and insert the words "are not subject to operating permit requirements".

Section 64: We request the addition of item M starting at line 14. These provisions essentially provide that the director may establish a list of insignificant activities that we may exempt from the permitting requirements and have specific criteria that we establish for those exemptions. If activities do not result in emissions of regulated air pollutants that exceed 1 pound per hour or 1,000 pounds per year of hazardous air pollutants; that exceed 4,000 pounds per year of any

regulated air pollutant; that exceed any other emission limitation pursuant to an applicable requirement; and impact public health or safety. We also recognize that certain types of emission units may not have an impact and could be considered insignificant. However, if numerous units were brought together, they could have an impact on public health and safety. This provision allows us to acknowledge that, when brought together, emissions may be significant.
Commissioner Gifford asked Ms. Johnson how they came up with those values of 1 pound per hour or 1,000 pounds per year? Ms. Johnson replied that was taken from U.S. EPA guidance provided in the Title V permitting regulations. They allow us to determine if certain emission units are insignificant and should not be subject to the full permitting process. Again, it will depend on the circumstances whether the administrator or director actually lists these units as insignificant.
Commission Tangredi asked, if you have 4 units not exceeding 4,000 pounds in and around an area, for example they would be considered a regional source, is it a violation if it exceeds more than 4,000 pounds per year? Ms. Johnson replied if it exceeds 4,000 pounds per year the director cannot list it as an insignificant activity. That is provided for at line 21 where it says the director may consider the impact of combined emissions of multiple emission units at any specific stationary source in determining whether specific emission units are exempt. In other words, we may exempt a boiler at one facility but if a facility next door has 6, 7 or 8 of those we would be able to pull back that exemption and say that those are significant because they are in multiple units and they may cause significant problems, therefore they would not be subject to the exclusion. Commissioner Tangredi asked, so an exemption can be pulled? Ms. Johnson replied, for specific sites, yes. Commissioner Gifford requested clarification. I read sentence 21 and 22 to say at any specific stationary source. I got the impression that the question had to do with multiple stationary sources - Commissioner Tangredi replied he asked if there were multiple stationary sources would you consider that a region and therefore consider it one regional stationary source. Commissioner Gifford replied, yes, so I don't think that lines 21 and 22 would pertain to that, it would pertain to multiple units within a stationary source but not multiple stationary sources. Ms. Johnson replied, you are right. If there is some concern about this we could amend this language to include that circumstance also. Commissioner Gifford replied, I would just ask is if of a concern to the Division? Would that kind of a situation come up in the sense it needs to be addressed. Commissioner Tangredi stated it would if it posed a health hazard. If you have 20 not exceeding 4,000 pounds but contributing an enormous amount

of tonnage in the air far exceeding a lethal situation, yet all of them would be in compliance because they would be emitting less than 4,000 pounds. That is not totally cleared up in my mind, but I am sure that the intent of this is to define multiple sources. Chairman Close asked, wouldn't line 20 in paragraph 4 take care of that? If it impacts the public or safety. If you had several units in a regional area, each under 1,000 pounds, you could decline to waive, based upon the fact that you determine the impact to public health or safety. Ms. Johnson replied yes, if we consider public health or safety may be impacted we will continue to permit those emission units. Chairman Close asked if the ultimate control, even though it might meet each one of these individually, would still be within your domain because of its impact on public health or safety, you could say no. Commissioner Tangredi noted that in Louisiana, the oil companies have fights back and forth. When the state of Louisiana asks for lowered emission tonnage from a particular site, the other one may scream and say "look at Exxon, 2 miles away, why didn't you ask them to reduce their amount". You have this competitive litigation between which source should be lowered. Ms. Johnson stated that it would not concern the Division if we eliminated the words "at any specific stationary source" and perhaps would cover more general situations where we may have multiple sources. Commissioner Griswold noted that agricultural land use is included and asked Ms. Johnson for an example of how agricultural land use is affected? Ms. Johnson replied that agricultural land use is specifically exempted already, this just allows us to add more specific pieces of equipment to this - Commissioner Griswold asked if this language would not give the director the right to regulate an agricultural source? Ms. Johnson replied no, agriculture is already specifically exempted. We are saying that we want the ability to list other units. We had suggestions, one from a power company and one from a mine, and the lists are rather long, with little tiny pieces of equipment that do emit particulate or other pollutants. It would not be prudent to spend a lot of time permitting these.

Chairman Close asked Commissioner Gifford if the change that has been suggested for line 21 and 22 takes care of your concerns. Commissioner Gifford replied yes. Commissioner Jones interjected, the question brought up is, if one unit throws the region over the threshold, do you then make the adjustment for everybody that is polluting in that particular area or do you just refuse the one who is now going to push it over the threshold? I view that as a real problematic issue. Commissioner Tangredi stated that problem is continual. If a new licensed company wishes to set up, having a pre-competitive market, would they be denied coming in on the basis that the additional emissions would throw everything into a legal disabled atmosphere? Ms.

Johnson replied, there are other permit provisions that indeed do that. You have to control adding another source if it is going to put the region into a non-attainment or exceeding the criteria of air pollutants and we would not be able to permit that facility. Deputy Attorney General Mischel stated that facility would have to re-locate. Commissioner Tangredi noted that determining if the air is unhealthy is a long process and during that period of time calamities can occur, litigation results where both sides say that the sources are not coming from their facility, it is only temporary or it is due to an atmospheric apparition. When we finally reach the point where our authorities would determine that the air is unhealthy, and it is due to that source, it is a long way down the pike. Jolaine Johnson replied, that is true. If sources are existing and you find that the air is at an unhealthy level, then it is very difficult to identify exactly who is to blame. The Division has authority to go in and require stricter control on any, or all, of the facilities to bring that back into a healthful air condition. New federal requirements place an extended monitoring program requirement on facilities to monitor their pollutant to control that. Commissioner Tangredi stated, even fugitive dust poses a problem. Where is the dust coming from? A company will say it is coming from him, not me, because we are out there watering, see our trucks? Ms. Johnson replied yes, these are enforcement issues that we are trying to address. Jolaine Johnson continued with requested changes.

Section 64, page 38, line 23:

Change "sources" to "emission units".

Section 65, page 39:

The Clean Air Act Amendments of 1990 require us to re-permit all of our major facilities in a 3 year time period and that period will start this summer when EPA approves our program. The We have to complete re-permitting ⅓ of our facilities in the first year; ⅓ in the second year and the complete the permitting process by the end of the third year. The current regulations state that within 12 months after we get our program approved all of the applications must come in. If everyone waits until the end of that period to submit their permit applications we will not be able to accomplish ⅓ of those permits the first year. Thus, we are asking for change to allow us to establish a schedule for submittal of these applications in a 3-tier process, allowing us time to evaluate them, determine if they are complete, and process the first ⅓ in a year. We will base that schedule on the complexity of the process for the facility, the source, and we will allow the simplest sources, those with the fewest emission units at their facility to submit those in the first tier; the next ⅓ the second tier, and the most complex facilities will be allowed the full year to

prepare and submit their applications. This change basically allows us to meet the requirements of the Clean Air Act Amendments.

Ms. Johnson continued with the requested changes.

Section 65, lines 3 and 4: Delete the words of a "Class 1 source" and substitute the wording "subject to NAC 445B.289". Add the words "Class I-A" in front of application on line 4.

Section 66, lines 15 and 16: Add the words "of all regulated air pollutants that are subject to an emission limitation pursuant to an acceptable requirement and the emission rate shall be". Ms. Johnson explained, as the major sources submit their applications they are required to quantify all of the emissions at the facility. This language clarifies that the only emissions we can be concerned about, or can control, are those that already have a regulatory requirement.

Page 43, line 9: We request Section 4, in its entirety, be removed. Basically, this section is putting more stringent requirements on Class II applicants than we have put forth in the past and we don't want to complicate or require additional information of those facilities. We are able to process those Class II applications without this additional information now and want to simplify that for them.

Section 70, page 48: Ms. Johnson explained, the way the regulations are written now basically sets up a Class II permit, as well as a Class I permit, for public notice. That is not required, nor do I think it is the intent of this regulation.

Line 4: Delete the words "make a preliminary determination". After we review these permits for the minor sources we can make a determination to issue the permit without making a preliminary determination and a public notice.

Line 6: Remove the words "and give preliminary notice of his determination to the applicant".

Line 3: We ask that instead of 30 days we be given 60 days to completely process an application for a minor source. Commissioner Griswold asked if that would create a hardship on some operations? Ms. Johnson replied that depends on their planning. Some are ready to operate now, then realize they need an air quality permit. If we were making a preliminary determination and going to public notice the time-frame would 30 days. We are suggesting that we give the air quality staff more time to process the permit. We have been accommodating the facility to the best of our ability and that policy will not change. We have processed applications within a week, when the circumstances are difficult for the facility. We will continue do the best we can with the resources we have.

Ms. Johnson continued with the proposed changes.

Section 75, page 56:

Eliminate the sunset and continue the provision. This continues the provision, particularly for temporary sources, when they are re-locating their facility. We will already have issued the permit, we will just consider the new location rather than re-process the permit.

Section 82, page 66, line 4:

Single source should be changed to stationary source.

Section 89, page 73, line 16:

For consistency, the word air should be inserted between regulated and pollutant.

Section 89, page 74, line 14:

Ms. Johnson explained the fee system for the air quality program is based on two fees.

1. An emission fee that is charged on a per sum basis of emissions emitted from each facility. 2. A maintenance fee.

We have attempted to make the maintenance fee equitable to the effort that is required by the Bureau of Air Quality to implement the air quality program at each facility. The intent was to charge a fee for each emission unit, what we are now calling an emission unit. It was called a source, and again, the terms have been used interchangeably and in different ways throughout this regulation. We ask for clarification that these fees be charged by emission unit rather than by source.

Commissioner Gifford asked Ms. Johnson to address the concerns raised in Eagle-Picher's letter regarding this issue. Chairman Close asked if this was the first issue raised in the letter. Ms. Johnson replied that section 89 is the only issue raised in the Eagle-Picher letter. Mr. Flynn from Eagle-Picher raised the issue that using emission units as a funding requirement is not equitable. He is arguing that facilities emitting more pollutants may be subject to less fees because they have a simpler process. Eagle-Picher has a simple process, 5 emission units, but emit 90 tons per year and pay $1177 in fees versus a facility with more emission units at their facility that emits 10 tons per year for the tonnage of $3533. This is a balance that the Commission has adopted between charging for emission and charging for the emission unit at the facility that represents the amount of work required by agency to permit and enforce these provisions at that facility. We have agreed with all the facilities to re-address the fee program and try to come up with something more equitable. There are companies that think the opposite of Mr. Flynn. They agree that you have to charge on the basis of the work load that the facility creates. Ms. Johnson continued, Mr. Flynn's letter comments that the "definition of emission units is ambiguous and

inconsistent use will discriminate against competitors". We have tried to clarify emission units in these proposed regulations. I have to suggest that when these regulations were adopted for fees, the intent was to charge by emission unit. Mr. Flynn is right. We don't know how many emission units he has. When we visit his facility and permit it, then we will count those emission units. Commissioner Griswold asked how it would affect the bottom line of the fees that he pays. Ms. Johnson replied, when we pull his permits together to issue him one source permit we may find that there are more emission units than we previously accounted for his fees could go up. Commissioner Griswold asked if this was likely to be the case in other plants resulting in the collection of more fees than you have in the past? Ms. Johnson replied yes, but with any luck we will come before you to ask for a fee reduction. We charge fees to cover the cost of our program and the fees that we have established today are based on the number of emission units that we know are out there. If those numbers change the fees come down. Commissioner Jones asked if the Bureau had taken a sampling of different applications, for example, a power generation plant and other places, just to see what the net effect would be and is the fee structure based upon the application. Ms. Johnson replied no, we have not. We started to take a closer look at the facilities last year when we applied these fees the first time. We have not taken a detailed look at all the facilities but as opportunities arise, and as we have transferred these multiple permits into one-facility permits, we are coming up with higher numbers of emission units at those facilities than we originally accounted for. Commissioner Jones asked, was it the intent of the Commission at that time, to change the fee structure by this process. Jolaine Johnson replied that the fee structure was substantially changed.

Ms. Johnson addressed Mr. Flynn's concern about permit writers having different interpretations of what an emission unit is and that has been true in the past. When we look at emission units now that will become consistent when we re-permit these processes.

Ms. Johnson continued, Mr. Flynn is concerned that the fee structure will re-evaluate the number of emission units and maximize revenue. We will assess fees and bring to you a fee schedule that is adequate to cover the resources that we need. There is no authority to collect any more than what we need to run these programs.

Jolaine Johnson continued with the requested changes.

Page 75, line 21:

Remove the word "portable" and insert the word "temporary". Section 90, page 76, line 16 we are correcting "the source" to "an emission unit".

Similar change on lines 18, 19 and 20.

Section 94, page 79:

Again, we are changing "air contaminants" to "regulated air pollutants" and we want to clarify that these provisions only apply to "toxics" that are established by the Commission and by the Federal EPA as hazardous air pollutants. These requirements for "best available control technology and lower emission rates" are only applicable to the toxic pollutant. Commissioner Tangredi asked if the toxic pollutants are posted for the general public? Jolaine Johnson replied that the toxic pollutants consist of the limited hazardous air pollutants established by the U.S. Environmental Protection Agency. This Commission has the authority to add toxic regulated air pollutants to that list but to my knowledge that has not been done, that there are no additional toxins other than the Federal program. Commissioner Tangredi asked, when you reach a specific level, do you require that facility to post the level. Jolaine Johnson explained Section 100, page 83 of these proposed regulations states that "notice of existence of hazardous air pollutants or toxic regulated air pollutants at a level of 90% or more of the accepted emission rate must be conspicuously posted at an area available to the general public".

Ms. Johnson continued,

Sections 94 through 99 and Section 100: These sections address the toxic regulated air pollutants and hazardous air pollutants.

Section 103, page 85:

Line 2:

We ask that you delete the words "single source".

Line 22:

Delete the words "a source located on a contiguous property" and replace it with "an emission unit".

Page 86, line 1:

Delete the words "a source located on a contiguous property" and replace it with "an emission unit".

Page 87, lines 10 and 11:

Change the word "source" for "emission unit" and that covers all the other changes to these regulations as proposed.

Commissioner Gifford asked, out of curiosity, on page 87, there is a document price of $31. I notice on one of the other changes there had been a document change, cost-wise. Is that still

current? Jolaine Johnson replied she was not sure what that price should be. Commissioner Gifford wondered if we might just put a period at the end of the zip code and leave off line 19. Lew Dodgion stated that you have to include the cost. Chairman Close asked Ms. Johnson to find out the cost and put that cost in and for clarity to place the word "current" to define cost. Chairman Close asked for additional questions. There were no questions.

Chairman Close called upon Patrick Flynn

Patrick Flynn, Director of Research and Environmental Affairs for Eagle-Picher Minerals noted that Eagle-Picher has been a processor, primarily, of diatomaceous earth in both Nevada and Oregon. The company has processed diatomaceous earth in Nevada for approximately 50 years. Eagle-Picher are concerned about the way the use of emission unit is to be applied for determining fees. There has been discussion regarding the letter we submitted and I would like to read it for the record.

Ladies and Gentlemen of the Commission:

The purpose of this letter is to present the comments of Eagle-Picher Minerals, Inc. ("Eagle-Picher") on the above referenced Petition to temporarily amend certain sections of the Nevada Administrative code ("NAC") related to various air pollution regulations. These comments generally support the amendments proposed in the Petition, with the exception of the proposed amendment to NAC 445B.327 relating to the service and maintenance fees being charged by "emission units" and not "permitted sources".

Eagle-Picher understands the necessity of providing a mechanism for funding Nevada's air quality program. Eagle-Picher supports a broad-based mechanism allocating equitable charges to industrial sources of air pollution which will provide the requisite level of funding for the Nevada program. However, the use of "emission units" and not by "permitted sources". Eagle-Picher understands the necessity of providing a mechanism for funding Nevada's air quality program. Eagle-Picher supports a broad-based mechanism allocating equitable charges to industrial sources of air pollution which will provide the requisite level of funding for the Nevada program. However, the use of "emission units" as opposed to "permitted sources' for determination of service and maintenance fees is <u>not</u> equitable and Eagle-Picher strongly opposes the amendment of NAC 445B.327 to use such emission units as the basis for fees.

Eagle-Picher's objections to the proposed temporary amendment are based on the following. First and foremost, the use of emission units to determine fees will not equitably allocate cost among air pollution emitting sources. Further, the definition of emission unit is

ambiguous and can be applied differently by permit writers for various facilities. This lack of consistency could result in a discriminatory fee schedule particularly among competitive producers of like products. Likewise, the ambiguity and the definition of emission units and the accompanying inconsistencies in their application could expose manufacturers including Eagle-Picher, to costly regulatory exposure.

1. Using Emission Units to Allocate Funding Requirement is Not Equitable.

The utilization of emission units is totally inequitable and penalizes a producer for the complexity of his process, not the cost for administration by the Bureau of Air Quality ("BAQ") or the pollutant impact on the environment. For example, assume the following two facilities would operate in Nevada:

Facility A emits 10 tons/year of particulate and has 20 emission units. Fees assessed would be:

10 tpy x #3.36/ton emitted =	$ 33.60
20 emission units x $175/emission unit =	$3,500.00
Total	**$3,533.60**

Facility B emits 90 tons/year of particulate and has 5 emission units. Fees assessed would be:

90 tpy x #3.36/ton emitted =	$ 302.40
5 emission units x $175/emission unit =	$ 875.00
Total	**$ 1,177.40**

This scheme of fee assessment cannot be deemed "equitable" when Facility A, which emits only 11% of the pollutants emitted by Facility B, would pay over three times the fees of Facility B.

This scheme is totally in conflict with the intent of Environmental Protection Agency in establishing a fee structure, which is aimed at creating a market-based incentive to reduce emissions. This intent is reflected in 40 CFR part 70 which in relevant part states "fees are based on actual emission levels... [which] will create an incentive to reduce emissions." The proposed fee schedule only promotes a reduction in emission units which are physical pieces of equipment. It would actually discourage a reduction in pollutants if that reduction required adding extra equipment which would be classified as emission units. In fact, only 2% of the fees which Eagle-Picher were assessed in 1994 could be attributed to emissions, which hardly meets the intent of EPA's directive.

2. The Definition of "Emission Units" is Ambiguous and its Inconsistent Use Will Discriminate Among Competitors.

The definition of "emission unit" is unclear and ambiguous and it is possible for different persons (i.e. permit writers) to interpret and apply this definition differently to the same process. Two producers of the same products could accordingly be assessed different fees, solely based on the identification of an emission unit by BAQ staff during the permit evaluation process.

This problem has recently been a reality at an Eagle-Picher operation where a new process was permitted. Based on BAQ's interpretation, this process was permitted with more emission units than other comparable processing units at the same facility. Even though the total number of emission units and the total emissions of the process is significantly below the other processing units at the facility, the fees assessed for the new process were three times higher than the other three processing units combined.

The net effect of using emission units rather than permitted sources as the basis for fee assessment is to tax the complexity of the process required to manufacture the product, not the emissions from the process. Further, the monies generated from a particular facility in no way reflect any difference in cost to administer the program. This creates fertile ground for discriminatory assessments even if unintentional.

3. Inconsistent Designation of Emission Units May Subject Some Companies to Unwarranted Regulatory Action.

The application of "emission units" may result in a re-examination of a facility's permitted emission units to maximize the revenue production of the fee schedule at issue. We are also concerned that during this process BAQ could note that Process A has a piece of equipment identified as an emission unit in BAQ's fee schedule, while process B has the same piece of equipment that is not listed in the fee schedule. BAQ could initiate enforcement action against the company for not adequately identifying its emission units and trying to avoid payment of fees due to the Agency. Yet, the only reason that Process B's equipment is not listed as an emission unit is solely due to BAQ's prior interpretation during the permitting process, not that the Company failed to disclose the presence of the equipment.

4. Reevaluation of the Number of Emission Units to Maximize Revenue Production will have a significant Negative Impact on Manufacturers.

Should BAWQ reevaluate all current permits it could grossly exaggerate the number of emission units at a facility to maximize revenue production. Almost every physical unit in a

continuous process plant has the potential to emit some level, albeit de minimis, of pollutant, making each potentially an emission unit if BAQ so chooses. The impact of this action could dramatically increase the cost of manufacturing in Nevada. For example, if all of Eagle-Picher's potential "emission units" were included for the purpose of maintenance fee assessment, the increase in fees could be ten-fold. Certainly it can be appreciated that this would have a very significant and negative financial impact on Eagle-Picher and may other manufacturers. This increased cost of doing business could likewise impact decisions to site future projects in Nevada.

Eagle-Picher has made it objections known to the BAQ on several occasions but these comments have fallen on deaf ears. On June 28, 1994 we expressed our concerns to the then Chief of BAQ, offering to work with BAQ to establish an equitable fee schedule. There was no response from the Chief or his staff. We would also note that the Commission received a copy of these concerns at that time. Two additional letters were sent to BAQ in February, 1995 reiterating our concerns about the fee schedule; again there has been no response to answer these concerns.

We understand that Petition 95010 has the support of organizations such as the Nevada Mining Association and the Nevada Manufacturers Association. We surmise that their support is positive because their member companies do not envision that they would be significantly impacted by these fees. It is likely that Eagle-Picher would also have supported this measure the it not been for its recent experience in permitting a new process where in inordinate number of emission units were identified compared with the other processing units within the facility.

As stated previously, Eagle-Picher actively supports an equitable fee schedule which is based on actual emissions to the environment and the number of sources which relates to BAQ's costs in administration of the program. The proposed temporary amendment to NAC 445B.327 is neither. Instead, it creates and inequitable ambiguous and discriminatory system of cost allocation which could negatively affect the competitiveness of manufacturers in the state of Nevada.

We ask that the Commission defer action on NAC 445B.327 until an equitable fee schedule can be established. Such a system must be based on actual emissions and the number of permits required at a facility in order to remain equitable and above interpretation. Eagle-Picher continues to welcome the opportunity to work with BAQ and the Commission to establish such a schedule.

We sincerely appreciate the opportunity to enter these comments into the Administrative Record. We would be pleased to discuss this matter with the BAQ and Nevada Environmental Commission at the earliest possible convenience to develop an equitable fee schedule.

Signed: Eagle-Picher Minerals, Inc. Patrick T. Flynn, Jr., Director, Research and Environmental Affairs.

Patrick Flynn continued, as I mentioned, Eagle-Picher has a facility in the State of Oregon. Oregon has chosen to utilize a source fee as the basis for each facility and their fees for emissions are based on emission units. However, their description of emission units goes beyond, including any particular piece of equipment that has potential to emit, it goes on to say that the activities or parts may be grouped for the purposes of defining an emissions unit provided that quality conditions are met, and

a. The group used in defining emission unit may not include parts or activities to which a distinct emission standard apply or for which different compliance demonstration requirements apply.
b. The emissions from the emission units are quantifiable.

In proposed regulation 95010 there is no effort to quantify the amount from each potential emission unit. I think it is more appropriate to be able to apply a fee schedule to those units that are indeed emitting, not a potential to emit, which is part of the definition.

Mr. Flynn continued that Eagle-Picher is concerned about the idea of new assessments strictly on the complexity of our process compared to other processes, rather than on a basis of emissions and number of sources that are emitting.

Chairman Close asked for questions.

Commissioner Turnipseed asked Mr. Flynn if the net result of their Oregon permitting process resulted in higher or lower fees than in Nevada. Mr. Flynn replied that it will probably be slightly higher, but we are not talking in order of magnitude where it will be 10 times higher by utilizing emission units. Basically, our fee schedule in Oregon has been somewhat the same for the past 3 years. It is going to increase slightly because of the increase in emission fees, the base is around $2,000 and it is going up to $2,500. Regarding the emission units, we have been permitted at approximately 50 tons a year and that 50 tons will be based on $25 or $30 a year depending on what we will get in the future. But, at least we know exactly what the fee is going to be based on. Source is X number of dollars and your emissions are also known, rather than having all these individual pieces of source or emission units being considered as part of a

facility.

Commissioner Fields noted in his letter, Mr. Flynn indicated that this fee schedule could put one facility at a competitive disadvantage when companies in competition are both producing like products. Commissioner Fields asked Mr. Flynn to explain the diatomaceous earth market and how competitive that is. Patrick Flynn replied that Eagle-Picher is in a competitive industry competing with other companies that are primarily not in Nevada, although some competitors are in Nevada. The company that has the fewest pieces of equipment identified as emission units, or whoever has the simpler process, is going to be paying less fees but they may have a larger process, doing the same exact thing with fewer pieces of equipment. Therefore they are going to be assessed a lower fee. We don't think that is equitable. Commissioner Molini stated, it seems to be increasing the cost of emissions per ton would be an equitable methodology and asked Mr. Flynn if could suggest a solution. Patrick Flynn replied, let's take a look at our Lovelock facility. We have 7 or 8 permits on that particular facility and let's say we have 8 permitted sources at that facility, those are certainly the areas at which the emissions are occurring. This is, in essence, is the way Oregon also handles their emission unit, each one of these sub-processes within the facility are called the emission unit and emissions from those are aggregated to determine the emissions for the facility that would go to the dollar value per ton. In Oregon there is a uniform fee for each facility. A process is considered to be small, medium, or large and your base fee would then be considered on that particular area. If you are a small facility, you would be given a base fee of perhaps $1,000 or $2,000. If you are a middle-sized emitter or facility, then you are put into a category that would pay $3,000 or $4,000 and if you were a large source you would pay $7,000 or $8,000 per year, plus your emission fees. Commissioner Molini asked if that was defined by a range of tons of emissions. Patrick Flynn replied that he was not sure if it was emissions or whether it is predicated on the actual throughput of the facility.

Commissioner Gifford asked Mr. Flynn for his opinion how many businesses are impacted by this identified, in your perspective, inequity. Is it primarily your company? Mr. Flynn replied that it was difficult to say. If we were to take a look at our facilities when this was first proposed, without the new Pearlite plant which we built last year, in the first wash, it would have no effect on us at all because we only have 3 or 4 pieces of equipment that are identified as emission units. If you take that up to 75 emission units you are talking about a significant difference and that is basically what we are looking at. Our facilities at Lovelock have the potential, each one of them, to go from 4 or 5 emission units or maintenance fee schedule up to 50 - 75 per unit with a total of

maybe 150 - 250 emission units. That becomes very significant.

Chairman Close asked for additional questions of Mr. Flynn.

Commissioner Gifford stated, it was alluded to that there was a concern of their number of units going from a small number, 4 or 5, to 100 or 200. That would mean a proportionate increase in fees, and the end product would be very large compared to what it might be today.

Commissioner Gifford asked Jolaine Johnson for her response in that regard.

Jolaine Johnson replied that the Bureau is in a transition period in the way we issue permits to these facilities. In the past, as Mr. Flynn said, he may have at one facility, one contiguous area, 7 or 8 permits and what we call sources were permitted at that time. At this point, what we are trying to do is come up with an equitable fee system that somehow addresses the complexity of each source, but what we want to call source now is the whole facility, and we want to charge fees that somehow represent the amount of work that we have to do to permit the whole source and to enforce the permit at the whole source. We have identified an emission unit. When we receive a permit application today, it will list 5 to 30, we have one with 200, emission units at that facility. I would submit that the workload is more directly related to the emission unit than it is to the source and that is why we are attempting to identify and clarify and to make it more equitable by charging these fees by emission unit rather than by source or permit or by total emissions. The issue over total emissions versus the number of emission units is a fee issue, there is a balance issue that has been established already by this Commission and it can't be considered today. We have agreed that the whole schedule for fees must be reconsidered and that we will sit down with all interested and concerned facilities to readdress how we are assessing fees. We may re-balance that, one way or the other, more towards total emissions or towards some representation of the workload that is presented to our agency by that facility. We will have to do that at another time and propose that within the next year, before the next fee schedule comes up. There is one due in June.

Commissioner Jones asked, in light of our necessity to try to drive down the amount of fees, and I understand you cannot deal with that rate issue specifically, today, but a compromise might be in the area of taking your units, as defined, to make a determination of small, medium and large, as is done in Oregon, to satisfy your need for workload for amount and then adjust the amount per tonnage. It seems to me that our jobs are two-fold, one to set fees to cover the cost for your effort to do that and two, to reduce the pollutants. I would agree that we ought to have the system based upon a mechanism to try to bring pollutant numbers down, which may mean more

machines are needed to accomplish that, but the facility is penalized. Maybe the compromise of counting the units and setting a base fee for the three or five levels, whatever you come up with, would satisfy your need for fees based upon work in the field, but also then adjust the tonnage rate to make it equitable to the people and to give them incentive to bring down pollutants. That seems to be the direction to go. We should be addressing both issues simultaneously, trying to reduce the pollutants and satisfy the fee needs, rather than just concentrating on fees.
Commissioner Molini asked, could we have an example, let's take Eagle-Picher, where you used to call part of the process a source and now you are going to identify emission unit? How many machines could be involved such as crushers, roasters and whatever, that you would now call an emission unit that you used to call a source. Jolaine Johnson suggested that Patrick Flynn, because he does have a specific case where he had source permits before and when we most recently did a permit for one of his operations, we identified emission units, answer that question. Patrick Flynn replied, we have three main processing units of diatomaceous earth. That has been broken down into basically three sources. A crushing unit that goes to the facility, a wet-end where we have a baghouse which has been permitted as a source, and then a finish-end baghouse after the product goes through the kiln. I do not have the permit identification with me but I believe each permit identifies perhaps 3 or 4 pieces of equipment and there is more to it than that. For instance, we have various blowers, various cyclones, multiple packing stations, screening equipment and grinding mills, all within the process, and they will now become emission units but they were previously considered part of one source.
Commissioner Molini asked, aren't you complicating this? Jolaine Johnson replied, she has concerns that they might do it this way for his facility, and as he has indicated, there may be some inequity between Eagle-Picher and their competitors, but when another diatomaceous earth company comes in we may have permitted it differently. We are trying permit them all the same and we are in a transition period, we are permitting them by the source. We could attempt to come up with some other basis for this maintenance fee, This is simply our suggestion on what seems most representative of a measurement of our work load. When we get an application for a permit, they will have maybe 6 different sets of their operation but we look at each piece of equipment to determine how much emissions are coming off of that equipment to determine whether they are going to exceed an emission standard. Commissioner Molini asked, in essence you really have to evaluate each step of the process that emits some kind of regulated pollutant. Jolaine Johnson replied, regardless of the way that we permitted it in the past, we do look at each

piece of equipment to determine what the emissions off that are and at this point we are just establishing that as the most equitable representation for the fee system.

Commissioner Tangredi asked Ms. Johnson if she would be amenable on the level of fee depending on the site location. Would you lower it if the site was away from a high density population area and increase it, if it is located a near high density population center? Could you have a bell curve or sliding scale, dependent on the ultimate destination of the pollution? Jolaine Johnson explained, to attempt to assess on that basis would be very complex. We would have to do a regional environmental evaluation for every facility to come up with the fee rate for each kind of facility.

Commissioner Ober stated that he thought it very important that the Division have a level playing field for everybody because of the complexity of the issue that the Commission can't determine at this time. Commissioner Ober suggested the Division meet with all the various industries to receive input from them. Jolaine Johnson agreed that a meeting is necessary and it was her understanding, when this Commission first adopted the emission and maintenance fee, there was an agreement for the whole structure to be reconsidered. I have agreed to sit down with the Manufacturers Association, the Mining Association and all interested parties to reconsider this. Commissioner Griswold agreed with Commissioner Ober and expressed her appreciation of the effort the Division has expended in reaching the goal that you are trying to achieve. However, it seems that asking us to consider the source without considering the fee is asking us to address part of the whole. It is nearly impossible to reconcile, at least in my mind, what the end result is going to be.

Commissioner Molini noted that some of Mr. Flynn's arguments certainly have merit. Let's go back to the one about trying to create an incentive to reduce total pollution. There may be some inherent problems with this, but would not just a per ton of discharge pollutants be the best way to create that incentive or would that not provide sufficient fees to support your program? Jolaine Johnson replied, everyone recognizes the complexity and Mr. Flynn is correct in his reference to the U.S. EPA's federal regulation that basically said that these facilities should be charged a fee on a per ton basis. Simple! It is complicated by the statute which basically says that we shall assess fees that are related to the amount of work that we put forth in implementing this program at each given facility. There is a balance, established by this Commission earlier when these fees were originally set up, and it has to be reconsidered. Basically, 50% of our fees are emission loading fees and 50% are maintenance fees that we are trying to establish on an equitable basis.

That can be rebalanced but certainly not today. With direction from this Commission and direction obtained from workshops with the affected facilities we can come back with another proposal next year. There are other facilities that argue the other way so we do need a public hearing to re-balance the fee schedule.

Commissioner Molini asked if representatives from some of the other facilities were in the room. Chairman Close stated that Lynn Giraudo would be speaking to this issue.

Chairman Close asked if, based upon Eagle-Picher's letter and todays comments, which have merit and deserve consideration, could we adopt the other provisions of Petition 95010, except for 445B.327, so these fees would not be imposed on the facilities at this time without further consideration and after workshops are held. Jolaine Johnson replied that these fees are being imposed on these facilities at this time. The proposed amendments are suggested to clarify how they are applied by "emission unit" rather than to "source" which has been used in implementation of this program. Counsel Jean Mischel stated that it was an interpretation that was consistent with emission unit and not with facility. Counsel Mischel asked if workshops had been held on this provision. Jolaine Johnson replied not on todays change. Meetings were held with the Nevada Manufacturers Association and the Nevada Mining Association. As a result of those meetings this Petition was developed. Lew Dodgion, Administrator for the Division of Environmental Protection noted that numerous workshops were held when the fees shifted to include emission fees. Jolaine Johnson continued, from my evaluation of the record that led up to the proposed fee schedule, the intent was emission unit when these regulations were adopted to charge this maintenance fee. I am asking for a clarification of that now. It was applied this way as these fees were assessed last year. The concern is, we have some mixup data on how many emission units there are at any given facility, depending on how we permitted it.

Commissioner Turnipseed recalled that one of the problems they had before we amended the fee structure was wide swings in revenue collecting, perhaps multiple hundreds of thousands of dollars one year, then during the next quarter or the next year they had greatly reduced fees and it was hard to design a program around that kind of cash flow. When we amended the fees last time we increased the maintenance fee so there would be more of a constant revenue stream and decreased the fees on the per ton unit.

Lew Dodgion explained, we are in a transition. A transition in the way we were issuing permits in the new federal system and we are in transition from getting some money out of the general fund to support the program from being almost totally grant fee based. In the past, we charged a

single fee, good for 5 years, for the processing and issuance of a permit for a source. We did have great swings in our revenue. We tried to smooth that out by going to a processing fee and a maintenance fee and emission fee. The Commission had adopted a three stage change in those fees. We are operating in stage one now, to increase July 1 of this year and to increase again July 1, 1996. We came before you at your last meeting and asked that you eliminate those two increases because they appeared to be totally unnecessary. At the same time, we indicated that we are hearing from various industries that think it needs some tweaking and adjusting. Obviously Eagle-Picher is one of those industries and I agree that we are going to have to work with this, perhaps better define what an emission unit is, or perhaps look at an Oregon type system of small, medium, large and larger facilities. If you go strictly to an emission based fee you will find that the large sources, like power plants and some of the larger mines will be supporting the entire program and some of the people with complex facilities that require a higher level of effort to process and issue a permit, inspection time and more enforcement time, pay little for that. For sources like the power companies, you need to increase the processing fee and maintenance fee and reduce the emission fee because they don't feel they should pay 90% of the revenue when they only take 10% of the work. It is not a clear-cut issue. We have tried to balance but obviously we need to revisit and a re-balance. We can look at a better definition of emission unit to see if we can take some of the complexity out of the permitting process and complexity out of determining emission units at sources. I will commit that we will do that and start that process in the near future.

Commissioner Gifford asked if the fee structures issue would come back before the Commission in 1996? Administrator Lew Dodgion replied that depends on how quickly we could work with the regulated community and achieve a consensus. Commissioner Gifford stated, then it would be at your prerogative depending on how fast these processes move along. Lew Dodgion replied that the next Commission meeting will be in June and we will be back in a permanent regulation situation after July 1, 1995. David Cowperthwaite explained, LCB has 30 days to draft the regulation so obviously it would be August 1, 1995. Lew Dodgion replied that he thought the Division could commit to being back in front of the Commission in early Fall with a progress report, and perhaps a proposal to amend this, hopefully with the consensus of the regulated community.

Chairman Close asked, so there is nothing we can do, at this point, relative to the fee structure. Lew Dodgion replied he did not believe so. Again, you have a number of people on both sides of

the issue. It will require several work shops and a public hearing to make sure that we cover all the people that will be impacted by the fee structure. Chairman Close asked, what we are acting upon today does not change what is going on - Lew Dodgion replied, no it does not.

Counsel Jean Mischel stated, with respect to the issue of unequal treatment, Mr. Flynn has pointed out that his primary concern seems to be, depending on the reviewer within NDEP, a broad definition of emission unit. Although it is not an ideal situation, his permit is subject to appeal if he feels he is being treated differently than somebody similarly situated. That could be reviewed with NDEP's involvement by the Commission. Mr. Flynn does have some recourse if he feels the person issuing the permit was being arbitrary so, at least in the interim, while they are working out the kinks there is some relief for individual permittee's if they do have a legitimate complaint. NDEP makes every effort to address those issues on a case-by-case basis.

Patrick Flynn stated, nobody likes to pay fees and our main concern is not so much the fees we paid last year, this is certainly something that is livable, our main concern is that if somebody really wants to follow the law there is an expediential potential increase in fees and we would like to see some control.

Chairman Close called for questions of Mr. Flynn. There were no additional questions.

Chairman Close called upon Lynn Giraudo.

Lynn Giraudo, representing Barrick Goldstrike Mines and also speaking for the Nevada Mining Association as a member of their Air Quality Task Force, commented Petition 95010 makes various amendments to the Nevada Air Pollution regulations, particularly those regulations implementing the State's new Title V program. We have been working on these regulations with NDEP and we support all of the proposed regulations. We believe they will result in a more efficient implementation of the State's air program. We recognize the efforts put forth by Bureau of Air Quality in drafting this petition. They put a lot of time and effort into this complex situation and we appreciate their willingness to engage in constructive dialogue with the public and affected industries. I would caution you on trying to pick apart these regulations and not adopting portions of them. The reason is, they are so complex and intertwined that if you pick out one part it may affect a lot of others. Barrick now has our entire facility on what we are calling the new unitary permit, the one that encompasses the whole facility. We do have several in our area so we actually have about 4 or 5 permits. We have commented to the state, because they were calling them sources and listing the sources, that if you read the definition of a source, they are really not sources but are emission units. We certainly support this change because we

felt the way the regulations were in the past was confusing, that the word source was used in several places to mean several different things. We feel todays proposed changes help to un-complicate things. We want one phrase that is used everywhere to mean one thing instead of four different words to mean the same thing in different places. We definitely support this effort to simplify things and eliminate confusion.

Chairman Close asked for questions or comments.

There were no additional questions or comments.

Commissioner Molini made a motion that Petition 95010 be adopted, with the understanding that the Division of Environmental Protection will continue to evaluate, in this transitional period, the fee schedule and make an effort to meet with affected parties to arrive at the most equitable possible fee schedule. Chairman Close asked if the motion included the hand-written delineations that we went through with Jolaine Johnson. Commissioner Molini replied yes.

Commissioner Fields asked if the Division would use their entire mailing list to all permittee's to advertise workshops noting that there are many small mining and industrial manufacturer's that are not closely connected with the Nevada Manufacturers or Nevada Mining Associations that should be involved. Jolaine Johnson replied the Division would establish several workshops and will make certain all permittee's receive notice of the workshops.

Commissioner Turnipseed seconded the motion. The motion carried.

Commissioner Fields requested that the motion maker clarify exactly what was adopted.

Deputy Attorney General Mischel stated that Section 3 was omitted; Section 13 on page 4, line 27 was also changed to regulated air pollutant. Chairman Close reviewed additional changes, page 35, line 17 was changed to new stationary source; page 36, line 5 an existing stationary source; page 38, line 21 and 22 delete "at any specific stationary source"; page 73, line 16 "regulated air pollutant; page 87, whatever the current price, that will be inserted.

Chairman Close called for a 10 minute recess at 12:15 p.m.

Chairman Close called for order at 12:35 p.m.

II. Settlement Agreements on Air Quality Violations

A. Desert Lakes Subdivision: Notice of Alleged Violation # 1151

Don Del Porto of the Bureau of Air Quality, Supervisor of Compliance and Enforcement, reported that Desert Lakes Subdivision is constructing an 18 hole golf course and 827 single

family lot in Fernley located between Highway 50 and Farm District Road. It came to our attention, by an ad in the Reno Gazette-Journal and also with a telephone conversation with the Lyon County Public Works Department, that Desert Lakes had started construction without an air quality operating permit. Notice of Violation #1151 and Stop Order #9501 was issued and Desert Lakes ceased construction as soon as they received the notice. During an enforcement conference, corrective action was discussed and Desert Lakes were instructed to obtain the correct permit, which they did, and an administrative fine of $510 was agreed upon. Desert Lakes has had no previous air quality violations and they are in compliance at this time.

Chairman Close asked for questions.

Commissioner Fields asked how the Division arrived at the figure of $510. Don Del Porto replied the penalty was assessed at $600. If the company lets us know the violation occurred, and if they are very cooperative and immediately resolve the problem there is a percentage factor that we can use to decrease the fine amount. There was a 15% deduction because they were cooperative which brought the fine down to $510.

Chairman Close asked for public comment. There were no comments.

Commissioner Molini made a motion for acceptance of the Desert Lakes settlement agreement.

Commissioner Tangredi seconded the motion. The motion carried.

B. Advanced Scientific Solutions: Notice of Alleged Violation # 1152

Don Del Porto reported that Advanced Scientific Solutions was operating a vapor extracting unit for a soil remediation project at the Lyon County School Bus Service facility in Yerington. The emission rate for volatile organic compounds exceeded their permitted allowance. The exceedence was attributed to the saturated charcoal filter they were using. A notice was issued and an enforcement conference was held. The corrective action that was proposed by Advanced Scientific Solutions was to implement a series of canisters and to sample more frequently to detect an early break-through on the initial canister. NDEP accepted the corrective action proposed and agreed upon a fine of $450. The company has no previous air quality violations and their remediation project is now in compliance with all air regulations.

Chairman Close asked for questions.

Commissioner Fields asked Mr. Del Porto how long they had been out of compliance before it was detected. Mr. Del Porto replied that Advanced Scientific Solutions began operation on December 28, took a sample December 29, could not get the test results back until December 31

and shut the system down as soon as they got the test results.

Chairman Close asked for questions or public comment. There were no questions or comments.

Commissioner Molini made the motion for acceptance and ratification of this settlement agreement with Advanced Scientific Solutions. Commissioner Griswold seconded the motion.

The motion carried.

IV. Discussion Items

A. Legislative Update

David Cowperthwaite distributed a list of the legislative bills of specific interest to the Environmental Commission and gave a short overview:

AB 162 - The issue of appeal rights has been postponed in Committee and Assembly Natural Resources. AB 162 has not moved at all and appears to be dead.

AB 404 - Makes various changes regarding financial disclosure by public officers. The bill requires an annual financial disclosure, by December 31 of each year.

SB 63 - Relates to the Commission's authority on hazardous waste and primarily deals with Federal Facilities. SB 63 has moved out of Assembly and is now in the in Senate Natural Resources.

SB 132 - Prohibits certain members of the Commission from working overtime. SB 132 has not moved since the January introduction date.

AB 286 - Relates to the contents of notices and adds estimated economic effect, cost enforcement, duplication of regulation disclosure public notice. The Division testified on this bill and is in support of AB 286.

Chairman Close asked for questions. There were no questions.

B. Small Business Program & Ombudsman Update

David Cowperthwaite reported that Mr. Michael Elges, introduced at the last Commission meeting as the Ombudsman, chose to return to his duty station the Bureau of Air Quality. Mr. Cowperthwaite introduced Mr. Ralph Capurro, of Capurro brother's fame, as the new Ombudsman.

Chairman Close called for questions.

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

Lew Dodgion, Administrator, Division of Environmental Protection, stated that he had nothing to report at this time but would answer any questions from the Commission.

Chairman Close asked for questions. There were no questions.

D. Future Meetings of the Environmental Commission

David Cowperthwaite distributed forms requesting clearance for the Nevada Test Site field trip on May 4.

David Cowperthwaite related information regarding the rehearing of the Helms Dewatering appeal. Counsel Jean Mischel explained that a motion for reconsideration and rehearing of their original petition was denied by the Commission panel on April 3.

Mr. Cowperthwaite noted, as an outgrowth of the motion for reconsideration and rehearing, and because rehearings are very rare, the Commission has never adopted regulations that define how the rehearing process works and asked if the members on the Commission panel believe there is a need for regulations that define the parameters of how rehearings are to occur.

Deputy Attorney General Jean Mischel explained that the guidelines applied on April 3 were the District Court Rules for Rehearing and those are legitimately applied in the absence of other statutory regulatory requirements because you want your decisions to be final and you don't want to allow people to come in without any grounds to reopen the evidentiary portion of the hearing. From that perspective, we were on solid ground without specific regulatory requirements. With respect to a more procedural question of whether or not the chairman can review petitions for reconsideration and issue written decisions, that would require delegation in your regulations so that you would not have to hold a public meeting to make that initial determination of whether there are grounds for rehearing. If the chairman of that panel decided that rehearing was appropriate, he or she would issue that decision granting rehearing, the panel would reconvene and a public meeting would be held.

Ms. Mischel continued, NRS 233B outlines a very short time frame in which to make that determination. David Cowperthwaite had to put together a panel on very short notice with 3 days posted notice because it then was a public meeting requiring open meeting law compliance, just to decide whether or not there were grounds for reconsideration. Chairman Close asked what the time limits are in 233B. Ms. Mischel explained that the petitioner has 15 days from the date of the service of the decision to file a Petition for Reconsideration. Then, the Commission has to decide at least 5 days before the expiration of the appeal time period. In reality, if the petitioner waits until the 15th day, the Board only has 9 - 10 days to set up a panel and 3 of those days is the public notice requirement, so you are pushed to the limit. Ms. Mischel continued, I cannot imagine any time you would make a decision more than 5 days ahead of the appeal period, the

reason is that a Petition for Reconsideration does not, on its face, toll the appeal period so that the legislature wanted to give the petitioner's some time to file their Petition for Judicial Review if you denied their Reconsideration. If you granted rehearing, that would push the appeal time period back until the new order was issued. Chairman Close stated, if a Petition for Rehearing is based upon a written motion, there is no argument. Counsel Mischel replied, it can be only written, but in this case we took arguments since we had to convene anyway. In fact, the chairman could set up a date for hearing of the petition if they felt that the written submissions were inadequate. If there has been a delegation through your regulations, the chairman could review the petition for specific grounds for rehearing, which is usually misapprehension of fact or law, or that new events or new facts came up after the date of the hearing that were not previously available, and that is really all that should be decided initially, whether or not rehearing is appropriate. You could do that based upon a written petition. NRS 233B contemplates a written petition but not necessarily a written response. Ms. Mischel noted that there are model rules the Commission could work with in drafting some regulatory language for rehearings. This issue has not come up in the years I have been with the Commission so it is not real crucial but the issue should be dealt with. Chairman Close stated, if we deal with it then we avoid a problem.

Commissioner Gifford, a member of the panel reported that Russ Fields, Chairman of the panel did an excellent job, wading through a lot of unknown's. Commissioner Gifford stated he felt most uncomfortable, not knowing what the ground rules were in the beginning in terms of what they could present, what we had to listen to, what was the beginning and ending points in terms of the appellants request for this rehearing. From that standpoint I would appreciate some clarification. I would not have an objection to having the panel chairman make the decision because the chairman would be privileged to all the procedures and testimony prior to the request for rehearing. However, as a member of the panel, I did not mind listening again, in all fairness to the appellants. We did not change our minds, we all listened patiently and arrived at a decision. I know there was a scramble to get everybody together and organized.

Chairman Close stated that if he were the appellant asking for a rehearing, he would appreciate having the panel, rather than just the chairman, review the request and make the decision for rehearing. The chairman would surely feel uncomfortable not having the ability to discuss his decision or his rationale with anybody else. Jean Mischel stated that the Deputy Attorney General would discuss the chairman's decision with him. Commissioner Turnipseed asked how

many times a motion for reconsideration had been received. David Cowperthwaite replied that Coastal Chem had also requested reconsideration, it does happen periodically, if the players are very sharp they utilize the process. Commissioner Fields noted that, as Chairman of that panel, I would have been very uncomfortable making the decision to grant the rehearing by myself. We have to remember that most Commission members are not trained as attorneys. Chairman Close could have easily made the decision but for myself, I thought it was important to come together, have the benefit of the other panelists and the legal guidance that was given to us, in public, by our Deputy Attorney General. In view of the fact that it does not happen very often, I don't know that we should change the policy but what we might want to look at it procedurally.

As an example, Commissioner's Ober, Fred Wright and myself sat through days and days of testimony on the Triton Case in Las Vegas. It seemed that process was so open to the various attorneys and parties and the panel had no control on the length of time of that hearing. It could have gone on forever. Deputy Attorney General Mischel stated that time allotted is a very difficult issue. NRS 233B gives you some authority, as a chairman, regarding the redundant or irrelevant testimony but there is a due process overlay and you want to be very strict in construing redundancies if you are cutting off rights of the appellant.

David Cowperthwaite stated, the issue of re-hearing in which nobody really understood the parameters in terms of how, not only procedurally, how it was approached but what could be discussed - could you go back in and add new evidence, etc. I am trying to articulate that we need to be able to make it clear that there are boundaries, in terms of rehearing. If new information comes forward that was not available at that time, In this particular instance the appellant decided to get some photos not previously presented in as evidence. They could have presented photos up front in the process but they didn't. We need that type of limitation that makes it very clear to the panel chairman what will, and what will not be be admissible in the process. Chairman Close agreed it would be easier to have rules so that people know what they have to do to abide by those rules. Commissioner Griswold stated it was likely to happen quite a few more times in the next 15 years.

E. General Commission or Public Comment

Chairman Close called for additional comments.

There were no additional comments from the public or from the Commission.

Chairman Close adjourned the meeting at 1:05 p.m.

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