NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF April 9, 1999

HELD AT: Carson City, Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
April 9, 1999 8:30 am

The Nevada State Environmental Commission will conduct a public hearing commencing at **8:30 am, on Friday, April 9, 1999,** at the Nevada Commission on Tourism, Commission Chambers, 2nd Floor, Carson City, Nevada.

This agenda has been posted at the Grant Sawyer State Office Building in Las Vegas; the Washoe County Library in Reno; the Nevada Commission on Tourism, the Department of Museums, Library and Arts, and the Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on March 10, March 16 and March 25, 1998, in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

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

I. Approval of minutes from the December 8 & 9th, 1998 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. Petition 96015 (LCB File No. R-110-96) is a proposed permanent regulation repealing NAC 445A.001 to 445A.026, the Protection of Lake Tahoe. Repealed citations include definitions, permitting requirements for construction of residences, commercial or public facilities. In addition, requirements for subdivisions, alterations of property, community water supply and sewage disposal, and marine toilets are repealed. The regulations proposed to be repealed have been supplanted by those adopted by the Tahoe Regional Planning Agency.

B. Petition 1999-06 proposes to temporarily amend NAC 445A.347 by removing the Division of Emergency Management in the Nevada Department of Motor Vehicles & Public Safety from the list of agencies required to be notified of spills and releases pursuant to Nevada's water pollution control regulations. The intent of this regulation is to provide for regulatory relief regarding the disclosure of spills and releases. Other emergency reporting requirements are not affected by this amendment.

C. Petition 1999-07 proposes to temporarily amend NAC 445B.001 to 445B.395, the air pollution control regulations. Amendments are proposed to NAC 445.221 to update the reference to the Code of Federal Regulations from 1997 to 1998. The amendments to 445B.300 extends the expiration of an operating permit from one year to 18 months. NAC 445B.362 and 445B.373 are proposed to be amended to correct equation errors and add the term "maximum." NAC 445B.383 is amended to correct the references from cubic feet to yards.

D. Petition 98007 (LCB File No. R-121-98) is a permanent regulation amending NAC 459.952 to 459.9542, the regulation of highly hazardous substances. This regulation implements Senate Bill 266 of the 1997 session to allow delegation of the EPA's Clean Air Act Risk Management Program (RMP), 40 CFR Part 68, to regulate facilities with hazardous substances. Facilities affected by the program would be required to prepare risk management plans that would be available to the public. The proposed regulations mesh the existing State authorized Chemical Accident Prevention Program with the Federal Risk Management Program.

III. Settlement Agreements on Air Quality Violations * ACTION

A. Sylvan Spawn Laboratories; Notice of Alleged Violations # 1359
B. Cinderlite; Notice of Alleged Violation # 1360
C. Frehner Construction; Notice of Alleged Violations # 1370 & 1371

IV. Presentation by the Bureau of Air Quality and Washoe County Air Pollution Control regarding the preservation of visibility.

V. Proposed Resolution of the State Environmental Commission regarding the adoption of appropriate emission reduction measures in the Las Vegas Valley * ACTION

VI. Status Report by the Bureau of Correctives Actions regarding MTBE and possible health and environmental impacts. The Clark County District Board of Health requested that the Environmental Commission consider the possible potable water contamination effects associated with summertime gasoline that may be oxygenated with MTBE (Methyl Tertiary Butyl Ether), in deciding whether or not regulations should be adopted that would limit the use of the additive oxygenate MTBE in gasoline. * ACTION

VII. Status of the Legislation in the 1999 Session

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

IX. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (702) 687-4670, extension 3118. The public notice and the text of the proposed permanent regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at **http:/www.leg.state.nv.us.** In addition the State Environmental Commission maintains an Internet site at **http:/www.state.nv.us/ndep/admin/envir01.htm**.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-4670, extension 3117, no later than 5:00 p.m. **April 2, 1999.**

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

The Nevada State Environmental Commission will hold a public hearing beginning at **8:30 a.m. on Friday, April 9, 1999, at the Nevada Commission on Tourism, Commission Chamber, 2nd Floor, 401 N. Carson Street, Carson City, Nevada (located immediately south of the Carson Nugget and two blocks north of the Capitol Building)**.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of temporary and permanent regulations in Nevada Administrative Code **(NAC)** Chapters 445A, 445B, and 459. 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.

Petition 96015 (LCB File No. R-110-96) is a proposed permanent regulation repealing NAC 445A.001 to 445A.026, the Protection of Lake Tahoe. Repealed citations include definitions, permitting requirements for construction of residences, commercial or public facilities. In addition, requirements for subdivisions, alterations of property, community water supply and sewage disposal, and marine toilets are repealed. The regulations proposed to be repealed have been supplanted by those adopted by the Tahoe Regional Planning Agency.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Petition 98007 (LCB File No. R-121-98) is a permanent regulation amending NAC 459.952 to 459.9542, the regulation of highly hazardous substances. This regulation implements Senate Bill 266 of the 1997 session to allow delegation of the EPA's Clean Air Act Risk Management Program (RMP), 40 CFR Part 68, to regulate facilities with hazardous substances. Facilities affected by the program would be required to prepare risk management plans that would be available to the public. The proposed regulations mesh the existing State authorized Chemical Accident Prevention Program with the Federal Risk Management Program. **This petition was previously noticed with an intent to act upon regulations for the December 9, 1998 Environmental Commission hearing.**

Petition 1999-06 proposes to temporarily amend NAC 445A.347 by removing the Division of Emergency Management in the Nevada Department of Motor Vehicles & Public Safety from the list of agencies required to be notified of spills and releases pursuant to Nevada's water pollution control regulations. The intent of this regulation is to provide for regulatory relief regarding the disclosure of spills and releases. Other emergency reporting requirements are not affected by this amendment.

The proposed temporary regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. Business should find the process of reporting less burdensome. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Petition 1999-07 proposes to temporarily amend NAC 445B.001 to 445B.395, the air pollution control regulations. Amendments are proposed to NAC 445.221 to update the reference to the Code of Federal Regulations from 1997 to 1998. The amendments to 445B.300 extends the expiration of an operating permit from one year to 18 months. NAC 445B.362 and 445B.373 are proposed to be amended to correct equation errors and add the term "maximum." NAC 445B.383 is amended to correct the references from cubic feet to yards.

The proposed temporary regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. Business should find the process of reporting less burdensome. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. The proposed amendments will make the Nevada air pollution control regulations consistent with the federal air pollution control rules. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Persons wishing to comment upon the proposed regulations or any other matter listed above may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least 5 days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notice have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at **http:/www.leg.state.nv.us.** In addition the State Environmental Commission maintains an Internet site at **http:/www.state.nv.us/ndep/admin/envir01.htm**. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Pursuant to NRS 233B.0603, the provisions of NRS 233B.064(2) is hereby provided: "Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption."

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

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on **April 2, 1999**.

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

# # # #

STATE ENVIRONMENTAL COMMISSION
Meeting of April 9, 1999
Nevada Commission on Tourism
Carson City, Nevada
Adopted Minutes

MEMBERS PRESENT:
Alan Coyner
Marla Griswold
Paul Iverson
Fred Gifford
Roy Trenoweth
Joseph L. Johnson
Terry Crawforth

MEMBERS ABSENT:
Melvin Close, Chairman
Mike Turnipseed, Vice Chairman
Robert Jones
Mark Doppe

Staff Present:
Deputy Attorney General Jean Mischel- Deputy Attorney General
David Cowperthwaite - Executive Secretary
Sheri Gregory - Recording Secretary

In the absence of Chairman Close and Vice-chairman Turnipseed, Roy Trenoweth nominated Alan Coyner as Chairman for the meeting.
Commissioner Gifford seconded the motion.
The motion carried unanimously.

Acting Chairman (AC) Coyner called the meeting to order at 8:45 a.m. and verified the meeting had been properly noticed in compliance with the Nevada Open Meeting Law.

Agenda Item I. Approval of minutes from the December 8 and 9, 1998 meeting.
Commissioner Griswold moved for acceptance of the minutes as presented.
Commissioner Iverson seconded the motion.
The motion carried unanimously.

AC Coyner moved to **Agenda Item II. Regulatory Petitions**
He then asked David Cowperthwaite for his wishes with regards to the order of the petitions.

David Cowperthwaite, Executive Secretary, stated there seemed to be some competing needs. The existing order of business is to start with Petition 96015, Item A, B, C, D and then it proceeds on to the issue of settlement agreements and the issue of presentations and discussions. There's been some suggestions to be able to that the original intent of strategy was to be able to move through the meeting and focus in on Items A and B and then focus on Item C and then from Item C is to be able, because there's people in the audience here that have to go to the legislature this afternoon, to be able to focus on Items No. IV., V., and VI. There's other suggestions in the room to be able to move immediately to Item D. Let me point out Item D is probably going to take us four or five hours to be able to get through today. I guess it would be up to the pleasure of the Commission as to the approach that they would like to be able to take in terms of dealing with this.

DAG Mischel asked so you want to go A . . .

Mr. Cowperthwaite answered it should not take very long to be able to process Item A. Item B will not take very long to be able to process and then Item C will not take very long to process and that would be the issue of dealing then with Items IV., V., and VI., which would not probably take very long to also deal with.

AC Coyner stated that he would advise the Commission that Item D probably has the most participants in the room.

Commissioner Iverson stated he thought that should be considered especially during this time of year because a lot of folks could be at the legislature today and suggested that AC Coyner take and find out what the crowd is because there is no reason at all for half of these people to sit through A, B, and C unless they absolutely need to be here.

AC Coyner asked for a show of hands from the people in the room with regards to Item D. He then asked what the Commission's pleasure was. He stated Item D as I understand is a longer item, it will take us longer to work through it, but it involves more people in the room.

Commissioner Iverson moved that the Commission listen to Item D first. He stated it seems to be an issue of real importance and get that resolved so that these individuals can leave and we can get on with the hearing and they don't need to sit here for an hour.

AC Coyner stated I think it's our prerogative to do so. I don't think I need a motion. He then called for Item D.

Agenda Item II.D. Petition 98007 (LCB File No. R-121-98) a permanent regulation amending NAC 459.952 to 459.9542, the regulation of highly hazardous substances. This regulation implements Senate Bill 266 of the 1997 session to allow delegation of the EPA's Clean Air Act Risk Management Program (RMP), 40 CFR Part 68, to regulate facilities with hazardous substances. Facilities affected by the program would be required to prepare risk management plans that would be available to the public. The proposed regulations mesh the existing State authorized Chemical Accident Prevention Program with the Federal Risk Management Program.

Mark Zusy, Supervisor of the Chemical Accident Prevention Program, under the Bureau of Waste Management and NDEP presented the proposed modifications to existing regulation for the Chemical Accident Prevention Program. These regulations are primarily implementing the authority provided to us by Senate Bill 266 which was passed in the 1997 Legislature. It is being proposed as a permanent regulation. I'm going to use slides to help us walk through this presentation. It's already been indicated it is pretty extensive and what I'd like to do is make sure that we do this in an organized fashion and I help give you enough information on this reg. so that you understand exactly what it is we are trying to do.

He gave the outline of how he was going to proceed with the presentation. I just wanted to briefly go over the purpose of the proposed regulatory mods. and then talk about the efforts we've made in the regulation development. It took us quite a while and the efforts we made to conduct outreach activities. There's also a lot of coordination required when we implement this program and I'm going to briefly outline that as well. Then I was going to get into the bulk of the presentation and go through the regulation. I'm going to start with an overview of the regulation structure just so you can see how it's set up to flow, explain how it fits together and then what I was going to do was go through the regulation itself. There are in excess of 100 sections here. The way I was going to do that was just go through groups of sections. They fit together under certain elements and I was going to go through and explain how those worked. When I did that I was also going to at that time talk about the public comment we received and how we considered comments, what we incorporated, what we didn't and why. And, also, this effort, as I get into the presentation you'll see we're seeking delegation for a federal program, some of the language in the regulation, some of the requirements are a little bit more stringent from the federal program and as we go through the regulation review in detail I'm going to note that as well.

First, an overview of CAPP, the Chemical Accident Prevention Program. The CAPP acronym you're going to hear a lot was promulgated as Senate Bill 641 in 1991 as a result of a couple of major accidents down in Henderson. The program itself has been actively implemented. We've been actively doing inspections since 1994. The primary purpose of the program is hazard identification and mitigation. What we focus on is accident prevention and emergency response preparedness in facilities handling very hazardous toxic substances. Another aspect of our program is the public right-to-know provisions. We do provide the public with information about these facilities. Currently we have approximately 30 plus facilities that handle or
manufacture large quantities of toxic materials. The program is intended to be proactive in that we're not

responding all the time to incidents. What we're looking to do is take every reasonable step we can to insure that we're doing things to prevent accidents from ever occurring. To date, the facilities that have been in the program have responded by, we've seen a need for, or they've seen a need and we've agreed, for them to improve safety systems, procedures, training requirements, so there were a lot of different things that they got in to do to improve their accident prevention programs and improve their emergency response preparedness. Some of the facilities responded by reducing their volumes. Actually having a low amount on site to minimize the potential for off-site consequences or they've looked to switch to less hazardous substances. So, their awareness of this program and our involvement with them has led them to make some of these decisions and we see those as positive.

Senate Bill 266 was promulgated in 1997. It basically did two things. It authorized the NDEP to seek delegation of the Federal EPA's Risk Management Program. We're going to talk a lot about that today. So, we'll get into more detail on that. Essentially, it is very similar to our existing State Chemical Accident Prevention Program. Another thing that Senate Bill 266 did was add the two release provisions to incorporate facilities with small quantities of substance. As we go through this you're going to see that the program is really focused on facilities that have a lot of a hazardous material. The program is not typically applicable to facilities with smaller amounts of substances. This provision, and I'll get into more detail later, helps us address situations where a facility that isn't covered by CAPP now would have to be if they were having problems. The proposed regulation specifically, again, promulgates the regs. authorized by 266. It's merging our existing State Accident Prevention Program with the Federal Risk Management Program. So, we're trying to bring these two things together and make them work as well as we possibly can. A lot of facilities in our program are subject to both. So now they don't have to report to the State and then separately to the EPA. They'll be able to do it all through one agency. One of the impacts is it adds numerous flammable substances. It's going to increase our regulated community. As I mentioned before, CAPP, the existing program primarily has toxic substances. Now we're adding flammables. The reg. itself is quite extensive as you're obviously aware. A large amount of that regulation is actually Federal EPA language. What I did was incorporate the federal language into the reg. What we're trying to do is to provide an all-inclusive regulation rather than have a minimal regulation that cross-references a federal regulation and other requirements. I wanted it all in one place so they can take it and work through it and know exactly what's required. So, I'm trying to make it as straight forward and as un-confusing as possible. One of the other things that we're doing with this regulation is codifying a lot of requirements that we currently have in guidance documents. The existing statute is not very specific on performance criteria. We have, to date, been using guidance to establish what needs to be done. We prefer to put that in regulation because it is things that we use to gauge whether or not a facility is in compliance. Then we can take guidance documents from this point forward and let that focus more on how to comply. The reg. is set up to flow logically to help a facility walk through and understand exactly what is required. I'll just point out that there is no facility that is subject to every single section in this reg. Only certain sections apply to certain types of operations. So, it's set up to help them walk through that.

Just briefly, the development and outreach efforts, there was quite a bit of time in drafting the regulation. We also went through a pretty extensive effort to try to identify the potentially regulated community. Make them aware of the proposed modifications and hold workshops. We did that; we held the workshops and we considered public comments. The reg. was submitted to LCB in June, so it is being proposed as a permanent regulation. We've gone through a couple of iterations of LCB drafts, being that they were drafts and the time frame was so tight we had originally scheduled this hearing for December 9th, but the state of the reg. when we had it there was such that there was so many modifications, technical corrections we had to make to it, we felt better to withdraw at that time and ask you to reconsider it now.

We will have delegated authority for the program, but there are several agencies in the State that have some overlapping requirements. What we're trying to do is coordinate with those agencies. Nevada Department of Business and Industry, our State OSHA, has a program similar to ours and the Air Pollution Control Districts have some similar requirements in some of their permitting. We're working with them to coordinate and essentially do that through a Memorandum of Understanding. So, we don't have multiple agencies doing similar things. Speaking of coordination, one of the major areas of overlap with safety programs is with our State Liquified Petroleum Gas

Board. They regulate safety in propane handlers. I'm talking retailers, end users, essentially anyone that handles propane in the State. I started an effort over a year ago to work with the Board and with the staff to evaluate our regs. versus their requirements and we did that in some detail and at great length. We identified areas where the LP Gas Board program would be enhanced by the CAPP provisions. What we did was propose a Memorandum of Understanding for joint implementation. Work together to make this thing work, and again, not have two agencies. The Board chose to file a resolution and that's also included as Exhibit 2. So you have that. That's requesting that propane be exempt from CAPP. That resolution is reflecting some national issues. The EPA is currently re-examining the applicability of propane in end users. People that use it for fuel that don't have large quantities. Even at this date, they are considering modifying their regulation. Additionally, the National Propane Gas Association is involved in a lawsuit with the EPA and they are looking to have propane pulled entirely from the Risk Management Program, the federal program, or at least get certain sectors of the propane industry exempted. There are obviously some major open issues here. Given all of that, what the NDEP is going to do is propose a modification to the applicability of the program, but I would like to hold off on discussing that until I get into the actual section that we're going to discuss in detail so at least you can understand where that will fit. Just for your information, there was also another submission, an Exhibit 4, from the Nevada Propane Dealer's Association that also reflects the LP Gas Board position.

He then went over the regulation structure by putting a table up (using an overhead projector). It outlines, basically, all the program requirements and as we get into the program detail, you're going to see, we're going to talk about all these tier levels. You'll be able to go back and reference this and see what each of the Tier levels is required to do. There's information on program fees and who some of the representative of the regulated community would be under all these programs. So, that's kind of a reference table.

Getting back to the regulation structure. It's going to enable the facilities to determine the applicable requirements. I already mentioned, the entire reg. itself does not apply to any one facility. There's only certain sections they have to comply with. There are a couple of basic sections. There's the applicability and substance list. You go to that section and you understand which program applies to your particular facility. Once you determine that, you go to performance and submission and it will let you know what things you need to do and what kind of reports you need to submit to us. The next two sections, I've kind of split the reg. up into two basic areas. Those are the in-house requirements. This program is not about paper. It's not about reporting. It's about implementing an accident prevention program on site. It's about having an emergency response program in place, coordinated with local responders. It's about doing things at the plant. The in-house requirements are all the things that they need to do in detail and have on site. The submission requirements are public documents. It's public information. Essentially what it does is summarize the efforts that were conducted in house. With that, I was ready to get into the detail of the reg.

You've been handed the regulation. There are three parts to the regulation in the booklet. The first part you'll find is a Table of Contents and there are no tabs in that, unfortunately. The first several pages, six pages I guess, are a Table of Contents followed by the regulation and then at the very end is several pages of table, which are the lists of regulated substances. As I go through this I'm going to refer to specific sections in the regulation and walk you through this. So, I will let you know exactly where we're at as we're walking through this. If you get beyond the Table of Contents the first thing that I want to do is point out is there are a lot of definitions. The first 40 sections, as a matter of fact, are definitions. Most of those are in place primarily due to the our program and the federal language and I was not going to spend a lot of time with those definitions unless there were questions. Except, there was one thing I wanted to point out, Section 6, I thought it was worth mentioning, that's on page 2, the definition of CAPP. We adopted that acronym back in 1994; it means Chemical Accident Prevention Program. We are not renaming the program. The CAPP from this point forward, once these regs. are adopted, will refer to our entire program. So, it will be the current State program, plus the provisions of the Risk Management Program.

Commissioner Griswold commented it occurred to me while reviewing this that there was not a definition of "site." Would that be something that maybe should be addressed?

Mr. Zusy answered actually, what we use rather than "site" is "facility." If you look at Section 12 has the definition for "facility." Basically, it's a contiguous area, property.

Commissioner Griswold stated she still had some questions, but wanted to go on and see in the discussion if possibly that needed to be expanded.

Mr. Zusy explained as a matter of fact, as we get into the applicability I think you're going to see how that gets used and hopefully that will be clear on how that is defined.

Commissioner Griswold agreed.

Mr. Zusy moved back to the Table of Contents. I just wanted to show you how we're going to go forward with this. We've got page 1 as definitions, part of page 2 is definitions. What I was going to do was address the reg. by what I call "element" here so the first element is applicability. So what I was going to do is cover the information in Sections 41 through 44. And what I was going to do was first give an overview of that section and for the applicability section I think it's real important that you understand how that works because it determines who is in and who is not. So I was going to spend a little bit more time walking you through those sections in more detail than I may with the rest of the sections unless, of course, you have questions.
So, if we could start with applicability. That starts with Section 41 on page 6. Let me overview it first though. Senate Bill 266 essentially required a separate RMP program (Risk Management Program). RMP is the other acronym you're going to hear a lot. The differences between the programs are somewhat subtle, but there are also issues of applicability, regulated community. The EPA covers certain industry that we do not under the State program. There was an interest to insure that that distinction was maintained. So, that's how we proceeded. Senate Bill 266 does require two programs. The programs are differentiated as Tier A and Tier B.

First, the Tier A program. Those are the facilities that are covered by the existing program pre-Senate Bill 266. The materials that are covered are primarily toxic substances. If they have these substances, inadequate thresholds, they are in the program. And those are the exemptions as noted on the overhead.

Tier B is essentially the Federal EPA's Risk Management Program. It covers many of the toxic substances, plus it adds a considerable list of flammable substances. So it's adding chemicals to the list. The exemptions there are as noted on the slide. In the EPA regulation they further defined facilities or subdivided facilities under the RMP and they broke them into three different program levels. What the EPA was attempting to do there was to provide some kind of a preliminary assessment of the potential hazard that a facility may pose and the net effect of that was the different levels have varying requirements with regards to accident prevention program implementation and emergency response program implementation. Program level 3 is the most stringent. Program level 2 is the least stringent and program level 1 they have no off-site consequence. Their program is very minimal and, as a matter of fact, we don't even oversee their accident prevention program. Just to point out now we've talked about Tier A, Tier B, program level 1, 2, and 3, if you look up at the heavens you can see the table. The first four columns are the Nevada CAPP program. Just for reference, off to the side, I mentioned that we coordinate with Occupational Safety and Health for the Process Safety Management program. That's part of our coordination effort. They also have certain program requirements. So, you can see where we have similar requirements between the two programs.

Commissioner Johnson stated you mentioned the exemptions. How does that interface with the federal adoption of the federal program and the delegation? Will the federal program recognize the exemptions that we have statutorily?

Mr. Zusy answered the exemptions are consistent with the federal program.

He then continued by moving to Section 42 of the regulation. It starts on page 6. Section 42 covers applicability in Tier A programs and I just want to explain to you how it works and you can look at it. Basically, the requirement is

if a facility has an amount of a listed substance that's equal to or greater than the amount listed in Section 45, then they're in the program. Let me show you an example of the facility table of the substance table that's in the regulation. This is one of the tables, you're not going to see the whole thing, this is one of the tables in section 45. Basically, what's listed is the chemical substance and if there was an alternate name. That's just for convenience. Mixture description, if that applies. Chemical abstract number, and what we want to look at is the Tier A threshold quantity. So, in order for Tier A to be applicable, you'd have to have a substance with a Tier A threshold quantity that is listed and you would have to have an amount equal to or greater than that substance. So that's pretty simply defined.

There is a second section that I'm going to cover in more detail later and that's B. That's the two release quantities. "B" was added as a result of Senate Bill 266. You can see that, for example, if you, acetaldehyde is listed at a Tier A threshold quantity of 2,500 lbs. If you have less than 2,500 lbs., you'd be subject to our program or accident prevention requirements. What the two release provision under paragraph B does is say that, "O.K. You're not in the program, but if you have two accidental releases within a 12 month time period, even though you don't have that much substance, you are going to be subject to the program" and we will talk about what that means later.

He then moved on to Section 43. Again, in order to be subject to the Tier B program, basically you have to have a substance that's equal to or greater than the quantity under the Tier B column now. You can see that those thresholds are generally higher. That's because the EPA was intending to focus on potential off-site consequences, so they had higher threshold quantities. Section 43 is pretty extensive. I don't know if you had an opportunity to look at that and be confused by it. I just wanted to walk you through some of the parts of that. Starting on page 7, number 1, is the applicability that we just discussed with the threshold quantity. Then Subsection 2 talks about what needs not be considered when determining whether or not you have a threshold quantity. They spend more time talking about what's not included as opposed to what is included. I will note that as you go down Section 2 the paragraph A is essentially how to handle a toxic mixture of a de minimis value. So if there's a very low concentration of the regulated substance in the mixture, it's not in. That's essentially what that section says. Paragraph B is on page 8. It addresses the same de minimis exemption in flammable mixtures. As you move down towards the bottom of 8, paragraph C is a gasoline exemption. Basically, gasoline is not covered. Paragraph D is essentially saying that in oil and gas reservoir up to the inlet of the processing plant is not intended to be covered by the RMP. So the RMP takes affect in the plant. On page 9 there's paragraph E, "Substances contained in an article" presumably some manufactured articles there may be some materials in there that are regulated substances. But, they're saying that, "Well that's not what we're looking for here" and they're exempting these articles. "Articles" is defined below in Subsection 3, paragraph A. Paragraph F, again, some other specific clarifications saying that if these substances are contained in any of those listed objects, it's not covered. Paragraph G is just a lab use exemption. So if it's used in a laboratory environment it is not covered. And, lastly, Paragraph H. Ammonia is exempted from this program when it is held by farmers and used as an agricultural nutrient. So those are all of the exemptions and what I would like to do is add to that. I already mentioned that there were some open issues regarding propane on the Federal EPA level. What we would like to propose at this time is that we exempt propane . . .

AC Coyner urged the Commission to pay attention to this part of the presentation because it was one of the important issues with regards to this regulation.

Mr. Zusy continued by stating and also this amendment was submitted as Exhibit 8, for the record. We're proposing to exempt propane as used in processes subject to Tier B, program levels 1 and 2. O.K. essentially what that does it impacts propane retailers and propane fuel users. So the AmeriGas and Suburbans that receive and deliver propane and all the end users, tanks for boilers, furnaces, things attached to say schools and churches, all of those will be exempted by this provision. And I have a couple of parts to this. The one we are talking about now is number 1, which is amended Section 43, Subsection 2, by paragraph I and it's just that "I" language that will be inserted below H. As I stated, these are open issues with the EPA. What we would like to do is wait until those open issues regarding the lawsuit and the EPA's potential amendment to their RMP, wait for those things to be settled before we

go further, but at that point in time we would likely reevaluate the situation. I will note that the language in that amendment is not contingent upon anything happening. Basically, those facilities are out. They're not in. If we ever want to or decide that we should include any part of that regulated community, we would have to come back to you to amend the regulation.

Commissioner Griswold asked what does that leave in the program in regard to propane facilities?

Mr. Zusy answered it leaves in primarily chemical manufacturers. There are several in the State that use propane that use propane as a chemical feed stock. So they are not dealers or sending it to customers for heating use. These people typically have large 30,000 gallon plus tanks, very large quantities, and they use it in the process. Our program covers not only the tank and the pipe, but it gets into the process. Where the material is flowing, reacting. So those are the types of facilities and we wouldn't anticipate more than actually about three or four chemical manufacturers and also some, that's about it.

Commissioner Griswold asked there would be three or four?

Mr. Zusy answered that we've identified thus far.

Commissioner Griswold thanked Mr. Zusy.

Mr. Zusy stated that covers the applicability.

AC Coyner asked I assume you're going to come back to the second amendment on that list. You were just covering the first one, you'll return to that later?

Mr. Zusy answered yes. The second amendment is tied to fees. We are making some fee adjustments related to pulling the propane facilities into the program. Since they are now no longer going to be subject to the program, we're going to pull those things back out and we'll discuss that at the end when we talk about the program fees.

AC Coyner stated that's fine.

Mr. Zusy stated I'll just put this back up here again for reference, but I'm not going to use that immediately. The next thing I wanted to talk about was performance and submission. O.K. they've gone through these sections. They understand whether they're Tier A, Tier B and if Tier B, which program level. Now what do you have to do? What I'm going to go to next is Section 46, we're going to be talking about Sections 46 through 49. That starts on page 11 in the regulation. I was essentially going to walk through this without an overview and just walk you through each of the sections. The intent is to guide the facility through which parts of this massive reg. they need to comply with. They don't have to work with the whole thing.

Section 46 starts on page 11. It basically covers the things that all facilities need to do whether they're Tier A, Tier B. Basically they are registering, they're paying fees, and they're developing a management system and we'll discuss management system later.

Section 47 covers what the Tier A program must do and the things that are listed there should be consistent with what you see on this table. There are a few things in Tier A that are above and beyond what's required in Tier B.

When we get into Tier B, that's Section 48, page 12, and it outlines the different things that are required. With each of these requirements there's a cross-reference provided in the regulation so they know exactly where to go and what parts to respond to. There are some facilities, as a matter of fact, out of the 30 or so facilities we have in the program, probably all but two or three are going to be subject to both Tier A and Tier B and that's addressed in Section 49 which starts on page 13. Essentially Tier A is what they're complying with. So from those sections they

can go forward and get started on program implementation.

The next thing that I wanted to do, if you're following on the Table of Contents, we've gone through definitions, applicability, substance list and performance and submission requirements. What I would like to do is skip around just a little bit from this point. The next item, registration, is a submission item. What I propose to do is go through and talk about those in-house requirements I discussed up front. I want to go through those. You'll understand what the performance requirements are. Then, when we talk about submission, it's just basically a summary of what they've done in house. So the next one that I would like to go to on your Table of Contents what we're looking at is the hazard assessment requirements on page 3. It starts with Section 56 and runs through 64. It starts on page 19. The hazard assessment is geared toward evaluating the consequences of an off-site release. What can happen when a substance is released. It's broken into a couple of different components. First, what they are required to do is evaluate the worst case release scenario on the facility. That's defined by the EPA and we pulled that into regulation to mean the largest vessel or container that contains that regulated substance, that hazardous material, fails. What happens? If it's a toxic material, it'll form a cloud and disperse. If it's a flammable, it will ignite and burn or if it's a vapor cloud, it may potentially explode. Evaluate the worse case using that quantity in the largest container. Quite often the worst case is not real, real likely because a lot of things have to go wrong and what they also are required to look at, consequently, is the alternate case release. This is something that is more likely to happen. This is things that routinely occur - say a hose rupture in a plant, a flange failure, something that is a lot more probable than one tank failing entirely. Once they evaluate these scenarios, they look at the extent of the impact on the public. The exposure the public will see is harmful to the individuals, the levels that we're looking at here. The impact, first of all, they are looking at the impact on public receptors, the people. They're looking at the toxic effects, if it's a toxic material. If it's a fire that happens as a result of your analysis. The radiant heat and how many people that could potentially impact, or if it explodes the over-pressure. They also look at the extent of the impact on the environment. What they're looking to do there is quantify environmental receptors. Environmental receptors is one of those definitions up front. What the EPA wanted to do, the program was obviously accident prevention, but they were also mandated to do things to protect the environment. When it came to evaluating the off-site consequences, in how does it harm an environmental receptor, they asked, "Well, what's an environmental receptor and how can we determine how it will harm an environmental receptor?" What they ended up coming down on was well, there's not a real good way to determine how this concentration may harm a tree or animals, potentially. So rather than actually define the actual harm on the environment, they quantified the receptors. How many national parks are there, for example. In doing in this evaluation you're counting how many environmental receptors there are. As I mentioned, this evaluation and the extent of these releases is intended to identify a sphere that could impact the public and cause harm. The levels that they're modeling to are not looking at lethal doses of materials. They are concentrations that can cause harm to somebody. It will not hamper them taking protective action and will not kill individuals. So it's a circle that will definitely be noticeable by the public.

What is this used for? Responders can use this information for planning, emergency response planning. Especially the alternative case release scenarios. Well, how bad can something really be? What do we need to think about in terms of evacuation, road isolation, they can look at this and say, "Well, these are the kind of things that can go on and this is how we need to gear our response planning." Additionally, it gets provided in reports as public information. So the people living next door to the plant can understand what's going on and what potentially can happen. Another part of the hazard assessment program is to list the accidental releases from the past five years. This just gives an accident history of the facility. So they're listing what has happened, what kind of accidents have they had. Again, this is public information and it's also used in determining the appropriate program level under the applicability section. We did get some public comment on this section. There was concern about the alternative release scenario and whether or not they needed to report that if the impact did not go off site. The EPA clarified that through questions and answers and basically said that even if it doesn't go off site, it did need to be included. So, consequently, we left that in. That was all I was going to say about hazard assessment. I was not going to go through the sections in detail. We can move on.

Commissioner Gifford commented he was curious, in terms of units, I know in some places going through here

you've got units of meters or square meters, other places you've got feet, other places you've got pounds, and so forth. Do you plan to have a consistency of units as you go through there? Or at least in parentheses getting everything down to a common denominator, either British engineering units, or metric, or whatever standard you're using in terms of your units? It seems like it's really a mixed bag.

Mr. Zusy stated quite frankly I had not picked up on that. This is all EPA language. I didn't alter it. We certainly could put in parentheses a conversion.

Commissioner Gifford stated it might be worthwhile to include parentheses just to get everything down to something that everybody can understand. They can pick one that they like.

Mr. Zusy stated I should also point out, that brings up another point that I did not raise. This evaluation of a hazard assessment requires modeling. How does the substance disperse? What the EPA has done is developed a guidance document called An Off-Site Consequence Analysis that has essentially taken all the materials that they cover and developed tables so that the regulated community can take those tables and not have to go through extensive or expensive computer modeling. So it almost makes the point of this unit consistency not applicable if they're not going to do the modeling. So, in other words, the smaller businesses that don't have the resources will just go to the table and pull those quantities off.

Commissioner Griswold asked in considering an industrial site, who makes the final determination whether the site is acceptable?

Mr. Zusy answered well, in our program the sites are there. They are permitted and they are operating.

Commissioner Griswold stated I'm referring to proposed new sites.

Mr. Zusy answered proposed new sites? Right now that falls on local planning commissions.

Commissioner Griswold asked they would make the determination under these modeling rules and assessments?

Mr. Zusy answered hopefully. I should note and I think David will probably bring up some issues regarding pending legislation that may have those considerations be built in to the planning commission.

Commissioner Griswold stated I'm asking this because particularly in Elko County we are very close to wilderness areas and I'm wondering just what sort of a consideration would be - what the rules will be on proposed new sites. Whether these regulations will restrict greatly the ability for a town like Wells to acquire a new industrial site.

Mr. Zusy stated this regulation and our program does not have anything to do with the facility citing or permitting right now.

Commissioner Griswold stated o.k.

Mr. Zusy asked did I answer your question?

Commissioner Griswold answered yes, kind of.

Mr. Zusy explained it's really a planning commission function.

AC Coyner clarified it by stating essentially after the facility is permitted and the levels of different materials are set, then this document essentially knocks out what the rules and regs. are applicable to that?

Mr. Zusy answered that's correct.

AC Coyner stated Tier A, Tier B, program levels and so forth.

Mr. Zusy answered yes. That's right and we'll cover this, but the idea here is that when you're building a new facility you are required to be in compliance when you start up. So all the things, all the accident prevention programs and emergency response preparedness all needs to be developed, coordinated and ready to go when you start the new facility up. At this point, informally a lot of times we do get involved with the facility if we hear about it as they're building and getting ready to go, to insure that they know what our program is so that they are in compliance. But as far as our current enforcement authority, it's when they bring the material on site. Then they need to be in compliance and if they're not, we have the authority to insure that they do get into compliance.

AC Coyner asked so, for instance, if the facility is within 50 miles of a wilderness area, this document doesn't spell that out, it doesn't restrict that, essentially?

Mr. Zusy answered that's correct.

Commissioner Johnson stated this document is an operating procedure rather than a controlling citing document. I mean, there's nothing in here that talks about how close to a dwelling unit that you can cite. It just says that if there is one there, you have to take into consideration the operation and development of the plans for risk management or other items. It is up to the local communities to set those other standards.

Mr. Zusy stated that's correct. He then proceeded with talking about the next in-house requirement. That's the prevention program. That starts on page 31, Section 65 and it covers Sections 65 through 84. I mentioned earlier that there are two levels of prevention program. They were intended to reflect the potential hazard of certain regulated sectors. What we're trying to do with an accident prevention program is be proactive. Don't get in and do things and fix things and try and improve things after you've had an accident, even though you may be operating with a good record, let's do it up front and get the measures in place. The intent is hazard identification and mitigation. What can possibly go wrong in this plan? And see that you have something in place to minimize the chances of those things going wrong. Additionally, what the prevention programs require are comprehensive operating procedures, employee training programs, maintenance programs, and incident review. Learn from accidents that you've had. Evaluate and learn from those accidents.

O.K. I guess I got ahead of myself. I said there are two prevention programs. The Tier A and B, level 3, Tier B level 3 is the more stringent of the two programs. The Tier B level 2 is the less stringent of the two programs. And you can see from this chart which facilities we're talking about for each of these programs. Tier A and Tier B level 3 is one prevention program requirement and then Tier B level 2 is another. What I wanted to do was actually talk about the Tier A and Tier B level 3 program first. So, I would reference you to Section 73 on page 37. Well it starts on page 37 and the bulk of it's on 38 and 39. We're looking at process safety information. There are three major areas here. One is the substance hazard information. You're looking at the toxicity and all of the various properties of the substance. You're also required in this section to evaluate your design limits. What kind of pressures, temperatures can the process handle. In addition to that, there are requirements in this section to evaluate and ensure compliance with the various codes and standards that are in place for the process. So what you're doing is gathering a lot of information here, understanding what the plant is designed to do, and just making sure that you're not operating outside or beyond what the plant is capable of doing. This information is used to get into the next section which is the process hazard analysis. When we talk about the hazard identification and mitigation, hazard identification is the area - is really done in this process hazard analysis. What it is, and it starts on page 74, or Section 74, page 39. It's a structured hazard identification and mitigation program. What you're doing is going through the plant systematically and evaluating segments of the process. A group of pumps, compressors, and vessels. Looking at dedicated pieces so that you can be thorough. Identify what can possibly go wrong in those systems. Look at what you currently have in place in terms of safeguards. Safeguards would be things that would

prevent those accidents from happening. Emergency shut-down systems, pressure relief systems, for example and identify current mitigation systems. Mitigation systems would be things that worked after the fact, after a release. A mitigation system would either contain or minimize the quantity of the release. From there, if it's determined that there are inadequate safeguards and mitigation measures, propose to do something about it. Add additional safeguards and mitigation measures. It also looks specifically at human error. Human error is a major contributing factor to accidents in plants. So, it addresses evaluating human factors in plant operation. It looks at issues with regards to facility citing. What we're talking about there is citing of equipment within the plant or relative to other plants outside. How a plant on the outside border, if it had a problem, how it could impact the existing plant, or pieces of equipment within the same plant. Are they adequately spaced, or could an accident in one potentially effect another. Start a chain reaction. So that's the kind of thing they're talking about there. Then external forces, Mother Nature, wind, weather, seismic forces, which is important and various other things. Losses of utilities. So you're evaluating all these different things and how these things can impact the plant and make sure that you have what's in place to minimize the potential for any accidents to occur. We did get a few public comments on this. Number 1, in terms of the structure PHA, there are numerous methodologies that they can use to conduct this. We clarified that. Also, we added a separate requirement for human factors, facility citing, and external forces. Just to clarify, it was built into the reg. before, but it wasn't very clear and we saw it was not always getting evaluated thoroughly so we spelled it out separately.

Operating procedures, basically just have clearly defined operating steps covering, among other things, start up, shut down, normal operation, emergency shut down. Have these things on paper. A lot of plants that have been around for a long time have 40 year plus people that have everything in their head, but it's not down on paper. It needs to be there. And safe work practices, how to safely do your job. Isolate equipment, get in and do work on electrical.

Training programs require that the employees be thoroughly trained in the operating procedures in their job and not only did they get the training and have record that they attended a class, but verify that they understood and have some method of ascertaining whether or not they've comprehended and know how to do things. There were some comments from the public. I originally had included an issue for functional training. It was basic math, science, equipment operation. We ended up deleting that. We're looking to try and round out the training requirements for the facilities. And we also did some clarifications on the types of training that could be employed. On-the-job training, classroom training and we just clarified how those things should proceed. And also there's some clarification on records of training.

Mechanical integrity section - basically what we're looking at there is to maintain critical equipment to prevent premature failures. Stay on top of it. Don't wait for it to break and fail catastrophically. You need to implement a program. You have to identify what needs to be done and then schedule it and make sure that it does get done. It's also requirements, just like with the operations, make sure that the maintenance people know how to do their job. And quality assurance just to make sure that all the materials they use in maintenance are appropriate for the service. Management of change is a function whereby the facility just makes sure that when they replace equipment, for example, that they are replacing it with a like component. Something that meets the design intent and calls out that if they're doing something that's different than what was originally designed, they need to step back and take a look at it and evaluate it before they just install it. A lot of times accidents can happen because a wrong type of valve or component got put into a system. That's what that's about.

Pre-start up safety review for a new or modified process - if you're building a new plant there is a requirement to insure that not only are they in compliance with our program, as we require, but to insure that o.k. they've installed all the equipment to the engineering specifications, that they've completed their operating procedures and all of the operators have been trained, and that the process hazard analysis was done and any recommendations that came out of that got implemented. There's a provision for compliance audit which requires the facility go back and evaluate this prevention program at least once every three years just to make sure that everything is up to date and current and that they are in compliance. So that's an in-house requirement on the facility.

There are requirements in Section 81 for incident investigation. Incident investigation is just basically to insure that the facility learns from their mistakes and from their accidents. Get in and thoroughly evaluate whether it was a catastrophic release or a minor release or maybe no release at all, but something almost happened. A near-miss as we call it. Review what happened. Learn from it so that you don't do it again.

There are requirements for employee participation. Just involve the operators and the people in the plant in this evaluation. Nobody knows the day to day better than they do. Hot work permit, it's essentially a safety procedure, but it's spelled out as its own requirement. Just insure that they're doing work safely in flammable atmospheres. If they're going to weld, for example, you want to make sure you don't have an explosive mixture of a gas around.

Lastly, there are requirements for contractors. If they bring people on site, these requirements basically require the plant to insure that the contractors know what they're doing, know about the hazards of the operation so that they don't get in and do something that could cause an accident. O.K. That's Tier A and Tier B program level 3 prevention program requirements.
Tier B program level 2 are similar but not quite as extensive. I'll go through these really quickly and maybe not spend too much time unless somebody has a question. There is safety information, a hazard review, which is essentially a less structured PHA. The requirements for operating procedures. Their operators are required to be trained. They are required to maintain their equipment. They are required to audit their prevention program as well triennially. And they are also required to investigate any incidents that they have in-house. Again, learn from mistakes.

The next slide I wanted to get into was emergency response. This is another in-house element. It's noted as Sections 85 and 86, which start on page 53. We're doing everything we can to work with the facilities and they're doing everything they can in-house to prevent accidents. That's the objective. But, in spite of all those efforts, things can and do go wrong. They have to be prepared to deal with emergencies. What these two sections do is define the type of preparation that they have to make. Number 1 there is a requirement that they have an emergency action plan. Basically, what that is is a recognition that there is something going wrong. They need to have procedures to make the proper notifications, whether it's dial 911, or whatever they need to do and procedures to evacuate the facility. At a minimum they have to have that together. Now, sometimes these incidents require response in a toxic atmosphere, for example. They need to get into some hazardous locations to do some response activities. If the facility is doing that type of response and they are not obligated to do so, they need to have a haz-mat response plan (that's a hazardous materials response plan). It entails some detailed requirements for training and qualification. That haz-mat response involves putting on gear, protective suits, breathing apparatus. It takes a lot of training and there are specific requirements for that. If they're going to do the responding, they need to have that in place and have those people trained. We have requirements that they maintain their emergency response equipment and that they train their employees in emergency response. And most importantly, is that they coordinate their activities with the local responders. If there's one thing we've seen over the past five years that I've been doing this program, in a lot of cases, that is lacking or it's not very clear and the responders don't always know what's on site or what's expected of them. The coordination means that they're both talking and they know what the other party is going to do and what is expected. In terms of stringency, I will note that the coordination of the activities with the local responders is something that's above and beyond what's in the EPA's RMP.
At that point, I just wanted to note we received a comment from industry today requesting that we make minor amendments to Sections 85 and 86. The amendment they've proposed, we do not have a concern with, and this is new David. So, I guess I would like to propose that we incorporate this amendment into the reg. O.K. I'll just wait for one minute while we pass that out to the members of the Commission. It's relatively brief so I'll read it for the public as well.

The original language in Section 85 under Subsection 2(a), "The facility has implemented an emergency action plan that contains the elements set forth in 29 CFR 191038(a)." That is an OSHA reference for the emergency action plan. What has been requested is that we add to that only for facilities regulated by 29 CFR 1910. The request is that if they're not subject to OSHA, not to make that requirement of them even though we're not subjecting them to

OSHA with that language, we're just referencing the elements there. The Division is all right with that.

In Section 86, the same comment is made where there are, again, references to the OSHA standards, 29 CFR 191038(a) and 86 Subsection 1(a), 1 and a, 2 and add similar language to what I just read. Any questions there? That covers what I was calling the in-house requirements. I'm ready to get into the submission requirements now. The reports that get submitted. We have to just shut down here and change a file real quick. Of course, then we want to keep going forward. We're going to start with annual registration which is on page 13, Sections 50 through 55, it starts on 13. Annual registration is required annually or upon start-up. What they are providing in the annual registration is information on off-site consequences. The five-year accident history summary, an emergency response plan summary. So here, we're summarizing these things they've already developed in-house. What we are looking to do with this registration is, (1) understand that the plant is there. If we are not familiar with the facility, it tells us something about the facility, for example, how much material they have, where the population centers are, what the potential hazard is there so that we can do some prioritizing if we have multiple facilities and know who we probably want to visit first. This section is basically intended to satisfy the statutory requirements that we have for registration and what's called a report on safety. We've kind of pulled all that information together into one document into this new registration document.

The assessment report - this is basically a summary of their accident prevention program and emergency response program efforts. This report will be submitted once every five years, at a minimum, by the facilities. We have currently what's called an ARTAR report (an assessment of risk through the analysis of hazards). This is a document that's required to be submitted every five years for public consumption. It talks about the plant and all the things they do with regards to accident prevention. The EPA has their RMP report which has a lot of the same information. What we've done through the statute and reg. is consolidate these items and provide it in one report. As I said, most of our facilities will be subject to both, at least as it stands right now. What's in the report is an executive summary which just talks about their accident prevention programs and includes an item called "the plan to abate hazards." I'll just get back and say a word about that in a minute. Also, there's an off-site consequence analysis summary. So they will be stating in there how far off site a toxic cloud might go, how many people it might impact, how many environmental receptors. They'll list their accident history that they developed and then they'll provide a summary of their compliance with the various accident prevention program and emergency response program elements. I just wanted to call your attention to this plan to abate hazards. This is a CAPP unique item. The State of Nevada has had this in place. What it is is a list of all of the things that the plant has defined that they need to do to improve safety in the plant. What's in there are any recommended actions that come out of the process hazard analysis. Plus, as they evaluate their procedures, training program, maintenance programs against the program requirements, if there are certain things that they do not have in place, that they need to put in place to get into compliance, they will list these here as well. So what the DEP will have before them is a comprehensive list of everything that the plant is going to do and not only is there a list, they commit to dates. We use that to follow up in the facilities to see that those things are getting put into place. I did want to note that the inclusion of that plan to abate hazards for the RMP facilities would be slightly more stringent than the federal RMP requirements. So that was one more area where we were a little bit more stringent, but we found that to be a real valuable tool over the years.

In terms of public comment, there was some concern raised over our consolidation efforts with the annual registration and with the assessment report. The registration and assessment report as they currently exist can be sometimes somewhat voluminous and have a lot of verbiage to them. What we're doing with these new reports is streamlining that and reducing it to a lot of tabular information and checklist information to give the important pieces of data so we do not have as much verbiage in there. Exhibit 3, as a matter of fact, are comments received by the City of Henderson to that effect. I'll note a couple of things. We're faced with a pretty monumental task to try and merge these two programs, just given the subtle differences. I was trying to do everything within my power to make these reports fit together so that we didn't have one report and then another one that did almost the same thing, but had a few extra elements. So what's in the registration and assessment report is not exactly identical to what exists now under our current program, but we feel the information in there is relevant and it provides all the

pertinent information that the public needs. The only other point I'll make is that we do rather comprehensive inspections in the plant. We develop detailed inspection reports which are open to the public and have been accessed by the public before. So the information is out there and they have it, or I mean, and it is available to people. And, quite frankly, I think what the DEP finds in their inspections is more relevant than what the facility is going to tell you, at least in terms of where they are. A lot of times they say they're in compliance and we go out and find that no, you're not quite there yet, or there's other things you can be doing. So, given that, I think the forms we have here are good and they do provide good information to the public. The next requirement - this is strictly a Tier A requirement and this is for assessment team approval. Under the old program, the legislature wanted us to look at the individuals that were going to get together and evaluate this plant. We wanted to make sure that there was a good cross-section of people, people that knew about operations, maintenance, chemistry, so there was a requirement that they have this comprehensive team in place and to do this evaluation as a team. What we did in these requirements, assessment team requirements, is take, again, what was actually in statute and some stuff that was in guidance and pull it all together more cleanly under regulation. It clarifies the assessment team member roles and there were a few public comments related to team member participation and some of the role requirements. Basically, what we're requiring is that the entire team, which could be a half dozen to a dozen people needs to participate in the process hazard analysis. They also evaluate all the other elements, procedures and training and we allow them to break up into sub-groups to do that kind of stuff. So that's where we ended up. We made a clarification. The next section is the annual compliance report. This is, again, a Tier A requirement. What it does is takes the information that's listed in that plan to abate hazards that we talked about and requires the facility to give us a status report on that. So, how are you coming on those? We are required by statute for the Tier A facilities to verify the information on that report on site by conducting an inspection and to do that annually. We are also required to document our inspection findings. One concern that arose in the public comment was related to follow-up on plan to abate hazard measures. A lot of times a measure will say, "Well we need to study the potential to install an emergency shutdown system" say. But it doesn't get engineered there. So, technically, if they've done the study, we can say, "Yeah, you've satisfied that." But, the question of follow up; o.k., did they determine one was necessary? Yes, o.k. We follow up to make sure that it gets put in. There's a little concern on the public side that we just kind of dropped it at that point before it actually got installed. But, we do not through our inspection process.

Now I wanted to talk about the two release provisions. This was introduced as a result of Senate Bill 266 and there's several things we need to talk about here. What I'd like to do is first call your attention to Section 42, page 7. We're going back to the applicability. Under Subsection 1, paragraph B, the facilities that get involved in this program are ones that are otherwise not covered by CAPP. Their threshold quantity does not meet the threshold quantity requirement, small amounts. However, they keep having accidents. The provisions are that if they have two such accidents in any 12 month time period, they are required to become subject to CAPP and comply with our program. There's a determination that they would benefit from the rigors of CAPP.

Commissioner Johnson stated it's my understanding that the level of release, that there's a quantifiable level that triggers this. It isn't - well I guess to go back and ask the straight question. Is there a regulatory level for each of the listed chemicals that would trigger a release?

Mr. Zusy answered yes. We were obligated to develop those numbers. They're on the table and we're required, as a matter of fact, to adopt those numbers in this section and I'm going to go into a little bit of detail as to how we did that. It's probably more appropriate to have this backup - the number you're talking about is the two release quantity and that appears on the table here and we're going to talk about how we came up with those numbers.

O.K. So that's how they're pulled into the program is the two releases. What I'd like to do is just walk through the process first for inclusion in the program and then once we get through that, I'll talk about how we developed those two release quantities. I was going to call your attention to Section 102 on page 70. O.K. These facilities were not subject to CAPP originally and there are provisions for these facilities to eventually get out of the program again. There are provisions in the regulation to do just that. Section 102 discusses those. Basically, they need to be in the

program at least two years. The idea there is just to see that (1) they've gotten in and developed the programs and that time period would be good enough to be able to ascertain that not only have they developed the programs, but that they're maintaining them. They're keeping their training current. So, those things are being incorporated into the corporate culture, if you will. Of course, we want to make sure that they are in full compliance with CAPP. Any abatement items plan to abate hazards measures that they identify are complete, and then, lastly, that the Commission concurs with that exemption. You are going to be the ones that grant exemption to that facility and I'm going to talk about that on the next slide.

O.K. Now this is Section 103 which is on page 71. First, the process to obtain exemption from CAPP. The facility has to initiate it. We are obligated as NDEP to verify that they are in compliance with the program and have satisfied the mitigation measures. At that point, the facility will petition the Environmental Commission for exemption and a public notice of the request and hearing will be made and then, of course, they will come before you and request this exemption. There are several things in the regulation under Section 103 that the Commission is to consider in granting that exemption. Number 1, have the causes of the accidents that pulled them into the program in the first place been adequately mitigated? Number 2, do they have an accident prevention program in place and working? Number 3, does the Division concur with the exemption? Do we think they're ready to get out? And lastly, have they had additional accidents? If they keep having accidents, then you need to think about that. So, those are the things that the Commission was defined to consider. At that point, there would be a decision made by the Commission to either grant this exemption or to deny and provide an explanation as to why the exemption was denied.

AC Coyner asked any estimate of how many facilities fall under this?

Mr. Zusy answered actually, we have one facility that falls under these provisions now. I went back and researched our release database back to 1993 and I found no other facility that would have fallen under these provisions, since '93.

O.K. So that's the process. Now, I talked about these two release quantities. So, basically, if you're looking at the two release quantity, if they have accidents and release the quantity as listed there, that amount or greater two times in a 12 month period, they're in the program. Now, the question is how was that developed? I'll use that table on the overhead for reference as I talk. Basically, there was a requirement - or the way Senate Bill 266 was worded, it said that if it had two releases in excess of a select quantity, they used as a basis, 40 CFR 302, which is a CERCLA reporting requirements. What they are obligated to do is a facility is required to report a release in excess of that CERCLA RQ. So, the reason, really that was selected as the basis for these two release quantities is (1) it's a fairly sizable release, but it is not necessarily catastrophic. I mean take the major substance we have in the State, chlorine, for example, and you can see the RQ is actually 10 lbs. So, it's a fair amount of chlorine. It's not a catastrophic release, but what it's indicating is that there's something going wrong here because you shouldn't be releasing those kind of quantities. The other benefit is it's already reportable to NDEP. They have to phone this in. So, at least we'll be likely to hear about it. If there was no requirement to report any of these numbers in any way, we may never hear about it. So, there's an advantage there. We supplemented it with 40 CFR 355 values, which are EPCRA EHS RQ's. They also require reporting and we get that information as well. So, there are documented release quantity numbers. That's where we started with this.

O.K. From there what we did was we had to come up with some way to handle the substances that were not addressed. We found that we're still short by about 40 or 50 substances. We still didn't have values and we needed to develop a value for those. So what we did was take a step to evaluate the relative toxic hazard of each substance. The first thing we did was we wanted to have a pretty good database, so rather than just go with the Tier A substances to whom this really applies, we pulled Tier A and Tier B substances together and got a list of like 215 chemicals. And, again, we were just after data quality. We don't intend to put two release quantities on Tier B substances because that was not the intent. And what we did was ranked and sorted those substances based on a combined toxicity and volatility factor. So, what we're looking to do was say, the most toxic materials and the more

toxic the material, the more hazardous it would be, the more volatile the material is the more hazardous it could be because it would be more readily transported. And, in doing division with that, what we developed was what we called this Nevada SHI or substance hazard index. So, for each of these substances, we had a vapor pressure and a toxic limit and its division and we came up with those numbers. We sorted that list by Nevada SHI. The more hazardous materials are at the very top. They have the highest number. So, we had a sorted list doing that. What we did then was list the release quantities from 40 CFR 302 and 40 CFR 355 and put those numbers down. And based on those numbers the next step that we took - o.k. I've already said generally the lowest RQ'S had the highest toxic hazards. If you look at the listed RQ column you can see those numbers are relatively low, although not real consistent on this sheet and the SHI values are high as there are multiple pages of this list and as you work down the lower SHI numbers typically had higher listed RQ'S. What we did was take the general RQ'S, or just look at the listed RQ'S and in any particular group, for example, from here to here and say generally what does the RQ look like? We took 10 as the example and said, "O.K. Based on its location in the Nevada SHI table, everything here should be a 10." So we pulled it forward and made all these substances 10. Likewise, as we got down here we saw that substances generally trended as 100 listed RQ'S. So we pulled it over here and made everything a listed RQ of 100. Where there wasn't data or there wasn't a listed value, we just put the 100 in. So, that's how we came up with the values. You have to remember that what we're trying to do here really is just identify what an accident is. We could have just said two accidents and it would have been too open. So we were trying to somehow quantify what that accident was. I guess that's kind of a long-winded explanation, but that's really all we're trying to do there. Some substances were not toxic. They didn't have toxic characteristics. They were even on the Tier A list, they were either flammable or had explosive characteristics. These materials were stable liquids and solids. If released they would not necessarily do anything. So, alone they would not impact somebody. We further added a requirement for those spills to be involved in a fire or explosion to count as an accident. That's just our way of dealing with that. Those were like about 10 or 20 of the 140 CAPP substances. So, that's how we developed the two release quantities.

AC Coyner asked can I assume then that the chemical that's at the top of the list is essentially the most threat to us here in the State? Is that sort of a fair statement?

Mr. Zusy answered yes. I'd say it would be fair to look at it that way.

AC Coyner asked and then secondarily, look at the chemical about half way down the list which has a 5,000 unit value, but you're requiring it to report at a 100. It looks like they got treated sort of tough in this equation process of trying to find a number that . . .

Mr. Zusy answered well we looked really hard at that and one guy on my staff got in and tried to understand how the EPA generated these numbers and found that a lot of them were not real, real consistent. I mean generally you're just looking at 1 of about 20 pages of table. But, generally, the listed RQ'S trended pretty good with the relative hazard. But there were those anomalies and we could not determine for sure why that was. But in doing our analysis we just determined that here's the information we've got, based on that this is where it shakes out and this is the number. And, again, this is just to say what is an accident? I mean, that's all the number is being used for.

AC Coyner pointed out the opposite sense on your most hazardous chemical. In other words, the low number was 1 on the RQ, but yet you're going to allow them 10 essentially as a reportable number. So, you're moving in the opposite sense with the most hazardous ranked chemical. Just as an observation.

Mr. Zusy stated right. Generally we tried to keep them all in increments of 10, 100. Quite frankly, I'm not sure, I can't answer why that wasn't a 1. That would probably be the only one.

AC Coyner asked is there a lot of that stuff around? The one that's in the first slot there?

Mr. Zusy answered no. I'll tell you, we've got maybe no more than a dozen of the 140 substances within the State and the primary substances we have in Nevada are chlorine and anhydrous ammonia in ammonia refrigerated warehouses. The chlorine is primarily in wastewater treatment, potable water treatment facilities. That's where you find the bulk of it, outside of chemical manufacturing processes. And they're primarily located in Henderson and up along the I-80 corridor, Winnemucca by Battle Mountain.

There was some concern over the applicability period. Initially, we were only going to require the facility to stay in one year after they submitted their assessment report. We agreed and extended that and thought that it was appropriate to insure that they did get the program up and running and maintained and part of their culture. The only other one was that they wanted to insure that public notice was made of the exemption so the impacted community could at least know that the facility was seeking exemption and those are both in there now.

O.K. We have several more sections to go through. Process hazard analysis revalidation - we've already talked about the process hazard analysis. Basically, the facility needs to insure that the process hazard analysis reflects current operation. Things change over time. They may add systems, pumps, valves, controls and those may introduce hazards. The idea is to insure that this thing is current and when they do this revalidation they are obligated to consider past incidents. There is a criteria for the revalidation and it's explained in Sections 104 to 109, so it's over five sections, but basically that's the gist of what's in there. Just make sure that your analysis reflects current information. Very simple transfer of ownership - we just want to be notified if there's a different owner. This question came up a couple of times so we just wanted to put something in there to talk about how to deal with that and basically they're just telling us we've changed owners.

Management system - it's just a definition of who's responsible for CAPP at the facility. Not only for the Division's information, but for the facility to see that they have a structure in place and assigned responsibility for all of the program elements. If you assign somebody the responsibility, then obviously they need to insure that those things are in place. So that's the only intent of the management system.

Inspections - in the name of trying to make this an inclusive document, we pulled forth the NDEP statutory authority and restated it here.

Enforcement - the same.

And, lastly, adoption by reference - there are several references made throughout the regulation to outside document standards and pamphlets and we were required to adopt those portions of those references by standard and that's what happens in Section 114.

O.K. I'm ready to move on to the regulatory amendments.

AC Coyner announced a 10 minute break starting at 10:50 a.m. and reconvening at 11:00 a.m.

Mr. Zusy continued by starting with the regulatory amendments - Section 115, page 77 for reference. The first one is just technical corrections. The second one, 459.953, in amending this regulation I noted that we went in and in the last section deleted 953 entirely. Originally we were doing some amendments, but we have ended up deleting that. The information in 953 has been incorporated in other parts of the regulation. Annual registration, Section 53, and the annual compliance report, Section 101. So, I'm noting that we intend to delete that section now. And the deletions are noted in Section 120.

9534 - a couple of things going on there. Basically the assessment schedule is no longer applicable simply because - that's the report submission schedule - simply because the prevention program and emergency response programs are now being required to be in place upon start up. That was not the case before. So we have amended that regulatory section. Section 9536 we pulled some information forward into the assessment team, member

qualifications from the statute. It was set up so that some information was in statute and some was in regulation related to assessment team. We're trying to make this a comprehensive document. I pulled those the italicized portions forward so that now we have complete information on what's required of assessment teams in regulation.

Commissioner Johnson stated I noticed you're deleting the reference to the NRS and my question is simply if I were reading this as a document do I know what's regulatory and what's statutory? I mean the existing reg. has in page 79 A where you refer to NRS 459.384, you're deleting the reference. I understand that you have included the language from the NRS in this comprehensive document. But, if I'm just reading this, will I have to cross-check to see what's statutory and what's regulatory?

Mr. Zusy explained the point here was to make that irrelevant. In other words, it's in the reg. and you don't have to go back to the statute.

Commissioner Johnson stated all right.

Mr. Zusy explained that's why I did it that way.

Lastly, fees - we have an existing fee structure in the program. We have not modified the fee structure for the current facilities. What we have done, though, is modify the fee structure for the Tier B processes. The reason being (1) the requirements on the part of the Division are not as stringent and we would anticipate not doing, for example, inspection frequencies as often. But, bottom line, we think there's going to be less effort with those Tier B processes and we've made some adjustment in the fee to reflect that. The way the fee structure works, there's an annual base fee which is assessed per site and an annual graduated fee. So the base fee is just a lump sum dollar figure based on whether you're in Tier A or Tier B and that goes per site. The graduated fee is tied to the quantity of substance we have on site. What that is is basically the total quantity that you have on site and divide it by the threshold quantity from the tables. And that, you'd come up with the number of units and our fee is assessed by number of units. These are the fees. Tier A and Tier B program level 3, I'll note that the program level 3's we consider to be the highest risk facilities as well and we intend to treat them the same way we treat the Tier A's. They're going to see us at least every year and I've made comment that we are obligated to visit these sites once per year. Many of these sites we see two, three, four times a year just due to all the work that's going on. So for some of these facilities we spent quite a bit of time there. The base fee there is $3,100 per site and the unit fee is $10.50 per unit of substance. Tier B the program level 2's they are required to have a prevention program so we do need to get out and evaluate their prevention program, their procedures, maintenance, training. Although the inspection frequency may not be as high, so we've reduced the base fee to $2,000 per site and a unit fee of $10.50 per unit of substance.

AC Coyner asked could you give me an example as you go through that list of a typical site that would fall into those different categories, just, you know, overall. What would they be handling? What would they be doing?

Mr. Zusy stated o.k. You can refer to this table as well. Tier A, for example, has the most complex facilities. They would be chemical manufacturers. Say, somebody like a Pioneer Chlor Alkali down in Henderson. It's a large chemical manufacturing plant. They would be assessed the base fee of about $3,100 and their unit fees, due to the quantities they have on site, would add another $10,000 to $15,000 to their fee. So they can pay $15,000 a year, or they do. Public water treatment facilities, right up here in Sparks we have Truckee Meadows Water Treatment Facility, they handle a large amount of chlorine in 17 ton tank cars for disinfection. They would also be assessed these types of fees. The refrigerated warehouses, the only one in our program up here is Model Dairy. They have ammonia refrigeration. They would be assessed similar amounts of fees. Similarly, Tier B program level 3, we would probably - what we anticipate is facilities that would fall under there would be operations like the geothermal plants. They have large quantities of butane and pentane on hand - flammable substances. They would pay the $3,100 base fee plus some unit fee and off-hand I can't quote exactly where that would be. And, again, the other types of operations that would fall under level 3 are probably also subject to Tier A. I'll just note that if they're

subject to the Tier A and Tier B program level fee 3, they do not get assessed two fees. I mean it's just the one fee. In Tier B program level 2, quite frankly the bulk of the people that are in that are the regulated community are the propane retailers and the end users. There could be chemical manufacturing going on there as well, although I haven't identified any in the State. Basically, they would be plants that would not be inspected by OSHA currently. To do full site inspections, and we were thinking more along the lines of chemical manufacturers, we had the $2,000 fee. Two-hundred and fifty dollars for the Tier B program level 1, really what they're doing is evaluating the worst-case scenario. If they haven't had any accidents and they are remote enough and they can't impact off-site receptors, we just look to see that they have emergency response coordination in place. There's very little required there. We would go out and visit the sites and the responders to see that they have things in place. That would primarily be mine sites with LP gas. I'll also note that the level 2 and level 1 facilities that I have up on the screen there are all going to be exempt from the program under the proposed amendment. So, quite frankly, I can't tell you of a Tier B level 2 facility that's not a propane . . .
I wanted to get back to the amendment that we had proposed. This piece comes in with the fees. This is related to propane. What we had originally intended if we were able to coordinate with the LP Gas Board and work with them to implement in propane, or I'm sorry, what we were looking at here was if we did not have coordination with the LP Gas Board, but we did go forward with implementation in CAPP implementation in the propane dealers, for example, we would allow them to deduct their fees that they pay to the LP Gas Board because they are getting some level of inspection from the LP Gas Board. So the language that was in there did just that. Since we are now proposing to exempt those facilities, we're going to go in and delete that language. It doesn't have any meaning anymore because the regulated community that would be affected by that is not covered. Similarly, Subsection 5 under the fees was related to end users and how we would treat fees there. They are also no longer subject to the program so we're just proposing to pull that out.

Just one more thing to go over. The regulatory deletions, unless you're interested in going over them in detail, the reason they are being deleted is because they are either being incorporated elsewhere in the regs. or superseded by new requirements. Effective dates, the registration and off-site consequence analysis, we delayed that to June 21, 1999. The EPA has a deadline for submitting their risk management plans, their reports, of June 21, 1999. We did not want to make anybody submit all of that data until it was actually required. A lot of facilities are working together to come up with good ways to present that material to the public. As you can guess, some of that might be somewhat controversial. So we wanted to work with them and not make them do something sooner than they had to. All other sections are effective upon filing with the Secretary of State and, quite frankly, by the time that happens if we adopt these regulations today, they won't be filed until the first or second week of June probably. So there's not much difference between the two. With that that concludes my presentation. I just wonder if there are any other questions and if not . . .

AC Coyner admitted Exhibits 1, 2, 3, 4, 8, and 11 to the record.

Allen Biaggi, Administrator of the Nevada Division of Environmental Protection, stated that he was in negotiations in the hallway with a number of the parties concerning the propane proposal that was before the Commission. He asked for 5 or 10 minutes to allow what may be a mutually agreeable solution and allow much of the proposed testimony that was going to be before the Commission to be resolved and perhaps move the meeting along a little more swiftly than it would have otherwise.
AC Coyner stated without objection so ordered. He thought the Commission would still proceed with questions to staff about the particulars of the regulation.

He started the questioning by asking I know a number of the issues in here involved geothermal plants and our two refineries in the State, oil refineries. How much input into the proposed regulations did those facilities have? Or did they comment? Did they come to the workshops?

Mr. Zusy answered to my knowledge, they did not attend the workshops. I can say that pretty certainly. We have conducted outreach and been in contact with them and we have not heard any comments from them on the

regulation.

AC Coyner asked by your knowledge, will this effect the oil refineries in a big way?

Mr. Zusy answered no. In my discussions with the refineries, one of the two will have some part of its process covered and I don't know enough about what they do to say how extensively that will apply. We'll find that out, but we've had discussion and they're aware of the program.

AC Coyner asked on the geothermal side, I believe there's only one plant that uses the binary process with the isopentane, if I'm correct. I should since I regulate them, but I believe that's true and they would be the one that would be impacted whereas the other geothermal plants would not it sounded like to me in that part of your presentation. Is that a fair statement? And did you talk it over with them?

Mr. Zusy stated staff has been in discussion and visited geothermal plants. There are several that actually have binary operations. Most of them have quantities that are adequate to be in the program. A couple of them are questionable. But there are on the order of five or six.

AC Coyner stated we have Exhibit, I guess it's 3, from City of Henderson on a disclosure issue.

Mr. Zusy stated yes.

AC Coyner asked do you feel that they're fairly well satisfied with regards of how much data would be collected and how available it would be to them. They gave rather extensive testimony here that it was inadequate and I'm just wondering how you've addressed that with them.

Mr. Zusy answered basically, the City of Henderson has (1) they're very satisfied with the program and the performance. I'll also note that they are very satisfied with the level of documentation that we have and the availability of that information. They have no complaints there. One of their biggest concerns was that where the bulk of the information lies now is in our inspection reports and notes and the reason that we have such good inspection reports and notes is because of the individuals that are doing the inspections. Those requirements are not codified in regulation and because of that they are a little concerned still that some of this information may not be available to the public, although most of those things in one way or another are available. They are either picked up in the streamlined reporting format, or we have them through our site inspection records. But, so are they entirely satisfied, I would say no, probably not. But, in general, I think we cover most of those issues and perhaps at a later date, once we get through this, there may be some call to maybe clarify what the Division needs to do in terms of inspections and inspection reports and maybe put that in regulation as well to better address that. But their concern was not with the level of information that we have in our files, it's just with the next generation insuring that it continues.

AC Coyner asked so if they wanted the detail, essentially, for the full disclosure it would still be available, they would just have to dig a little deeper beyond the streamlined reports?

Mr. Zusy stated right. And no public agency or individual has to dig. I mean, we will help them. We're very open to that and help them go through files and help them find what they're looking for.

AC Coyner asked does the exemption apply only to the reporting requirement? It doesn't affect anything like inspections or that phase of the program. There was a possibility of applying for an exemption if you went two years without a release? First of all, that was applying to only the biggies, right? The Tier A and Tier B 1's or 3's or explain that for me in a little more detail. Why would we want to exempt a highly hazardous site?

Mr. Zusy answered I believe the exemption you're talking about is related to the two release provisions. Is that

correct? Yes, they have toxic materials, they don't have large quantities. The idea of this program was to focus on people with a lot of stuff. These other facilities had smaller quantities. There's actually a couple of ways you can address that problem. You could just go through and blanket lower all the threshold quantities by a factor of 10. You would increase the regulated community substantially and a lot of the things that those regulated community does that have low quantities are already covered in other codes and standards. There's simple enough processes that even things like the Uniform Fire Code would cover those for example. And, in general, it's not really necessary to get in there and, quite frankly, it would build our staff up and introduce a lot more bureaucracy and cost. The idea here was that it seems like a better approach to go with this two release provision. Just go after the bad actors and the thought is once they're converted and they've changed their ways, first of all, they are going to go through a lot and prove it, but then, o.k., let them get back to where they were before and hopefully they'll maintain those prevention programs. But, if they have accidents again, they'll be back in again.

Commissioner Johnson stated just to clarify - the exemption only applies to those who come into the program under the two release, not those that come in under the minimum amount of material that they handle. So, we're looking at Tier A and B people that are in there because of the amount that they handle. But, others that don't qualify, but have the two release, come into the program when they have two release, and the exemption only would apply to those that otherwise wouldn't be covered.

Mr. Zusy answered that's correct.

AC Coyner asked a question on the change of ownership. If it is the smaller facility that you're looking at, essentially the program is kind of as good as the person that's on site or the company that's on site. So is there a mechanism essentially during that change of ownership to make sure the new owners have the same shall we say, "spirit of the program" in terms of keeping their house in order?

Mr. Zusy answered yes, there's nothing in regulation, but what we would do is go out and visit with the new owner just like we go out and visit with the new facility, to insure that they are aware of our program and the requirements. In addition to that, for a change in ownership, the new owner needs to understand what commitments the previous owner made in terms of abatement measures. So, that's how we would handle that. It would be outreach by the Division's staff.

AC Coyner asked a question about the money, the fees. Do you have any kind of numbers on how much new money will be raised by the change in fees versus how much you're collecting now? Some sort of impact in that direction?

Mr. Zusy answered yes. Let me reference something here. It's going to be a little tough to say exactly. We have about 30 or so facilities now and let me explain that by June 21 we're going to have at least a half a dozen facilities that are currently covered by our program drop out because they're going to change to a safer alternative. The water treatment people are going to get rid of chlorine and go to bleach. So, the net add that we anticipate with this program is approximately seven or eight facilities, maybe up to a dozen, and they would all be Tier B program level 3. So we're talking at least $30,000 from those facilities, roughly.

AC Coyner stated that would be in addition to the current, so . . .

Mr. Zusy stated that's correct.

AC Coyner asked what's the current amount?

Mr. Zusy stated well, yes, but we're going to lose a lot of (inaudible) too.

AC Coyner stated I understand.

Mr. Zusy stated our revenue last fiscal year was $216,000.

AC Coyner asked so and the loss will be about $50,000 when those six leave maybe and a $30,000 gain on the other side so it'll be about a $20,000 loss net do you think?

Mr. Zusy answered my projection is go from $215,000 down to about $180,000, so we're going to have possibly a net loss, again, we're still working to identify everybody and we may not have everybody, but that's a rough projection.

AC Coyner stated I understand projections and budgets. Don't get me wrong, but it would seem like you're doing more with less. Is that a fair statement? I mean, you know, it's taking on new regulations, new authority, new work and yet your net to the staff is going to be less dollars, so . . .

Mr. Zusy stated that's correct.

AC Coyner asked do you see a problem there?

Mr. Zusy answered yes.

AC Coyner stated I do.

Mr. Zusy stated yes. What we're looking to do and we're looking at our bottom line funding and our balance forward, we foresee a lot of program development work through the next fiscal year and we are going to be able to go forward with our current staff to do all the program development that's associated with this reg. and all of the outreach to the new facilities and maintain that level. After that, we do foresee, if nothing else changes and our regulated community holds to what we're projecting now, we're going to see the need to do some reduction in staffing.

AC Coyner asked and, again, I'm assuming those numbers reflect your proposed amendments to exempt propane?

Mr. Zusy answered yes they do.

Commissioner Crawforth asked the programs that are not in the second release program already, how do you become aware that there's been releases?

Mr. Zusy answered hopefully, part of the idea was that the release quantities were consistent with reportable quantities to us already. And we're relying on them to provide that information to the Division as they are obligated to do under regulation. The only other way that we can hear about it, quite frankly, is if we read it in the paper or somebody from a local fire department calls us and tells us about it.

Commissioner Crawforth asked the staff is comfortable that the number of concerns from the City of Henderson are, they are available, they are addressed and you're going to consider looking at that again at a later date?

Mr. Zusy answered yes. I took their comments constructively because I think they had a valid point. They're concerned that, "What about the next guy that comes in? Well it's not really in regulation to do the kind of things that you guys do." I think the information is there for them now. I think it's very good. I mean it's very comprehensive information. But, for future program development, we should probably codify something in reg. that has some requirements with regards to inspection documentation and the level of documentation. I think that was a good comment on their part I thought. But, we are not trying to hide anything from anybody. I mean we are certainly very open with everything that we get.

Commissioner Griswold asked is there any cooperation presently or is there expected to be any with the military in the State of Nevada?

Mr. Zusy answered under the federal risk management program, the military or the federal government is not exempt. So, we are required to do inspections. If you'll look at the materials that are in our program the types of things that they would have on a base, for example Nellis Air Force Base, would be some chlorine for potable water chlorination. We don't have explosives. We're not getting in and inspecting all of their munitions. But, rather than coordination, we're going to have a regulatory role, clear authority to have a regulatory role there.

Commissioner Griswold complimented Mr. Zusy on an excellent presentation.

DAG Mischel stated she had a couple of questions. Again, the reason I'm concerned about the statements in Exhibit 3 is that their basic conclusion is that these regulations are less stringent than the statutory requirements and I know that you addressed that by saying, I mean in terms of reporting, and that you addressed that by saying the reports are now consolidated and that you're getting essentially the same information in fewer words. Is that right?

Mr. Zusy answered that's correct. There are some things if you picked them out in the statute that are not in there. Number 1, let me start with the assessment report. There's language in the statute that allows for the consolidation of the reports if they're substantially equivalent.

DAG Mischel stated if they're substantially equivalent, right.

Mr. Zusy stated so there's room for judgement there and I exercise judgement there.

DAG Mischel asked and your opinion is that the information is substantially equivalent?

Mr. Zusy answered yes I do believe that.

DAG Mischel asked with regard to the public notice provisions, would you still rely upon the statutory requirements for modifications to the programs, to the facilities? I'm looking at Exhibit 2 . . .

Mr. Zusy asked modification to the plan to abate hazards?

DAG Mischel stated right, PTAH.

Mr. Zusy stated that's one of the issues that's unique to the Chemical Accident Prevention Program for what will now be the Tier A facilities. That plan to abate hazards is actually an enforceable document. They provide that with our concurrence. We review and concur with that document. So all of those items they listed that they had to do to improve their program they are now held bound and if they don't comply, we have enforcement capability to make them comply. What is being referred to here is if for some reason we wanted to modify the content of that plant to abate hazards, the CAPP statute was set up to require us to go to a public hearing to air those differences and have it decided in a public arena what needed to be in those plan to abate hazards. That hasn't changed. We still would go through that route. But I'll also call to your attention that there is a provision in the regulation for these facilities to submit a draft report. What we do with these facilities is go out and do a detailed inspection before this official assessment report with this plan to abate hazards is submitted and in almost all cases we have been able to come to agreement on what needs to be in there before they submit the final document. We're not doing that to get away from a public hearing. The document is made available. We go to great efforts to put it in local libraries. We have announcements in the newspaper. We do public service announcements on the radio to make people aware that those documents are available for review. If the public had issues with the report or the information and the plan to abate hazards, we would certainly address that as well and that may take it to a public hearing. But that's still there.

AC Coyner asked for further questions from the Commission. There were none. He called upon Mr. Biaggi.

Mr. Biaggi stated first of all, I want to thank the LP Gas Board, the Nevada Propane Dealer's Association and the Nevada Petroleum Marketer's Association for working with the Division so diligently in the hallway for the last hour or so. And with that I'd like to make the following statement:

> I want to clarify the Division's position and intent with regard to these regulations and the inclusion of propane. The Division does not intend nor will it seek program delegation from EPA with regard to retailers and dealers of propane nor users other than those subject to Tier B program levels 3. We will also commit to work with the LP Gas Board and Nevada Propane Dealer's Association when, and if, Congress or EPA better defines the role of propane in Section 112R of the Clean Air Act and pending litigation is resolved. If EPA or Congress decide not to include propane in 112R of the Clean Air Act, the Division does not intend to include it into State regulations and that goes for Tiers B-1 and 2.

With that I believe the LP Gas Board and Nevada Propane Dealer's Association have a few words to say as well. In the meantime, if there's any questions, I'd be happy to answer them.

DAG Mischel asked that's not proposed as an amendment? That's just a statement that isn't . . .

Mr. Biaggi answered it's a statement of intent of the Division.

Commissioner Johnson asked do the proposed amendments that we had cover the immediate issue in the regulations?

Mr. Biaggi answered the statement that I just read is consistent with the regulations that were presented to you today and is really a statement of intent of what will happen in the future with regard to decisions made by Congress and EPA.

AC Coyner opened the hearing to public comment.

Rick Angell, Barrick Goldstrike Mines, stated previously Barrick did have a few questions that have since been resolved probably through the thorough efforts of Mr. Zusy. So, thank you very much.

AC Coyner called for Thelma Clark.

Thelma Clark's comments were made from audience (inaudible).

Richard Forant, Chairman of the Nevada State Board for Regulation of Liquified Petroleum Product, stated we have met and worked diligently to take and resolve a couple of key issues. We are in support of the agreement that Allen has presented to you and basically what it is it allows the Board to continue to do the job that it already has currently been delegated by the State Legislature to provide for the public. And at that I'll take any questions from the Commissioners.

AC Coyner acknowledged that there were no questions and called for Mike Ericksen.

Mike Ericksen, representing the Nevada Propane Dealer's Association, stated I'm very happy that I don't have to stand up here for 30 or 40 minutes and give the presentation that I had prepared on this issue. Because of the diligent work that and good work that Allen Biaggi and the Nevada State LP Gas Board and the Association has accomplished in the hallway, we feel very comfortable with the clarification of intent that Allen has read into the record and we're comfortable with that. I'd be happy to try and answer any questions if you have any. I'd also like to say how much the Association holds the Division, Mark Zusy, and his other coworkers in very high regard. They've done a great job on this and we appreciate them. No questions, thank you.

AC Coyner thanked Mr. Ericksen and called for Blair Paulsen.

Blair Paulsen, with the Nevada Propane Dealer's Association, and also with Bi-State Propane, stated we agree and concur with the statement. We think that a lot of ground has been covered in the hallway today, so to speak. And I'd like to thank the LP Gas Board. I feel like this is a thank you speech for an Emmy or something. And because there's been a lot of diligent work on everybody's behalf and we really feel good about the agreement that has been set forth here. I would also like to state that Peter Krueger, who should be on your list to speak, was unable to be here and he agrees with our position and thank you again.

AC Coyner thanked Mr. Paulsen and called for Doug Busselman.

Doug Busselman stated I'll pass.

AC Coyner called for further public comment.

Susan Crowley, with Kerr-McGee Chemical Corporation in Henderson, Nevada, stated first I want to say that Kerr-McGee appreciates the efforts of NDEP to try to incorporate the comments of industry into the regulation. We also support the consolidation of the CAPP regulation requirements and the federal RMP regulation requirements. This brings the regulatory process to a state level rather than a federal level and allows for the consideration of more local issues. Also, the regulations which are proposed today are complex. I think Mark did a very wonderful job of making them a little bit more understood, but even still, they are very complex and even with the proposed workshops, there will be smaller businesses that are going to have difficulty even understanding what the regulatory requirements are. And so, we're hoping that this program, as others have been, will be placed into a small business administration assistance program. We also hope that this is an active regulatory process with a review in some period of time as to how well these regulations and this regulatory language is working. Thank you very much.

AC Coyner stated I believe the review period is a minimum of 10 years. Is that right? Or a maximum, I'm sorry, a maximum of 10 years.

DAG Mischel answered a maximum of 10 years.

AC Coyner asked Ms. Crowley could you just give me a real brief thought about how much the change in regulations will change the way Kerr-McGee does business at their plant. Are you already doing most of what's encompassed here? Or are you going to have to do several new things?

Ms. Crowley answered we're already included in CAPP and so we already do a good portion of the program. We already comply with a good portion of the program. The one thing I think that's going to be different as RMP gets pulled into this regulatory process is a review of not just worst-case scenarios, which I think CAPP promoted, but looking at alternative release scenarios which would be more probable and are probably better to be planned to and that's what we see this whole process as. It's an effort to provide information to those people who need to plan for eventualities.

AC Coyner asked so you're overall supportive of the regulation?

Ms. Crowley stated yes we are.

AC Coyner thanked Ms. Crowley and called for further public comment.

Craig Wilkinson, Safety and Health Manager for Timet in Henderson, Nevada, stated I truly believe, contrary to what may be passed on today, that no industry, no manufacturer in this state or probably in this country is more regulated and receives more scrutiny than the chemical manufacturing industry. We work very diligently with Mark

and his staff on the current Nevada CAPP program and our registration fees are in tens of thousands of dollars and our compliance costs is in the millions of dollars. But with that said, and as a spokesperson for one of Nevada's largest manufacturers a facility in Nevada, I applaud the work that NDEP has done on this. I applaud the work that Mark and his staff have done on this to accomplish, consolidate in the regulations and the reporting requirements by CAPP and by RMP. Mark works very hard in developing a proactive partnership with industry and that benefits not only the community and the State, but it also benefits the industry. One question I do have is with respect probably to Mark is we have an obligation for submittal by June 21st under the federal program, does he feel that we are currently going to still file federally or will we be filing to the State? And the other thing would be, again commenting on Mark on a job well done and Timet does support this effort. Thank you.

AC Coyner asked could you answer for me whether that June 21st date is doable in your mind in terms of getting the stuff done?

DAG Mischel stated under the new regs.

AC Coyner stated under the new regs. Is that June 21st date doable? Are you going to be able to comply?

Mr. Wilkinson answered yes. We haven't been waiting for this Commission to be preparing for the June 21st. We knew regardless if this proposed regulation would be adopted or not, we knew that we had to be in compliance by the federal program by June 21st. Therefore, we had been working diligently towards being able to meet that deadline and regardless if it's a federal submittal or a state submittal, we will be ready June 21st.

AC Coyner asked Mr. Zusy if the filing was to the state or the federal or both.

Mr. Zusy answered the report gets filed to the Federal EPA. Even once we have delegation that assessment report filing is one thing that the EPA does not delegate. They collect all of the information and then it's going to be submitted in an electronic format on a disk and the EPA will compile the data and then turnaround and give the data to the implementing agencies. So that portion goes directly to the Federal EPA.

AC Coyner stated there's nothing worse than being regulated and not knowing where to send your forms. So I guess I would urge you to make it clear with your 36 businesses or so that you're dealing with the manner in which they must file so there's . . . is there a penalty associated with that June 21st date? I wouldn't want someone to fall past and be penalized because we don't make it clear where to file.

Mr. Zusy answered yes. Part of the reason it is not specified exactly where things get submitted in the regulation is because there are some people that are only subject to the State program and they still file with the State. The regulation is worded such that it shall be submitted to a location as designated by the Division and we're going to tell them to submit it to the EPA. We're going to do that through the workshops. We have an active internet web site now to get that message out. But we do plan to do a lot of implementation workshops between now and then. And in terms of being able to comply, the reg. has been out there on a federal level for three years and a final form now. So people know about it and they are working towards it. All the CAPP facilities are there. They're in compliance.

AC Coyner stated I guess I just urge you to go the extra mile with new ones that are going to be included so that if for some reason they don't get hit with a large penalty or something if they miss that date for some reason and I believe you will do so.

Mr. Zusy stated we intend to do that. We do very extensive outreach.

AC Coyner called for further public comment.

John Siegfried, plant manager at Cyanco in Winnemucca, Nevada, stated for those of those that don't know, Cyanco, we're the country's first liquid sodium cyanide plant. We were constructed in Winnemucca, Nevada in late '89 began production in 1990. We produce something over a 100 million pounds a year of cyanide. We're in the CAPP program because of anhydrous ammonia. I've known the NDEP folks then since late '89. I've dealt with Lew Dodgion first of all and many other staff members in the Division. We have three permits that have been in place since 1990. We're just now completing our 10th year of operation without a release or an accident that would put us into this program. We're previously regulated by the three environmental permits that we have to these standards now. So there's not an awful lot new. I did not get up this morning before breakfast and drive down from Winnemucca to encourage you to support the feds. in this regard. I came down because of the Division. Because of Mark Zusy and the work that was done before him by Jolaine Johnson and others in the Division. I consider Mark and his staff to be peers and I mean that as a compliment, Mark. I've got close to 30 years experience in the chemical processing industry. The decade of the '80s I was in a complex in Oklahoma. The decade of the '70s in Iowa. So I've been around the chemical processing business for a long time and what we see in process safety management, RMP, and CAPP is, in essence, what the Chemical Manufacturer's Association has us do under responsible care. It's what most companies do anyway. We have operating procedures. We have training programs. We have mechanical integrity. What the CAPP program does, though, it takes it out of the feds. and brings it down to the State and it brings it to a level where we can talk one on one as peers and get a program that works. I think the only thing I'd like to leave you with is that government can collect funds through property taxes, you can do that through sales tax, you can do that through user fees and it seems like every time we turn around somebody is into our back pocket. I tried to change my wallet, I tried to zip my pocket up, but no matter what happens, there are more fees.

The bottom line of what the CAPP program has done, it has taken the smaller concerns and make them comply with the existing regulations that the larger companies have always had, but it's put a fee upon us and when I think it was Jolaine, ACR 79, I believe, which begins Senate Bill 641, you know I spoke about the duplicity between the federal government and what this program would do on the state level and at the end of the day, Jolaine, being younger and more attractive and more outspoken and better educated, won the day and of course there was a Senate Bill 641 and we came under the regulations and now have a fee to pay. What I would encourage you to do, and Mark is very diligent about his department, but what I would encourage you to do is to consider whether the fees we have upon us, the State Emergency Response Commission also has a fee on our facility because we have a threshold quantity of ammonia and their psychology is we need to prepare for the emergency when it happens. And I know a little bit about that emergency response stuff because I was chairman of the local emergency planning committee in Humboldt County. I was privileged to have Governor Miller appoint me to a term on SERC. So I know a little bit about that emergency response fee and what it's there for. We do have double dipping though. There's an excess of a $5,000 fee from SERC to do exactly the same thing that CAPP does much better. We also have fees with the three environmental permits that we have and those environmental permits require us to operate exactly the same as the CAPP program does and as the SERC program. What I see happening today is that at least we'll be somewhat relieved by the overburden or oversight from the feds. which makes me very happy.

But, in conclusion, I would just encourage you to watch that attack on our back pockets because after all, you know, businesses that make profit are what make the world go around at least our Democracy go around and I noticed on the national public radio this morning and yesterday morning they were talking about our president talking to the president of China and some of the commentary related to the fact that China was not able to have democracy because at their level of development and growth, they could not afford dissidents. We have the luxury in our country to have democracy, but democracy is fueled by free enterprise and profit and anything that you do to overburden that industry that makes profit puts our country in jeopardy. Because after all, profit pays salaries, it pays us to put our kids in college, it pays our retirement plans, it's basically what keeps our country going so I would just like to encourage you at every step of the way when you have an opportunity to analyze the program that you would be very diligent about it. Mark has been very diligent about his program. One thing I would mention, though, is once these programs are up and running and once the company has standard operating procedures, a training program, mechanical integrity, assessment of risk, analysis of hazard, and it's acceptable to Mark and his

people, there might be the need to wind the overview of that down. I'm not suggesting that we back away from the regulation or that you give that back to the feds. But I'd like to think that we get a gold star for being in compliance and not having accidents and therefore, the cost of monitoring us is truly only what the cost is. Thank you.

AC Coyner called for further public comment and acknowledged that there were none. He then asked Mr. Zusy on Exhibit 8, the first part of that which is going to be one of your amendments that we'll being considering, is there a problem with putting Tier B ahead of program 1 and 2 as part of clarification? We noticed that other places in the regulation, wherever you mention program level 1 or 2, it's always preceded by Tier B. It's purely for clarification reasons only. Do you understand where I am? In the amendment you're proposing, Exhibit 8, Item No. 1-I. I reads, "Propane, if the process is subject to Tier B program 1 and 2 . . ."

Mr. Zusy answered that would be fine.

AC Coyner stated we have a question on the table then on the back of the proposed reg. with reference to propane. Would you go to that which I believe is on page 9 right at the back. And again, for clarification, as I come across the line that reads "propane" I see 7498-6 and then the next box I believe would be the Tier A box, the threshold? Should that be blank or should there be a number there?

Mr. Zusy answered no. Propane is not regulated under Tier A. It is one of the flammables that got added by Tier B by the RMP.

AC Coyner asked so the 10,000 in Tier B, is that still appropriately placed in that table?

Mr. Zusy answered yes it is.

AC Coyner stated we just wanted to make sure the table corresponded with the amendments. O.K. I will declare the public comment period closed and ask the Commission's pleasure. I would indicate to the Commission I believe that we are looking at a motion if we do propose one for adoption that would encompass Exhibit 8, Exhibit 11, the parenthetical equivalent measurements to satisfy Mr. Gifford, I believe, on English, decimal, metric we mentioned earlier would be the third part, and then perhaps would we want to incorporate the Statement of Intent as part of the motion. But that's open for a proposed motion.

Commissioner Crawforth moved for the adoption of R121-98 with the amendments incorporated in Exhibit 8 per the amendment to 8 and Exhibit 11 and the parenthetical request by Commissioner Gifford.

AC Coyner asked and not the Statement of Intent?

Commissioner Crawforth answered it does not include the Statement of Intent.

Commissioner Johnson seconded the motion.

Commissioner Gifford asked leaving out the Statement of Intent would do what?

DAG Mischel answered the Statement of Intent is really a Division statement and it doesn't really have an effect of on the Division action other than to not tie it to this regulation. So it wouldn't be codified. You really don't want a statement like that codified. It's for future drafting purposes. You can make a comment in the discussion period about your support or lack of support of that future potential.

AC Coyner stated I think it's reasonable given the testimony we heard that we certainly support the Statement of Intent, but as moved we will not include it in the motion.

The motion was unanimously approved.

AC Coyner called for a lunch break at 12:05 p.m. and reconvened the meeting at 1:15 p.m.

He then proceeded with **Agenda Item II.A. Petition 96015, LCB File No. R110-96** is a proposed permanent regulation repealing NAC 445A.001 to 445A.026, the Protection of Lake Tahoe. Repealed citations include definitions, permitting requirements for construction of residences, commercial or public facilities. In addition, requirements for subdivisions, alterations of property, community water supply and sewage disposal, and marine toilets are repealed. The regulations proposed to be repealed have been supplanted by those adopted by the Tahoe Regional Planning Agency. Staff, Wendell?

Wendell McCurry, Division of Environmental Protection, stated the proposal before the Commission is to repeal antiquated regulations. The regulations were adopted by the Board of Health in 1967 prior to the area being sewered, prior to TRPA regulatory requirements, and prior to the Executive Order by Governor O'Callahan prohibiting the use of septic tank systems and prior to adoption to some duplicative regulations by the Department which are administered by the Division of State Lands. The regulations are antiquated. Part of the regulations adopted by the Director of Conservation and Natural Resources and administered by the Division of State Lands are duplicative of these regulations and repeal of these regulations will have no affect on the Division of State Lands administering the regulations which the Director adopted. When we originally petitioned the Commission for this, TRPA asked us at that time to hold off until they had additional regulations in place and since then they have given us a letter stating they have no problem with repealing these now. So both TRPA and State Lands have stated they have no objections to repeal of the regulations as proposed.

Commissioner Crawforth asked the TRPA's rules are ordinances, they are not codified as regulation, is that?

Mr. McCurry answered they are ordinances.

Commissioner Crawforth asked they are ordinances so they are not codified as regulations as these are?

Mr. McCurry answered they are codified the way they codify them and they call it ordinances.

Commissioner Crawforth asked are you confident that they're providing substantially the same or better rules in theirs as we are, as what's in here?

Mr. McCurry answered they're more strict. And of course, some of ours is so antiquated it still talks about septic tanks and this kind of stuff up there and we haven't allowed anything since Governor O'Callahan was elected.

AC Coyner called for other questions from the Commission and then opened it up to the period of public comment on Petition 96015. Since there were no further questions he closed the period of public comment and moved to accept Exhibit 5 which are the TRPA comments into the record without objection.

Commissioner Gifford moved that Petition 96015 be accepted as given.

Commissioner Griswold seconded the motion.

The motion carried unanimously.

AC Coyner moved to **Agenda Item II.B. Petition 1999-06** proposes to temporarily amend NAC 445A.347 by removing the Division of Emergency Management in the Nevada Department of Motor Vehicles & Public Safety from the list of agencies required to be notified of spills and releases pursuant to Nevada's water pollution control regulations. The intent of this regulation is to provide for regulatory relief regarding the disclosure of spills and

releases. Other emergency reporting requirements are not affected by this amendment.

Ed Glick, Bureau of Corrective Actions, stated basically what this petition would do is remove the requirements to report spills to the Division of Emergency Management. Currently the regulation requires that the DEM (Department of Emergency Management) be notified of spills along with the Nevada Division of Environmental Protection or NDEP. DEM has requested this amendment because they have no statutory or regulatory direction to take spill reports. In addition, their federal grant does not include this activity. The result of this amendment would be to limit reporting of spills to NDEP only which we take all of the spills anyway as it is.

Public workshops were held in Las Vegas, Elko, and Carson City. The petition was also presented to the Nevada Mining Association. The only comment at the workshop was asked if there was a numbering system, if the numbering system that DEM uses would continue with NDEP, which we will. One written comment was received from US Fish and Wildlife Service concerning their memo of understanding with DEM in dealing with spills and we would take up that issue and enter into the same similar type of agreement for spills on waterways that are concern for fisheries. No negative comments were received.

AC Coyner called for questions. None were heard. He then admitted Exhibit 9 for the record.

Commissioner Crawforth moved for approval of Petition 1999-06.

Commissioner Gifford seconded the motion.

The motion carried unanimously.

AC Coyner moved to **Agenda Item II.C. Petition 1999-07** proposes to temporarily amend NAC 445B.001 to 445B.395, the air pollution control regulations. Amendments are proposed to NAC 445.221 to update the reference to the Code of Federal Regulations from 1997 to 1998. The amendments to 445B.300 extends the expiration of an operating permit from one year to 18 months. NAC 445B.362 and 445B.373 are proposed to be amended to correct equation errors and to add the term "maximum." NAC 445B.383 is amended to correct the references from cubic feet to cubic yards.

Gay McCleary, Bureau of Air Quality, Division of Environmental Protection, stated the bureau is proposing the following temporary amendments to our regulations. In 445B.221, Sections 1, 2, 4, 5, 7, and 8 to update the reference of all federal regulations adopted by reference to July 1, 1998. From July 1, 1997 to July 1, 1998 there were two amendments to the federal regulations which the Commission has adopted by reference. The first being in 40 CFR Part 60 Subpart WWW the Federal and New Source Performance Standards for Municipal Solid Waste Landfills which amended, corrected errors, and clarified regulatory text. The amendments to the federal regulations are very minor and there are currently no new landfills under the Bureau of Air Quality's jurisdiction which are subject to Subpart WWW. The second amendment to the Federal and New Source Performance Standards or to the federal regulations was 40 CFR Part 51 Section 51.100S The Definition of Volatile Organic Compounds. EPA revised the definition to add methyl acetate to the list of compounds excluded from the definition of VOC on the basis that this compound has negligible contribution to tropospheric O-Zone formation. Additionally, the update from July '97 to July '98 is necessary because the 1997 edition of the Code of Federal Regulations is not readily available and is actually outdated.

The second amendment we are proposing to 445B.300 Section 16 amends language to extend the expiration of an operating permit from one year to 18 months if construction has not yet commenced or if construction of the facility is delayed for more than 18 months after the operating permit is issued. The amendment also adds language that includes a provision for extension by the Director upon a satisfactory showing that an extension is justified.

The third proposed amendment in 445B.362 and 445B.373, the word "maximum" is added to clarify the intent of

heat input in operating rate. Also, in Section 3 of 445B.373, the formula for calculating maximum sulfur emissions is corrected by inserting "X" into the formula. This is the formula that is used to calculate maximum emissions from fuel burning equipment. "X" is the maximum input of the operation in millions of BTUs per hour and is essential in the formula. Research of past regulations has shown that this formula has been in error for many years.

And last, on Section 445B.383. The proposed amendment corrects an error in design capacity. The design capacity was incorrectly expressed in cubic feet rather than cubic yards.

A workshop on these proposed amendments was held in Carson City on March 23 and was attended by six people from industry and the public and there were no adverse comments received at the workshop. We have received no written comments for or against these regulations, although yesterday we did receive a letter from the Nevada Mining Association supporting the proposed amendments and I would like to have a copy of that letter entered into the record. That concludes my presentation.
AC Coyner accepted Exhibit 10, the letter from Nevada Mining Association in support without objection.

Commissioner Gifford asked on page 10, the formula at the bottom. And I assume the term ought to be combination fuel is the term it's not combination and then fuel is two separate categories.

Ms. McCleary answered yes, right. That's one term.

Commissioner Gifford asked is one divided by the other there? Is that your L times that .4X plus X times 6/10ths X is divided by L plus S?

Ms. McCleary answered yes, that's correct.

Commissioner Gifford asked does everybody understand that? I mean it's kind of spread apart there and fuel to me ought to be inset a little bit.

Ms. McCleary answered yes and probably when these are prepared in final form the formula will be more correctly typed.

Commissioner Johnson asked you stated that these two corrections, the "X" and the feet to yards have been in existence for a long time. Have we identified the problem before and what permits have been issued based upon these?

Ms. McCleary answered actually, in the process of using this formula over the years, the "X" has always been used in the formula and I'm not sure in calculating the maximum allowable emission rate, I believe everyone who deals with it in the Bureau of Air Quality knows it well enough that they don't refer to the regulations and it was overlooked. I researched back as far as I could in the regulations and I couldn't determine the point at which it was dropped from the formula. It was in there originally and somewhere along the line it was accidentally excluded.

Commissioner Johnson stated but on your checklist and normal utilization you include the "X."

Ms. McCleary stated we use the "X," yes.

Commissioner Johnson asked and what about the feet to yards? There's a significant difference between cubic feet and cubic yards.

Ms. McCleary answered yes, there is a significant difference and it was my mistake originally when we proposed the regulations on existing landfills to the Commission last year. I accidentally typed "feet" in instead of "cubic yards." The federal regulation the definition of a municipal solid waste landfill is expressed in design capacity and

cubic yards rather than cubic feet.

AC Coyner stated I see there's an either/or in that Section B where it said that you could design capacity in tons or you could design capacity in yards. So I guess if most of the experience was in tons, that would have never come up.

Ms. McCleary stated that's correct. And currently we do only have two landfills that are subject to these regulations.

AC Coyner called for further questions. There were none.

Commissioner Crawforth moved for approval of Petition 1999-07.

Commissioner Trenoweth second the motion.

The motion carried unanimously.

Mr. Biaggi thanked Ms. McCleary for almost 31 years of service and presented her with a plaque and gift.

Ms. McCleary thanked everyone.

AC Coyner joined in the Division's comments and compliments on behalf of the Commission.

He then moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**
A. Sylvan Spawn Laboratories; Notice of Alleged Violation #1359

Eric Taxer, Supervisor of the Enforcement and Compliance Branch with the Division's Bureau of Air Quality, reported that Sylvan Spawn Laboratories operates a mushroom spore production facility in Dayton, Nevada. Basically what they do is they inoculate rye grains with mushroom spores and once the spore has been germinated, the process is frozen and the material is transferred to another site where the mushrooms are grown. A routine compliance inspection was conducted at the facility last December. During the inspection it was noted that a calcium carbonate silo and associated baghouse were operating, but were not listed on the permit. Calcium carbonate is used as a (inaudible) absorbent to control the moisture content in the process. An enforcement conference was held in the middle of December and during that conference a facility representative acknowledged operation since 1996 of the baghouse and calcium carbonate silo. Their representative noted that an attempt had been made to obtain a permit revision, but the facility never followed through with actually getting the revision formalized. It was agreed that the notice of violation would be issued for operating the silo and baghouse without a permit.

Using the penalty and matrix evaluation, the violation received a negligible potential for harm. This is because the baghouse was installed which greatly reduced any emission that could have come out of that silo and also because the calcium carbonate has a very low toxicity rating. It's basically chalk or limestone material. The deviation from the regulation is moderate. Granted, they had indicated that they had initiated the process to get a permit revision, but that information cannot be substantiated by any formal documentation in our files or their files. But more importantly, they took the necessary steps to install the appropriate control which would be adding the baghouse on the silo.

Using this information, they agreed on a $400 per day penalty. Then, again, we looked at the number of days of actual operation and filling of the silo and came up with 11 days of actual equivalent operating time which therefore came up with a total agreed upon penalty of $4,400 for the violation. The facility has since renewed their permit application and is currently operating in compliance with all requirements and there have been no past history of

violations at this facility.

Kevin Thomas, Manager at Sylvan, stated I have only been there two years and at the time that they put this silo in I wasn't presently with the company. I have checked into it and checked with the people that were there and like I say, we were definitely in the wrong. But on the same hand in saying that we were aware and we were trying to get something done with that also through that time.

AC Coyner thanked Mr. Thomas and called for questions from the Commission for staff.

Commissioner Gifford stated I'd just like to call the Commission's attention to the fact that in the second sentence of the second paragraph that the silo and baghouse was observed to be operating, but here we're just talking about a non-permitted condition. Is that correct at this point?

Mr. Taxer stated that's correct. They were operating, but they were not listed on the permit to be operating at that facility.
Commissioner Gifford asked and would my interpretation be correct that if they had had a permit they would have met all the regulations at this point?

Mr. Taxer answered yes. They had a permit for all the other equipment at the site and since that permit was issued a decision was made by the facility to also add this calcium carbonate silo and baghouse.

Commissioner Gifford asked but the baghouse was providing the protection to the environment that was needed, it was just not permitted?

Mr. Taxer answered that's correct. It was just not permitted, but it was providing the protection.

Commissioner Gifford stated but it was providing the protection.

Mr. Taxer answered right.

Commissioner Gifford stated I'd just like to point out that we have so many instances that come before the Commission that essentially people have kind of gone around the regulations, have not bothered to not only get a permit, but not get the proper equipment and even though this is something that they should have attended to in terms of getting the permit, at least they were more or less meeting the letter of the law in the sense of protecting the environment and I'd just like to suggest to the Commission that the $4,400 to me seems high. And that maybe something a little more reasonable for this first time around could be discussed at least.

Commissioner Iverson stated I'm glad you were reading that in detail because I happen to agree with you on that. It's not like they were trying to sneak around and do something. They were actually trying to prevent some damage or some environmental situation. Do they have a permit now?

Mr. Taxer answered they do have a permit now and at the time of the inspection they had a permit, but that particular unit was not on the permit, but they do have a permit now that includes that silo and baghouse.

Commissioner Iverson asked and this is their first violation?

Mr. Taxer answered that's correct.

Commissioner Iverson stated I would have to go along with you on that because I think their intentions are good. Unfortunately, they didn't have the paperwork done.

Mr. Taxer stated right.

AC Coyner asked a question on the timing issue. Did they add the silo after their original construction of this plant at some later date? It would seem like if they had a silo in their first-pass inspection that you would obviously call for a baghouse at that time. So I guess it's a timing issue for me. You were there, but then they proceeded and put something together, a new silo, and didn't go through the right hoops.

Mr. Taxer explained that they initially obtained their permit in January of 1993 and the silo was not added until 1996. So when they added the silo, they did not revise the permit to allow us the opportunity to review that process to insure that the baghouse was indeed providing the adequate controls. Granted, the baghouse did indeed turn out to provide the appropriate control for that silo.

Commissioner Iverson stated this is unusual because I've been sitting here for three years on this Commission and probably 90 percent of the things we hear on these violations are they had a baghouse, but it wasn't working. And here's a situation where they had a baghouse, but it wasn't permitted, but yet it was operating and working, so . . .

Commissioner Gifford moved that the fine amount be reduced to $1,500 for this first time.

Commissioner Griswold seconded the motion.
Commissioner Johnson stated I normally wouldn't agree to a reduction in fine from what staff has recommended. But in this case I think it's appropriate. I think we also need to go on record that it indeed is a violation not to have a permit and that there is some assessment of fees against that. But I think $1,500 would be appropriate in this case.

AC Coyner asked Mr. Thomas if the baghouse was installed at the same time as the silo because we're looking at a period from 1996 to 1998, a two year period.

Mr. Thomas answered yes, it was all constructed at the same time. It was an oversight on our part as far as not having permitted the baghouse, but it was all constructed at one time.

AC Coyner asked so your testimony would be that you had it operating for two years under, we assume, satisfactory conditions?

Mr. Thomas answered yes. From the first day it started up it was up and running.

The motion carried. (Commissioner Crawforth voted no.)

AC Coyner stated the Division will be directed to reduce, refund, essentially I guess, if that's already been paid.

DAG Mischel stated it hasn't been yet.

AC Coyner asked it has not been paid? The Division will be directed then to set the fine amount at $1,500 for Alleged Violation 1359.

B. Cinderlite; Notice of Alleged Violation #1360

Mr. Taxer reported Cinderlite Trucking operates several sand and gravel crushing and screening operations throughout Northern Nevada. In the middle of December a compliance inspection was conducted at a site of theirs located southwest of Silver Springs. The inspection was conducted because of a dust complaint that the Division had received. Equipment that was being operated at the site included a grizzly screen on the secondary and primary

laboratory screen and five conveyors. None of these units were permitted. A Stop Order was issued at the time of inspection for the facility to cease all operations until the site was permitted. Since that time, Cinderlite decided that they weren't going to operate a facility at that location and decided not to get a permit. They do have a permit for a facility located in Carson City. During the enforcement conference that was held, the facility representative acknowledged that they knew ahead of time that a permit was required prior to operating any equipment at that site and that they had operated for a period of two days. However, the operations were conducted because they needed to, they liked to pass material quality and production rates before determining whether or not they wanted to go ahead with the permitting process.

It was decided that the notice would be issued for operating without a permit at that location. Using the penalty matrix, the potential for harm was determined to be minor to moderate. Granted, they did exceed an NSPS capacity limit of 10 percent for the secondary screen only. The capacity reading was 18 percent. However, there was only a limited amount of time that the facility was operated on each of those two days and there was not an impact to any population center in that area. The regulatory deviation, however, was major for going ahead with full knowledge of operating that equipment without a permit. It was determined that the appropriate penalty, based on the matrix, would be $1,500 per day which would be the equivalent of $3,000 for the total violation. They are currently operating within their permit limits for their existing Carson City facility, which is permitted, and this was their first violation.

AC Coyner asked where is the closest residence? I see that it is six miles southwest of Silver Springs. Would that place it like on the road going to Fort Churchill and up on that hill to the west?

Mr. Taxer stated I don't have that answer for you. I can do a more detailed search and get that information if you'd like.

AC Coyner asked what do you think Terry? Is that about right? You know that road going down towards Fort Churchill?

Commissioner Crawforth (inaudible).

AC Coyner stated so we don't know how close the closest residence would be, although it's fairly sparse out there. They were operating for two days, so apparently somebody was on it right away in terms of phoning it in. It was a complaint. He called for questions from the public. There were none.

Commissioner Iverson stated I guess I have a little bit of a problem with this too. I mean, maybe I don't understand it, but they set up the site and they operated the site for two days total. They hadn't determined whether they wanted a permanent site or where exactly they were going to build a permanent site and since then they, after those two days they made a decision they were going to move the site into Carson City.

Mr. Taxer answered no. They have a site in Carson City that was permitted and that has been permitted since 1993. They operate several pieces of portable equipment and they took some of that equipment and moved it out to the Silver Springs location for the two days just to see if that site would be conducive to a more permanent operation.

Commissioner Iverson stated a comment I guess, in the meeting you had, is that they indicated they knew they should have had a permit?

Mr. Taxer answered that's correct.

Commissioner Iverson asked why didn't they? I mean did they indicate why they didn't get a permit if they knew they needed a permit?

Mr. Taxer answered they admitted that they were in the wrong.

AC Coyner stated and we don't know whether it was on private land or public land, do we? BLM or private or county or . . . so there should have been a permit process, usually the county or the BLM or someone to o.k. them to go out. Is it an old site, is it a new site? New to them? You'd think there would be some portion of the permitting of the site process that might have kicked this in gear too. But they make the statement that they were aware that they needed it. I would probably offer that they were trying to run it and see if the quality was there of the material or something before they made a, you know,
a . . .

Commissioner Iverson stated I would imagine Cinderlite Trucking Corporation is part of the Cinderlite we see. Is it a one organization in the State the one in Southern Nevada down by Beatty, the one up here. I see on the compliance history, this particular company has no history of violations. As a whole, how is that company? Do we have other violations from Cinderlite that would show that this company is, in fact, conscientious and trying their best to stay out of this book we get every month? We just went through and in-depth discussion last Commission meeting about people showing up in this book and it was a really long discussion and, low and behold, here we are again. I just wonder if, I mean is this something that has been going on for a long time or is this company . . .

Mr. Taxer answered we went through and did conduct a file search for all violations associated with Cinderlite and this is all that we came up with which was nothing. So the answer to your question is this is the only violation on their record.
Commissioner Iverson asked and how long is that record? How far back does that go?

Mr. Taxer answered well it would go back to their first permit which would be 1993 for this site. We have records going back to the early '80s for all facilities. Mr. Iverson, just as a point of clarification, too, the Cinderlite Company in Las Vegas is separate from Cinderlite up here. Separate companies.

Commissioner Iverson stated the Cinderlite up here has been operating for a long time also I think. That's pretty good a company can operate, especially when you're moving as much dirt as they move and process as much cinder or whatever that they do without having any violations, so I guess I'm a little concerned and a little disturbed at $3,000 for a two day violation for a company that's been operating up here for many, many, many years without any violations and for a two day test program I guess I sort of have to go along with the Chairman, I guess they knew they needed it and didn't do it. There needs to be something, but I am a little concerned about that, but I have no idea what to do with it, so . . .

Mr. Taxer answered and the penalty matrix takes into account the history of noncompliance in coming up with the total penalty.
Commissioner Johnson pointed out that the second paragraph - in response to a telephone complaint regarding excessive dust there was discharge, was release, it's not simply a matter of not having a permit.

AC Coyner asked were they operating with any controls on the device or the screen equipment at all? Any kind of dust suppression? It just wasn't working or were they just operating . . .

DAG Mischel stated it says none on the inspection report.

Mr. Taxer answered no.

AC Coyner stated o.k. on the inspection report. So not only were they operating their equipment, they didn't even make an effort to control the dust, which speaks fairly bad for them.

Mr. Taxer stated that's correct.

Commissioner Crawforth moved for approval of the fine as recommended by the staff.

Commissioner Trenoweth seconded the motion.

The motion carried unanimously.

C. Frehner Construction; Notice of Alleged Violations #1370 & 1371

Mr. Taxer reported on December 18, 1998, an unscheduled compliance inspection was conducted at Frehner's hot mix asphalt plant located along Highway 95, south of Beatty. The inspection was conducted in response to an NDEP inspector's observation of a large plume of dust being blown across Highway 95 from their facility. During the inspection, the plume was determined to originate from the discharge point of a storage bin as well as from the discharge point of a conveyor stacker belt. Water sprays were not installed on the equipment. The change of location permit requires the use of appropriate controls such as water sprays to control any dust that may emanate from the use of that equipment. All other equipment that had been previously used on the site was removed since the site was being dismantled for relocation at another facility. However, these two remaining pieces of equipment were being operated to remove any remaining material that was left in those pieces of equipment.

During the enforcement conference, a representative of Frehner, who is here today as well, admitted that the controls were not being operated properly for those pieces of equipment and it was agreed that two separate NOAVs would be issued; one for each piece of equipment that was operating without the controls.

Using the penalty matrix, the potential for harm would receive a moderate rating. The volume of observed emissions were relatively high as they were being blown across the highway, but the toxicity of the material, which is crushed and screened aggregate, was low. The extended deviation is major in that Frehner Construction did not operate the controls required specifically in the permit. A penalty of $9,720 per violation, or $19,440 total for the combined violations was calculated and this incorporates the harm and deviation factors, it incorporates and economic benefit of operating the system without the use of the controls, and it includes an 80 percent adjustment factor for Frehner's history of past noncompliance. This penalty amount was agreed upon by both NDEP and by Frehner Construction. I'd also like to note that at the last Commission hearing I discussed a Compliance Order that we had issued which requires Frehner Construction to conduct a self-audit at each of its temporary facility locations prior to them being operated. The Commission requested that we come back with an analysis of how that system is operating within about a six month period. As we are just now beginning to enter into the construction season, we haven't had very many facilities come under the auspices of that compliance order yet. There's been one facility in Mina that has been operated and the self-audit was submitted to us about two or three weeks ago and we have yet to be able to go out to the site to inspect it after the facility has begun operation. There's a few other sites that are in the works to where the self-audits are being conducted and if the Commission wishes we will be able to have a report back to you on the effectiveness of that compliance order at the next hearing.

Commissioner Gifford asked would you review quickly for me what the 80 percent adjustment factor does? Can you give me an example real quick?

Mr. Taxer explained when we use the penalty matrix we look at a company's history of past noncompliance, we look at whether or not there were similar violations in the past and that receives, if there's a similar violation, that receives an additional 5 percent on top of whatever penalty was calculated using strictly the matrix. If there's a recent violation within the last year, that receives an additional 10 percent and then you look at the total number of violations within the past five years and that receives another 5 percent increase per violation. So when you sum all that up with Frehner's noncompliance history it comes up to an 80 percent surcharge, if you will.

Commissioner Johnson asked water sprays were not installed on the equipment. Is this a willful violation?

Mr. Taxer answered I hate to use that word. Water sprays were required on the equipment and water sprays were at the site during normal operations at that facility, but during the equipment shut down the water sprays were removed, along with all of the other pieces of equipment, so the equipment was operated without the water sprays.

Commissioner Johnson stated I understand the unwillingness to say that. We normally don't do criminal prosecution, but I would ask the legal counsel on the definition of what would comply to criminal action, and I perceive this on bordering on that. I think the distinction between civil and criminal is just what you said, willful. Is that true?

DAG Mischel answered yes. You have to have evidence of intent and the violation would be referred to the local DA's office for prosecution. The intent that they normally look for is an employee or overhearing a management statement, or something a little more direct, but this is circumstantial evidence that would certainly support evidence of intent. But we don't, we're not in the business of threatening criminal violations. We have to refer those - criminal prosecution.

Commissioner Johnson stated it was not my intent to try to change this, the action here, and recognizing this is a civil action. I just wanted it to be clear that there are other provisions to deal with these kind of matters. Commissioner Iverson stated I just wanted to make a comment that I think during our last Commission meeting we did have quite a discussion about this. If you look at the minutes, we did draw up at that time a considerable fine that was being requested to, if I'm not mistaken, zero. And I thought at that time and I'm trying to find it in here that we had talked about, you know, I think there were some people from Frehner Company at the meeting that indicated their proactive position that they were going to be taking to insure that this list doesn't keep going on and on. And I understand this is a big company, but I also understand that I worked for the Division of Minerals for 13 years and I worked for lots of big companies, mining companies, and you know, I see proactive things happening in those big companies, Barrick and Newmont, so that they're not listed one after the other and I also know they have lots of subcontractors in that industry. And in a lot of these big companies, before they hire subcontractors, make sure that the subcontractors are playing by the same rules as the big companies do. I guess one of my concerns is that it's my name that's on the minutes that made the motion to drop the $22,000 fine. And I guess the reason that I made that motion, and I thought that made a strong argument, is you know I really like to, on this Commission we're extremely concerned about environmental issues and I think we have a responsibility to do what we can to make sure that companies are in compliance. So it's not just regulation by whatever, but it's regulation to try to get compliance from these companies. I'm sure that this was probably taking place, I mean, or maybe, I don't know if it's taking place or not, but maybe they just haven't had time to get out to all of their subcontractors and I thought we had talked about a training program that in six months Frehner was going to come back, we were going to ask Frehner to come back in, explain to us their training program, for not only their staff, but for their subcontractors. And I thought at that time we were also talking about what proactive steps that they're taking so that these types of violations don't continue. I had a great deal of faith and still do in this company and I think that it's something that I definitely would like to see if not on the next agenda, one that we have maybe in Vegas or wherever their main headquarters. But I guess I just have to just go along with this one because I think there was probably a timing issue that they hadn't had the time to get out to all of their subcontractors and do the adequate kind of training and do the self-assessments that need to be made to insure that this thing doesn't happen anymore. But I do think the time now has come where there has been adequate time to get out to do their training to do their self-assessment, so I would assume that there shouldn't be any more of these violations from this one company, but and I think that's real important. I think we need a little bit of time, at least a couple of Commission meetings were we don't have this because I know this company has the ability, the technology, the manpower, and the interest in doing this kind of training. So I guess I can't make any suggestions this time to reduce the fine.

AC Coyner stated I would just draw your attention to the compliance history and I think, Paul, you were trying to indicate the operation without controls and so forth that were on August 18, 1998 where a penalty was not assessed. That's what you're referring to in previous meetings? And we did have a reduction to a warning just prior to that on August 4th. Now we're looking at these two from December.

Commissioner Crawforth stated I understand that we can reduce fines. Can we increase them?

DAG Mischel answered if you increase them it's no longer a settlement unless the Frehner representative has the authority to approve that. In other words, you just reject this settlement offer as agreed upon by both parties and schedule the matter for hearing or further negotiations.

Mr. Taxer added more information by explaining that the maximum penalty that we can assess is $10,000 per day per violation. So the maximum penalty that the Commission could assess for the two violations combined would be $20,000 and we're about $560 from that.

Jim Matthews, Frehner Construction, stated you saw the pictures of this particular incident? Now, I'm not offering any excuses at all because of our last meeting. We are proactive. We're doing all of those things we talked about. But I do have reasons for this that may or may not be adequate. I don't know. But, have you seen the pictures? Do you want to? Do you care?

AC Coyner answered yes, we'd be happy to look at the pictures.

Mr. Matthews stated you need to know what's happening out in the field. This is actually what (inaudible - passing out pictures.) We ran the job. We ran the job clean, got out, we're getting out. We pulled the rest of the hot cleaners as you can see, except for that feeder. We couldn't pull the feeder out. We couldn't figure out why. Somebody looks inside, somebody left material in the feeder. Too much weight, couldn't pull it out. So they bring the belt over and they start unloading it so they can pull the feeder out. Why in God's name I don't know what he was thinking. If you look at those pictures, you look on the ground you can see there's a water truck there watering the whole area, doing dust control. They did not pull the water truck over there to spray these stockpiles. There comes Air Pollution coming home over the hill, there he is. So we're on our way out of there, getting out, we're gone and this happens. It's senseless. It's not like we're running without controls because that particular feeder, that piece of equipment was permitted as a non-controlled source. There would have been none anyway.
Mr. Iverson I think you were referring to subcontractors. That was us; that wasn't a subcontractor. So as far as getting that out to the subcontractors, that's our responsibility. We take full responsibility for that. The Compliance Order - we are in full compliance with that. As a matter of fact, we're already on your agenda I believe for your next session. I could get it now if you want. We're ready to go. We've already done it, we've spent money. We have three training sessions that we are specifically training toward Frehner. We didn't go to the workshops. We spent the money to have the training to Frehner period; Elko, Las Vegas, and Reno. So we're having all three. So we can cover the whole state. So we're spending a lot of time, a lot of money, and a lot of effort. We're just trying to get the things timed with the Bureau of Air Quality as well as the people doing the training, what they accept as legitimate I guess. This is very unfortunate. Like I say I'm not trying to excuse it. You can see the dust. I mean it's there. But, we were not running. There's no economic benefit to cleaning a feeder out, dumping it on the ground, so you can pull it out and leave. There's none there at all. You know we were just trying to get off the job site. So it's not like we're making product to sell there. And this guy was terminated the next day. That's in our compliance order that you'll see, immediate termination of anyone, supervisors, personnel, anything, immediate termination and this guy was terminated the next day for that. And it was senseless because he has a damn water truck running around there. You can see watering the ground taking care of the dust control. And he doesn't just turn on the side sprays and hit the belt and be done with it.

AC Coyner asked how long would it normally take to unload that belt?

Mr. Matthews answered that thing ran 20 something minutes. And I believe was it David Gahr that seen it, just happened to come in there at that time.

AC Coyner commented we look after and monitor the whole State of Nevada with staff. It's curious to me that that thing ran for 20 minutes and there was somebody there to write the violation.

Mr. Matthews stated that's all it is. You would not believe some of the reasons that get (inaudible)

AC Coyner stated I'm not trying to cast dispersions or anything, but you know that brings up a question in my mind.

Mr. Matthews stated (inaudible) And you can see that belt that's on the end of it, the big long one? We had to move that over there. It's not even supposed to be in front of that. That's part of the operation that was permitted and that was permitted to operate. But that belt had to be moved over so that we could get you know you can't empty it on the short belt right in front of the feeder. I mean you would never pull it out. So all of the material that came off of the belt and the feeder itself were actually permitted. But that particular feeder at that point was not a controlled point, it was permitted as an uncontrolled point as all feeders are. And if you remember at our last meeting I accidentally in height I believe it was, permitted one with a little water spray, the one that (inaudible) $400,000. So that will never have a water spray or a control point.

Commissioner Iverson stated I don't want you to get the feeling that I don't have a lot of faith in Frehner, I do.

Mr. Matthews stated I just (inaudible) because you weren't quite right, you know.

Commissioner Iverson stated you're moving forward. It's a little, you know I think your comment with the training is good. Unfortunately, it sounds like you might be in a position where there's somebody, I think you're probably just being in the wrong place at the wrong time when.

Mr. Matthews stated well no, this particular instance. Before we weren't, we did it, I mean obviously.

Commissioner Iverson stated one of the things I guess I'd have to ask on this one because of what you're saying, exactly what happened, and I realize you're in violation, I realize you've admitted that.

Mr. Matthews stated yes.

Commissioner Iverson stated I guess now I'm going to fall back a little bit on DEP. Why would you settle for a $19,000 fine, this fine, why would you settle for it when this is a 20 minute run and, in fact, you're making proactive advancements in your training, in your monitoring, in your self-assessment, why would you agree to something of such significance, I mean that seems like a lot of money for a 20 minute mistake.

Mr. Matthews stated it is a lot of money. Mr. Frehner is not happy about any money that goes out. But we agreed to that because as you can see in the pictures, they don't lie. There was dust, it was our fault, we made dust and the rules you can't make dust period. We don't have a choice. We argued a few different points, some other points that were brought up during the conference, but I was concerned with Mr. Johnson's comment over there about running without controls, that type of thing, on purpose, well there wasn't anything to operate anyway. You know, technically on the permit, so there would not have been. So I was concerned with that. Because I don't want you to think we operate, you know, like this obviously through our history we seemed to but . . .

Commissioner Iverson stated I look forward to the next presentation on the next Board agenda because I do think it gives us all a little bit better understanding. Again, I have a great deal of faith in what you guys have told us last time you were doing and I think I realize in a big company, any company, even a small company, we're going to make mistakes and things are going to happen and you're going to get in a position like that. I guess my only problem here is there's not much I can do as far as helping on fine or anything.

Mr. Matthews stated I just wanted to make sure you guys knew what was happening here. That we're not running this big hot plant or something. This is what was happening here, these pictures, I don't know if you guys seen this or not and if you're aware of what actually is happening other than what's on the paper.

AC Coyner (speaking to Mr. Taxer) asked I think I just heard Jim say that that wouldn't have controls on it, that particular piece of equipment. Yet, in the violation we're seeing that water sprays were required on that process. So just resolve that for me.

Mr. Taxer answered in the Change of Location Permit No. 1636, it lists several pieces of equipment there. The control device that are required for all those are fogging water sprays, except for one piece of equipment which is just best operational practices to minimize emissions. So, you know, either they had to have fogging water sprays, which would be for the belt or for the bin would be operational practices to minimize emissions and that would be either add water sprays if you need it, or do something to prevent fugitive dust, or not fugitive, but to prevent dust from being emitted from that unit.

AC Coyner stated O.K. And the location was six miles south of Beatty? Any residences in the area? Because it looked like it from this picture.

Mr. Taxer answered it's a very remote location and that was considered in the calculation of the potential for harm category.
AC Coyner asked any comment at all on the operation for 20 minutes and getting tagged for it? Just happenstance, coincidence?

Mr. Taxer answered that's right.

AC Coyner called for public comment. No comments were forthcoming.

Commissioner Crawforth moved for approval of the settlement agreement as presented for Violations 1370 and 1371.

Commissioner Griswold seconded the motion.

The motion carried unanimously.

Agenda Item IV. Presentation by the Bureau of Air Quality and Washoe County Air Pollution Control regarding the preservation of visibility.

Mr. Biaggi stated, at the request of Commissioner Joe Johnson, I am here this afternoon to provide you with information regarding the State's visibility standard and measures employed to meet that standards. The Nevada Revised Statute 445B.100 establishes the public policy of the State of Nevada which is to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property and, importantly, preserve visibility and scenic, aesthetic, and historic values of the State. NRS 445B.115 defines air pollution as the presence in the outdoor atmosphere of one or more contaminants or any combination thereof in such quantity and duration that may tend to (1) injure human health, welfare, plants or animal life or property; (2) importantly limit visibility or interfere with scenic, aesthetic, historic values of the State; and (3) interfere with the enjoyment of life or property. NRS 445B.100 also requires the use of reasonably available methods to prevent, reduce, or control air pollution throughout the State of Nevada.

The State Environmental Commission has adopted standards of quality for ambient air which are found in NAC 445B.391. In addition to establishing concentration standards for criteria pollutants at levels that are protective of public health, the SEC has adopted a visibility standard at a concentration in significant amount to reduce prevailing visibility to less than 30 miles when humidity is less than 70 percent. The DEP has historically dedicated its resources to the protection of public health from the impacts of air pollutants. The SEC has not adopted, and the NDEP does not implement, specific programs or methods to reduce or control visibility impairment. Operating permit applications are exclusively evaluated to determine the potential for the source to

exceed the ambient air quality standards for health only. Permit restrictions are established and enforced as necessary to prevent violations of those standards. The NDEP's air pollution monitoring program is designed to measure concentrations of air pollutants for comparison with the ambient health standards. Visibility has never been monitored by our agency. The staff of BAQ has researched the complaint files back through 1989 and has found 15 complaints regarding visibility of a total of 1,677 complaints filed which is about .9 percent.

Historically, nearly all complaints have dealt with the concerns for health impacts of facility pollutants, dust concerns, and odor concerns. In many valleys of the State, a layer of haze, which reduces visibility, is noticeable during inversion periods when wood smoke, vehicle emissions, and other emissions accumulate on cold evenings or mornings. However, except in Washoe and Clark counties, pollutant monitors do not measure exceedences of PM-10 during those events. Reno and Las Vegas experience such urban haze more often than other areas of the State simply because there are higher concentrations of those pollutant sources. In the jurisdiction of NDEP, which of course is the rural counties, the only notable event which have substantially reduced visibility have been attributed to fires; either wild fires, or large controlled burns. During the past two years we have experienced smoke impacts from major controlled US Forest Service burns in California and Idaho. Due to the plans of federal land management agencies to substantially increase these burning activities in the upcoming years, DEP has assigned staffing and resources to work with land management agencies and surrounding states to establish coordinated smoke management plans. The NDEP has prepared a final draft of Nevada's smoke management plans for review. The plan will establish requirements of land managers to consider feasible alternatives to burning and to assess and mitigate the impacts of smoke from necessary burning activities. Coordination of burning activities will be required to insure that air sheds are not overwhelmed due to numerous simultaneous burns.

Generally, in an effort to balance the environmental forest health needs against the impacts to air quality we again focus on the health standards and not visibility. Agency approval will be required prior to admission on any particular given day. It is anticipated that these burns will reduce visibility while they are underway, but that visibility impacts will be limited through smoke management programs. The Federal EPA is pushing for final promulgation of regulations which establish requirements of all states to reduce the visibility impairment in Class I areas such as the Jarbidge wilderness. In fact, that is the only wilderness area in Nevada that is subject to these requirements. However, of course, due to the regional nature of haze, Nevada will also be required to work with neighboring states to address haze in these Class I areas. New regulations for the control of emissions will be required in Nevada to meet the requirements of the regional haze regulations. Presumably, however, control measures that are adopted to improve visibility in these parks will result in improved visibility throughout the Western region. This has also been an issue that's the subject before the Nevada Legislature under Senate Joint Resolution 3 which expresses the legislature's concerns with the Federal EPA's regional haze program. In summary, the NDEP does not implement emissions control programs at this time focused on the protection of visibility. However, controls which are implemented to meet health standards are effective in reducing visibility impairment. Additional control measures will be required to implement the federal regional haze requirements in the next decade. Those measures will likely benefit visibility throughout the State.

Based upon these current and future control measures and upon limited public concern and the jurisdiction of NDEP, I do not recommend the adoption of tighter visibility standards or control measures at this time. Should the SEC decide to enhance visibility protection requirements, I would recommend that the SEC consider and adopt those requirements simultaneously with the future requirements to meet the federal regional haze mandates. With that, I'd be happy to answer any questions you may have.

AC Coyner stated just for the record, we'll add that three page report as Exhibit 14.

Commissioner Gifford asked Mr. Biaggi if he could give them a thumbnail capsule of where the EPA regional haze studies are at this point.

Mr. Biaggi answered EPA has promulgated and will soon implement regional haze requirements. I'm not exactly

sure where they're at in the process, but their implementation and issuance is eminent. That's why a number of the states, Nevada's legislature are expressing their concern with regard to those requirements because they're sort of a one-size-fits-all and don't fit very well for us here in Nevada, nor do they adequately address, in our opinion, the regional issues that make up a regional haze, obviously. So it's very difficult, in other words, for us to control a facility or a source in Idaho or California that is impacting the State of Nevada.

Commissioner Gifford asked what will they focus on as producers of the haze? That, again, doesn't seem to fit the Nevada picture.

Mr. Biaggi answered one of the concerns we have with the regional haze requirements was Congress dictated that EPA would identify many of the sources that are contributing to regional haze, such as large power plants, dust from roads, auto vehicle emissions, burns, that sort of thing. In our estimation, EPA has failed to do an adequate job at identifying those sources and instead are leaving it to the states to those activities. There's one of our concerns.

Commissioner Johnson explained the reason that I brought this issue before the Commission is to begin the discussion in anticipation of the federal requirements and in reviewing the statutory language it seems that there is a requirement on the State. It seems, shall I say, obtuse to complain about the federal programs being one-size-fits-all when we don't have a program at all. This has been in the statutes since 1971, recognizing that visibility is defined as air pollution and setting the public policy. I don't wish to be revolutionary here, but I think that we should begin to be evolutionary and I think one of the points that I wanted to discuss here was other standards than simply a 30 mile or 100 mile visibility standard. The federal statutes recognize something called the desi-view or some other mechanism of measuring visibility impairment. Can your staff identify other standards that have been adopted for visibility measurements?

Mr. Biaggi stated I believe there are other standards and I would have to defer that to Jolaine who is not here. But I can speak a little bit to the desi-view standard and that's one that came out of the regional haze requirements and I believe maybe out of the Grand Canyon study. The desi-view requirement is not without its controversy. There's been a lot of work done by EPA back and forth on whether the desi-view standard should be implemented in the regulation. To my understanding it is in place right now and a desi-view, just for the rest of the Commission, is a reduction in visibility that is the least perceptible to the human eye. I have seen models which attempt to show what a desi-view reduction of visibility is and I personally can't see the difference, but that may be a function of my particular eyesight and that sort of thing. But it's a very, in my opinion, subjective standard and it is quite controversial.

Commissioner Johnson stated (inaudible) Actually 30 miles or any mileage is a very subjective standard, is it not?

Mr. Biaggi answered yes it is and I think you're pointing out one of the problems with enacting any sort of a visibility standard. It's much the same as an odor standard. It's very subjective and oftentimes very difficult to measure and quantify.
Commissioner Johnson stated just for a matter of record, I didn't wish the introduction of this topic to be a criticism, either implied or stated of the bureau's activities in the past, nor the local agency's. I think that it is something to identify an issue that we need to continue to discuss and go forward with.

AC Coyner asked if Washoe County wished to comment.

Andy Goodrich, Washoe County District Health Department, Air Quality Management Division stated I was asked just yesterday afternoon to give you a presentation on visibility and air quality issues in Washoe County. I was concerned that I would have little to discuss considering the short preparation time, but more importantly, because my job and our main objective to the district is to obtain compliance with the primary national ambient air quality standards. The primary federal standards are designed to first and foremost protect public health. We have

achieved compliance with the O-Zone standard in 1998. However, the Truckee Meadows continues to be designated as a non-attainment area for both carbon monoxide and particulate matter at PM-10. In fact, our last violation of the PM standard occurred just last January 6th. In other words, the population of the Truckee Meadows were subjected to PM-10 levels that day that were considered unhealthy by federal air quality standards. I believe our first priority is to implement strategies to provide healthy air for our citizens. This is not to say that visibility is not an important air quality issue. In fact often, but not always, visibility degradation and health effects of the air are linked. Visibility is also an important welfare concern. It directly impacts the quality of life we enjoy and has obvious economic implications. The EPA has adopted what are called secondary standards for some pollutants to protect welfare related issues. However, the current secondary standards do not address visibility and are less protective than the primary standards. As Allen has discussed, the EPA is currently working on regulations to protect visibility. It is my understanding these regulations are still under review and have not yet been finalized. Honestly, because of our occupation with the primary standards, we have paid little attention to visibility. The issue of regulating visibility is relatively new to most air quality agencies and I believe much more additional information will be needed prior to control strategy development. Our current knowledge about visibility in Washoe County is limited. However, in the last couple of years we have sponsored studies performed by the Desert Research Institute to gain a better insight on fine particulate matter and, by default, visibility. We know now that it is the very fine particulate matter in the range of 2-1/2 to 1 micron in size which are mostly to blame for the haze. Nitrogen dioxide emissions also are contributing to the brown cloud that can linger over the Truckee Meadows. Some of the key contributing sources of these pollutants are gasoline and diesel powered motor vehicles, not just tailpipe exhaust, but re-entrained road dust, fugitive dust from construction activities, and residential wood combustion. Currently the district implements many control measures to address particulate matter at the PM-10 size fraction. These include, among others, extensive dust control requirements on construction activities, best available control technology is required on stationary industrial sources, and a leading wood stove fireplace control program. Although these measures were adopted to control PM-10, they also minimize the emissions of the smaller and haze producing particulates. Recently, the district has installed instrumentation in the Truckee Meadows to better assess the fine particulate levels, those at PM-2.5 and less in visibility. This includes a nephelometer, a device for measuring light scattering of aerosols in the atmosphere and also several PM-2.5 monitors throughout the valley. We will need this data prior to making any decisions regarding control strategies for visibility.

Commissioner Johnson stated again, my intent here was to hear a report and I anticipated much of what you would say. I think in discussion with your administrator that earlier he had mentioned that the new steps that you were preparing in the area of 2.5 and less will address secondarily the issue of haze. I'm interested in your measuring the light scattering. Is this a possible approach or have people used this to indicate visibility. Is this a less subjective means of measurement?

Mr. Goodrich stated our objective with the nephelometer which measures the light scattering is really to provide a real time estimate of fine particulate levels. Again, it wasn't to look at visibility necessarily, but to get a temporal idea of PM 2.5 emissions, what time of the day that they are occurring. This device is able to report that data on an hour by hour basis. We honestly haven't looked at it as a visibility instrument, although I'm aware that there are agencies in Colorado that do use it for that.

Commissioner Johnson stated so this information would be usable for inventory basis should at some time in the future we proceed with establishing or changing the standard that we have for visibility. I also wanted to introduce the subject because there's been discussion in the legislature on a bill to authorize the health board in Clark County, which you've said in Washoe as a identical authorization from the State and their D.A. has ruled that the county health boards don't have the authority to set visibility standards and I wanted to ask our Attorney General representative to discuss that issue of whether it would be prepared in this meeting or to put the issue at the next hearing in Las Vegas to address the issue of whether the counties have the authorities to adopt visibility standards where the State has. This is not saying what standards they would adopt, but whether you simply have the authority to.

DAG Mischel stated I don't see any prohibition. There is a state standard and what I would recommend if you'd like some communication with Clark County D.A. is that the Commission ask for a written Attorney General opinion on the question. I mean that's one option. I think Allen will agree that in the program delegation to Clark and Washoe Counties that that can be included as a specific requirement.

Commissioner Johnson stated Mr. Chairman, as a point of discussion, I would request that at the next Commission meeting that we be placed on the agenda to consider asking for opinion. It would be my - that we did not notice this as an action item, that we probably should have it on the agenda, an action item.

Mr. Biaggi stated Mr. Chairman I think Mr. Johnson brings up a good point. I would suggest, however, that we don't ask that as a formal opinion because of the binders that it does place upon the agency and this Commission. We can ask Attorney General's office to review that for us and provide their input, but I'm not sure that we want to take the step of asking for a formal A.G. opinion on it.

AC Coyner asked Mr. Johnson if that was agreeable.

Commissioner Johnson answered certainly; it's a preliminary step.

AC Coyner stated we often at Minerals ask for that same sort of thing. It's sort of an opinion without a formal opinion. And they're very good at providing that as well. Thank you Allen. One quick question, can a nephelometer distinguish snirt, which is snow and dirt mixed together like we had yesterday?

Mr. Biaggi answered the instrument is designed so that it shuts down when the humidity rises above the set level, particularly when it snows and rains.

AC Coyner moved to **Item V is an action item Proposed Resolution of the State Environmental Commission regarding the adoption of appropriate emission reduction measures in the Las Vegas Valley**

Colleen Cripps, Bureau of Air Quality, Division of Environmental Protection, stated the item before you is a proposed resolution regarding the adoption of appropriate emission control measures for the Las Vegas valley. This resolution directs the Division of Environmental Protection, the Department of Motor Vehicles, Clark County Comprehensive Planning, and Clark County Health District to work together to evaluate alternatives and to propose the most cost effective and reasonably available control strategies necessary to attain the national ambient air quality control standards and to insure conformity between air quality and transportation plans. It also commits the Commission to adopting appropriate control strategies as necessary to assist with the attainment and conformity efforts.

Clark County is currently finalizing its State Implementation Plan or SIP submittal for carbon monoxide. Existing and proposed control measures are expected to result in attainment of the standard by the year 2000, but additional measures may be required in the future to insure the detainment of the standard continues and that conformity between air quality and transportation plans can be demonstrated through the year 2020. We understand that the adoption of reasonably available control measures is not something new to the Commission, but this resolution is needed by Clark County to provide assurances to the US EPA that control measures will be adopted as necessary over the next 20 years. This resolution will be included in our carbon monoxide SIP submittal.

We are recommending the adoption of this resolution with minor change. In discussions with the Clark County Health Department, it seems that the fifth paragraph of the resolution needs to be modified to include "proposed control measures." That's the first line of that fifth paragraph. Clark County is still waiting for county approval of new cleaner burning gasoline program, and so this paragraph would be more correct if the language were changed to read, "existing and proposed control measures." Is that clear, where we are?

AC Coyner answered I'm looking at it, but I guess I'd like you to go over it a little bit more and the comment from the AG's side and mine too is why would we want to include that footnote in there, or is that just to explain it or for clarification? You're not suggesting that we include the footnote in the resolution, are you?

Ms. Cripps stated the Health District asked for that change to their language, so it would say, "whereas existing and proposed control measures will result in the attainment."

DAG Mischel clarified by asking you're not suggesting this amendment, you're suggesting an abbreviated amendment that would read in the fifth paragraph, "where existing control measures" you just want to insert in "proposed?"

Ms. Cripps answered that's right.

DAG Mischel stated I guess since we're on that paragraph I think that Mike's language about "is projected" might be better as well, where it says "will."

Ms. Cripps stated I haven't seen that language.

DAG Mischel asked you haven't seen it yet?

Ms. Cripps answered no.

DAG Mischel explained the second phrase is, "It has been determined that eventually vehicle miles travelled will exceed the benefit." Wait a minute, no, the first line, "will result in attainment of the carbon monoxide." And he is suggesting that we change that to read, "projected to result" and delete "will" which is probably a little better.

Ms. Cripps agreed. Since this is the county's resolution, I'll defer to their language.

Commissioner Iverson stated this is a county resolution that you are reading, that's in the book here? I have a little bit of concern that we have the State Environmental Commission, Division of Environmental Protection, Nevada Department of Motor Vehicles, Clark County Health District, Clark County Comprehensive Planning, I think it's appropriate since we're talking about wintertime gasoline, we're talking about some of these things that we also ask the Commission, and I don't know if we can do that. I think we need the participation of the Division of Agriculture on there since they do have the responsibility for fuel quality.

Ms. Cripps asked has the Department of Agriculture been involved in the SIP process to this point?

Commissioner Iverson answered I think the Division of Agriculture probably should be if they haven't been, and yes they do attend the meetings and I think, I'm not so sure how you separate them out so I think it needs to be put in there.

Ms. Cripps stated that wouldn't be a problem.

Commissioner Iverson stated I think they need to be involved so we don't get cross-wise down the road and we work very closely with DEP on these issues and we try to work very closely with Clark County and if we can be up front with this and know what's going on then it's not coming to us on a . . .

Ms. Cripps stated I agree with your position. My hesitation is just that we have spent a lot of time working out this language with the county and I haven't had an opportunity to address that with them, so . . . but it doesn't appear that that'll be a problem.

Commissioner Iverson stated if the county has problems with the Division of Agriculture being involved with this, then I have problems with the county wondering why the county would have problems with the Division of Agriculture being involved with that.

Ms. Cripps stated that was fine. I also wanted to mention that there are letters of support for this resolution that were received from Clark County Comprehensive Planning and the Department of Motor Vehicles. These letters were provided to Mr. Cowperthwaite so that they could be included on the record.

DAG Mischel stated the proposed resolution has three amendments as currently being discussed. The first two are in the fifth paragraph so that it would read, "Where existing and proposed control measures are projected to result in attainment of the carbon monoxide standard by the year 2000 . . ." And then it goes on. And the third change is in the seventh paragraph, "Now therefore be it resolved that the State Environmental Commission directs the Nevada Division of Environmental Protection, the Nevada Department of Motor Vehicles, the Nevada Division of Agriculture, the Clark County Health District, and Clark County Comprehensive Planning to evaluate alternatives . . . And then it goes on.

AC Coyner asked then the understanding is that this is incorporated, the letter that came to us from Clark County Health District by that?

DAG Mischel answered that's correct. By just adding, "and proposed" really.

Ms. Cripps asked so you won't be adding this additional paragraph as well?

DAG Mischel answered I think it's awkward to add a footnote with the date of the next meeting.

Ms. Cripps stated she didn't mean the footnote.

DAG Mischel stated we could add the underlined language, but I think that the added proposed language includes that.

AC Coyner stated maybe we should ask Clark County if that's acceptable.

DAG Mischel asked Clark County is not here are they?

AC Coyner asked where's Michael?

(inaudible) answered he's gone.

DAG Mischel answered he came and left.

AC Coyner asked I guess does the Commission understand the option there? Essentially the inserting of the existing proposed control measures would encompass, I guess in our opinion, what they're asking us to write into the resolution from Clark County. Any discussion on this?

Commissioner Johnson stated I don't know that Mr. Naylor has worked this out with Comp. Planning. There is, from his suggestion, a difference in the substance between what was proposed and what he proposed because he's talking specifically of cleaner burning wintertime gasoline and the broader language that was proposed here is the control measures for carbon monoxide. So there's a difference. I personally would go with the wider language that was proposed in . . .

Ms. Cripps stated that she agreed.

Commissioner Johnson moved for the adoption of the proposed resolution presented as amended with the three amendments previously mentioned.

Commissioner Trenoweth seconded the motion.

Commissioner Crawforth asked Mr. Chairman, in the second to last paragraph where we're directing all these people, do we have that authority? Maybe we could just encourage them?

AC Coyner answered this is what they want.

Commissioner Crawforth stated I would often love to direct the Department of Motor Vehicles to do things, but I don't think I have that authority.

DAG Mischel stated we could change the word "directs." You do have some authority over DMV on this Commission, but it's more kind of joint authority than it is supervisory. "Encourage" or what did you suggest?

Ms. Cripps stated I said, "and the same is true for Agriculture."

DAG Mischel stated "And the same is true for Agriculture." So "encourages" I can't come up with (inaudible) right now.
Commissioner Johnson stated Mr. Chairman, I certainly understand the problem with "directs" but I think that's the operative term to this whole resolution that they want something that says something will happen, not that we would like it to happen.

DAG Mischel stated with regard to Clark County it's not a problem because we delegated the program to them.

Ms. Cripps stated perhaps we could change the language to that you direct the three agencies that you have the control over to work with DMV and the Department of Agriculture to do these things.

DAG Mischel stated that's a good idea.

Jolaine Johnson, Chief of the Bureau of Air Quality, stated I wanted to address Mr. Johnson's recommendation, or his concern. I think that changing the word "direct" to "encourage" would be o.k. because the real commitment that we're looking for here is that this Commission will adopt appropriate measures in a timely manner. So it's really the last paragraph that gives EPA the assurance that this entity will take appropriate action at the right time. Thanks.

Commissioner Johnson stated I still think and would hold that the direction for the three agencies that we have the ability to and then encourage cooperation with the other agencies would be appropriate also.

AC Coyner stated well at this point I'd have to ask for the motion to be amended then. Because it was first and seconded. So those two people that did that, I guess it's Joe and Roy.

Commissioner Johnson amended his previous motion to direct the Division of Environmental Protection, the Clark County Health Board and the Clark County Comp. Planning to do these areas and to encourage the Department of Motor Vehicles and Department of Agriculture.

Ms. Cripps suggested or to work with instead. You could direct those three agencies to work with the other two to develop and evaluate control strategies.

AC Coyner asked is that the o.k. terminology, "direct and work with?"

Commissioner Johnson answered yes.

Commissioner Trenoweth (as the second on the motion) agreed.

The motion carried unanimously.

AC Coyner moved to **Agenda Item VI. Status Report by the Bureau of Corrective Actions regarding MTBE** and possible health and environmental impacts. The Clark County District Board of Health requested that the Environmental Commission consider the possible potable water contamination effects associated with summertime gasoline that may be oxygenated with MTBE (Methyl Tertiary Butyl Ether), in deciding whether or not regulations should be adopted that would limit the use of the additive oxygenate MTBE in gasoline. This is an action item.

Doug Zimmerman, Chief of the Bureau of Corrective Actions, Nevada Division of Environmental Protection, stated I think you heard that Mike Naylor was here earlier and apparently has left to return to Las Vegas. We have worked with him over the last few months. He gave me a copy of his notes that he was going to present at this meeting which I'm not going to go through. But, I do want to share with you that through our consultation with him, it is his position that there is not a need to move forward with the adoption of regulations which would limit the use of MTBE in Nevada. His perspective is very much an air quality one and I would really have to defer to him for that presentation. But, as a result of the action at the last Commission meeting, we were directed (staff of NDEP) to look further into MTBE and specifically to review the University of California reports that were being generated at the time of the last Commission meeting. We've completed that review and the report was entitled "Health and Environmental Assessment of MTBE" and further evaluated our existing regulatory programs and our recommendation today is that we do not believe there is a need to adopt regulations that would be specific to MTBE and would limit the use of MTBE. Our recommendation should not be interpreted as an endorsement or encouragement of the use of MTBE. We still consider MTBE to be a chemical that if released into the environment has a high potential to degrade waters of the State. So it has to be properly controlled and regulated. The governor of the State of California did issue Executive Order D59 on March 25, 1999. I've got copies of it that I'll share with you. (inaudible - passing out order) In that Executive Order, the governor of California required that MTBE be phased out of gasoline as soon as possible but no later than December 31, 2002. One of the effects of that California action will be that since nearly all of our fuel comes in from refineries either in northern or southern California, that we will be seeing less and less of MTBE fuel, which right now we see very little of in either Clark or Washoe counties. So that trend should just continue into the future.
A couple of other items came out of California since our last meeting. There were two health-based determinations by separate science advisory boards that the State of California has. The Developmental and Reproductive Toxicants Committee voted five votes to none that MTBE is not a developmental or reproductive toxicant and their same science advisory board has a Carcinogen Identification Committee and the committee found insufficient support for the proposition that MTBE is a carcinogen. Those studies and that debate I think we heard some experts at the last meeting, that debate is still going on. California did come out with those two determinations, though.

As stated at the last meeting, NDEP's concern is with fuel releases. Whether or not these releases contain MTBE, a fuel release is a serious matter for us to deal with. The standard constituents of fuel, benzene, toluene, xylene, ethyl benzene, those constituents are always there and always causes concern, and in fact, some of those compounds are known carcinogenic compounds, and so it actually causes more concern than MTBE. I skipped over another study from California that I wanted to comment on and actually it's also a study out of Texas that looked at combined they looked at 800 plumes that have originated from leaking underground storage tanks and have found that the MTBE and benzene plumes were essentially covering the same areas. The Texas study came out and said MTBE was on the average 27 feet further ahead of the benzene plume. But, on average, they're not as large a plumes as perhaps we thought they were. There are, of course, exceptions to all of those. We have some in Nevada where we have MTBE out several hundred feet in front of those benzene plumes. But, in general perhaps it's not as major of an

issue in terms of that spreading issue as we thought.

We put a lot of basis for our recommendation in our existing regulatory programs. Our underground storage tank program, which deals with the design and monitoring of underground storage tank systems is the preventative side of our programs. There was a major milestone in that program that occurred December 22, 1998. All underground storage tank systems had to be upgraded to meet corrosion, spill, and overfill protection. Nevada has one of the highest compliance rates in the country for those upgrade requirements. We're currently at 91 percent compliance and we expect that compliance rate to go even higher as we get additional paperwork showing that they've met the standards and those kind of final stragglers do their final work. If we do have a release we, again, have regulatory programs that effectively deal with them. Our leaking underground storage tank program is very responsive to those leaks. Again, it's important to catch them before the plumes spread and create major problems like they have experienced in California at Santa Monica and at South Lake Tahoe also. The State Petroleum Fund is viable. We have a surplus in the Fund. We're able to fund all cleanups fully and to date we spent over $70 million cleaning up releases from underground storage tanks.

Finally, the authorities that are granted to us through the Nevada Water Pollution Control law allow us to establish standards for cleanup of MTBE. So we have done that. We actively pursue releases of fuel that contain MTBE and require that cleanup.
There have been two other activities since the Commission met. I commented on one already - the December 22nd deadline. The other has been that we had three public workshops on an MTBE guidance document that we've developed. It's somewhat of a cookbook for owners or consultants who have to go out and clean up MTBE gasoline releases with MTBE. The workshops were in Las Vegas, Carson City, and Elko and that document is now ready to be finalized. So I think we have another effective tool in our hands to make sure that we can address the issue of MTBE.

So, in summary, our recommendation is that we do not need to single out MTBE adopt regulations that would limit its use from a water quality perspective.

AC Coyner called for questions from the Commission. There were none.
He then moved to **Item VII. Status of Legislation in the 1999 Session**

Mr. Cowperthwaite stated I have presented to you a report dated April 7, 1999 that is a compilation of legislation that I've been able to compile during this legislative session.

AC Coyner interrupted Mr. Cowperthwaite for a moment. We just want to make clear that since that wasn't an action item, that the Commission is in agreement that we're taking no action on it. The A.G. has asked me to clarify that for everyone.
DAG Mischel stated the action would be, if any, to decide whether or not to go forward with regulations on MTBE.

AC Coyner stated or just not to do anything.

DAG Mischel stated you can do nothing at this point as long as you understand that is what you are doing.

Commissioner Johnson stated we could continue the item for future consideration as other things might develop.

AC Coyner asked agreement on that? The continuation? Very good, thank you. Proceed David.

Mr. Cowperthwaite stated in reference to that MTBE item, the reason why it was listed as an action item was to give you the flexibility if you wanted to close or move forward on it then you could do it in this meeting and it'll be sent forward to the next Commission hearing or at a later date.

As I was stating, the legislation that is now in progress down at the legislative building funnels into primarily three or four different areas. One area in which I've been able to pick it out is those areas that directly affect the jurisdictions of the Commission in which there will probably be new rule making that would occur in a variety of areas. Those areas include the issues of the Clark Commission report related to the Sierra Chemical explosion. There's a Brownsfield bill that is in that may end up requiring regulatory action. There's also bills in there that are related to the vehicle emission inspection program that staff will be able to address. What I've done is also looked at other bills that reflect the Administrative Procedures Act. The Administrative Procedures Act essentially does effect the way the Commission functions. There is one major bill in there that changes things. There's actually two major bills. One major bill is AB 12 that deals with the issue of policies. That has been significantly amended. The narrative here was the initial narrative of the bill. As you see in my report, that bill has moved forward from the Assembly into the Senate. The other bill that effects the Administrative Procedures Act is a bill that deals with small business assessment. That is AB 486 on page 3. That one defines an establishment of a framework to evaluate the impacts of business upon small businesses. So that will probably mean an expansion of the requirements for the Commission to both publish its public notice as well as require input from the agency and due process on the agency's part in terms of doing workshops and those types of constituency outreach.

Other than that, again, if you have any reports on these, I can either respond to them or the people who have been directly involved in the bills who are behind me or to either side of me can respond.

Commissioner Johnson stated I'd like to make a comment about the Sierra Chemical bills and how they'll interface with the regulation that we just spent a morning in.

Verne Rosse, Deputy Administrator, Division of Environmental Protection stated the bills in regard to the Chemical Accident Prevention Program that will come as a result of the Sierra Chemical explosion establishes a definition of explosives and it's using the ATF definition. There are some exceptions that have come out of the ATF that apply to transportation, military things, and I've forgotten what the third one is. But once that definition was established, I believe it's AB 536, that includes explosives and the Chemical Accident Prevention Program. Also, I believe it's 538 that says that if we're going to locate a facility, that before the local government decides to locate it wherever they're proposing to locate it, it has to come through our agency to get approval or a permit to construct and operate that facility. What that does is allows us to adopt some set-back requirements so that there's protection from residences or businesses or wherever the public has some potential exposure if there is an explosion. The State OSHA office also has that same authority in this legislation as well. I believe that's about the only places that the CAPP program gets involved in these bills. And it gives us authority to adopt regulations that comes through this Commission.

AC Coyner stated David I note 538 is not on the list. So make yourself a note to add in 538. If Verne has the number right. Any questions for David or Verne from the Commission? Any questions about pending legislation? Joe, probably you're the closest one to it in terms of being over there. Any other comments on your side in terms of pending legislation that might be affecting the way we do business?

Commissioner Johnson stated I think that you already mentioned the Brownfield bills. There are actually two of them and one of them that has progressed out of Committee and it's a fairly comprehensive document and we no doubt will be seeing that I anticipate, but I don't think any specific comments about it. Probably David would like us to get involved with wild horses, but . . .

Commissioner Iverson stated dealing with legislation, I want to let the staff know how good your Environmental Commission is. During our budget hearing Joe and I had the opportunity to answer questions and both of us were wrong.

Commissioner Johnson stated and we got caught at it.

AC Coyner stated I would just make a brief comment on AB 103 since that's the one that involves the Division of Minerals and also Agriculture. As summarized there, it does seek to reestablish both agencies as a department level status and at this point in time, the way AB 103 has been amended we're looking at department status for Agriculture and Division of the Commission status for Minerals. Both of which do not affect this body in terms of its representation though. Both of those individuals would still be members of the Environmental Commission. So you can't get rid of us yet.

He moved on to **Item VIII. Status of Division of Environmental Protection's Programs and Policies**

Mr. Biaggi stated I'm going to make this very quick because I know we all want to get on with the afternoon and the weekend. But you'll notice today there's been a number of DEP staff, or maybe you didn't notice because you didn't know who they were, but we've been sort of rotating them in and out and we're doing that because we are moving people up. We're trying to give them experience and I don't want their first experience before the Environmental Commission to be their experience when they're up here testifying. So we're trying to allow the people to see the Commission in action, to see how you conduct business so that when they have to be here they're familiar with your policies and procedures and the way you like to hear your testimony. So I hope you don't mind as we rotate staff in and out and we'll probably continue to do that at future meetings.

As far as the legislation goes, I think it's been pretty well covered here. Doug Zimmerman has been working quite diligently on the Brownfields program which we see as a major new program potentially for the Division and that's a bill that was introduced by Senator Titus out of Las Vegas. Joe has been involved with that to some extent and I think the other bill that was out there is being incorporated into Senator Titus' bill so we'll have one good comprehensive bill.

I'd just like to go through very quickly some of the activities that we've got going in our bureaus. In Mining and Leo Drozdoff is here, we're still working on bankruptcy activities. With the depressed metals prices, we're seeing a number of mines that are having financial concerns and Leo and the Attorney General's office have been working very hard on addressing those bankruptcy concerns and insure that the operations continue and that we don't have releases from those facilities. And I think that we're going to continue those activities as long as the metals prices remained depressed.

In our Air Quality Bureau you've heard today about regional haze and Jolaine and her staff have been working very hard on those activities and will continue to do so. Colleen and Jolaine have been working on prescribed fires and we're still being focused on permitting in order to get our permits out in a timely fashion and to work with business and industry to have reasonable, workable, permit conditions that are yet protective of the environment.

In our water programs we're having some concerns with the U.S. Fish and Wildlife Service, particularly on the Las Vegas water quality standards that this Commission adopted, I believe it was in December. The U.S. Fish and Wildlife looks like they're going to ask for a formal Section 7 consultation because the service does not feel those standards were tight enough protective of the razor-back sucker, which is a threatened and endangered species in the Las Vegas Wash and in Lake Mead. So we're working with the Federal Environmental Protection Agency and U.S. Fish and Wildlife Service on those activities. As I'm sure Marla is aware and Terry, we're also working on activities related to Jarbidge still although the Division's actions in Elko County are on hold until at least June or July of this year. But I saw in the paper today that the bull trout has been listed as threatened, Terry? O.K. so that is still a major issue that is pending on the environmental front.

TMDL's are another issue that we're working very hard on. Tom Porta of the Bureau of Water Quality Planning has been meeting with Agriculture and other interested parties to insure that we are up-to-date on our TMDL's so that we don't fall into the category of 35 other states that have lawsuits pending on a water quality standpoint on their TMDL's. So, Tom actually has a little Powerpoint presentation that I'm sure we'll bring to the next Commission meeting to update everyone on that issue.

In Water Pollution Control, Jim Williams is evaluating water pollution control fees. We are finding ourselves in a concerning situation regarding our finances in Water Pollution Control. Permit fees have not been raised in those

programs since 1990 and I anticipate that we'll be before this body probably in September of this year in an effort to try and raise those funds. So we're working with all of the permitted industries right now, especially the major dischargers in Las Vegas, Reno, Carson City, Gardnerville to try and work out something that's going to work for everyone.

In the Waste programs under Dave Emme, you've heard the big push that they've had for the last year or so and that's the CAPP regulations and I think they did an outstanding job presenting those today. They're also working on the Sunrise Landfill in southern Nevada which has significant EPA involvement right now from an air quality standpoint and a water pollution control standpoint and that will probably continue over the next couple of years.

In Corrective Actions, Doug and his staff have been working on the perchlorate issue in southern Nevada and the BMI complex in getting a remediation of groundwater ongoing in that area.

Federal Facilities is actually fairly quiet under Paul Liebendorfer. They are negotiating a new facilities agreement at the Nevada Test Site and we'll give you more information on that next meeting.

Finally, once the legislature goes away and we have a little bit more time, the Division will embark on a strategic planning process to sort of chart our course over the next couple of years both, you know, in two and three years and five and ten year periods to try and identify where we are right now and where we want to be in those time frames and that's something that we haven't done in the past and something that I would like to do and give us sort of a road map of maybe where we're going and we'll certainly bring the results of those activities to this body. So with that, I'd be happy to answer any other questions you may have regarding activities of the Division.

Commissioner Griswold stated I almost hate to bring this up, but I wonder where are we with the rolling stock? It has been brought to my attention that Elko County has been filing a general rolling stock permit and I'm just wondering where we are.

Mr. Biaggi stated that's a very good question. Since we got beat up so badly in December we haven't pursued that to any significant degree. It's status quo right now. I think you bring up a very good point that the five year general permits are now available for people to apply for and that means that they don't have to apply for a permit for every activity that they're going to do. It's a general permit. It outlines that they have to use best management practices and other reasonable activities in order to control water pollution.

So we're going to continue to work on that with Elko County with the agricultural community and others to proceed with rolling stock in the future. But we got the message pretty clear last meeting that we need to do a lot better job in working with all of the affected parties before we come back before this body with rolling stock.

Commissioner Griswold asked now this general permit - Now you said that they are - Do they all come due at a certain five year - or Elko County's is just at the five year?

Mr. Biaggi answered yes. They're due upon issuance in the five year period.

Commissioner Griswold asked and Elko County has had one in the previous five years?

Mr. Biaggi answered I don't know. I don't know if Elko County has or not.

Commissioner Griswold stated I kind of got the impression it was something new to them.

Mr. Biaggi stated it is something new.

Commissioner Griswold asked is it mandatory?

Mr. Biaggi answered no. Well, to get a permit is mandatory if you're going to have point source pollution in a water course. So the option would be to either get a unique permit for every project or if you're going to do a number of similar type projects over time you can get the general permit which is good for five years. So it reduces the paperwork to a significant degree. And I am happy to report that we can get those permits out usually under 30 days now and in many cases we're getting them out in two or three days.

Commissioner Johnson stated a question on the concern in the Las Vegas Valley Wash, what issue particularly are they concerned with?

Mr. Biaggi answered the U.S. Fish and Wildlife Service? I'm not really sure. I think that their position is that the Las Vegas Wash should be fishable and that it should be available for fish habitat. I think as this Commission is aware that's an effluent dominated stream. The majority of the year-round water flow is from the wastewater treatment plants at about 140 to 150 million gallons a day. So I don't know if that's a reasonable position to take, but they are concerned with the razor-back sucker that is found in Lake Mead and has been found, apparently, at some locations within the Las Vegas Wash itself. If you'll recall, the Commission did implement a total suspended solids standard that was new which was a pretty dramatic step forward in the water quality of the Las Vegas Wash. The U.S. Fish and Wildlife Service doesn't believe that was a large enough step and wants to take further dramatic steps towards water quality improvements in those water bodies.

AC Coyner stated I'll make one addition to your report, Allen, and that's the BLM 3809 issue. I've talked to several of the members of the Commission about it at lunch, but it is a rather large for this time around for State agencies and for our federal agency partner at the BLM as well. There's a series of hearings that are being held around the western United States on the issue. It's some rules and regulations that fall out of the mining law of 1872 and how that's administered on public lands and a number of us from State agencies will be testifying next week at the national, am I right Leo, next week, do I have it dialed in, for the National Academy of Sciences who is undergoing or doing a separate investigative report at the behest of the Congress on the BLM 3809 issue. So in terms of the mining front, that's kind of a big one for us right now and it's involving your staff and staff time as well. Lot's of things going on Allen, thank you.

He then went on to **Agenda Item IX. General Commission or Public Comment**

Greg Bennett stated my name is Greg Bennett and I thank the Commission for allowing me to come and pass on my concerns. I have a somewhat of a prepared statement that will take me about eight minutes and I appreciate that you're allowing me to do that. I wanted to start off by borrowing Mr. Iverson's comments, if I may. He made some comments about a concern of an issue he had because he had his name on the minutes. I heard him use the word "responsibility" and something to the fact about taking the environment and these issues serious. I agree with Mr. Iverson. I've tried to put this together so hopefully it'll answer any questions if the documents are looked over.

The first thing I want to say, the two release reports that I've submitted or I'm going to submit didn't cause any harm to the environment. The harm was in the reporting and the reaction to this type of reporting. I ask that the Commission look at these reports for their merits in protecting the environment and in protecting the integrity of the programs involved in protecting the environment. The ethics used along with these reports are a separate, undeniable offense. The reason I'm here is to notify the Commission and the public that environmental release reports are being written and used for reasons other than the protection of the environment. Concerning the two reports I'm introducing, there have been more than one investigation by at least three agencies. Each agency has determined there was either no wrong doing or there was absence of proof. I'd like to submit both reports, along with the supporting documents to this Commission for possible review. Both were written with false information and further filed with the NDEP. This is against State law, NRS 445A.710. I'd like to point out a couple other things the two reports have in common. Again, there was no harm to the environment brought about by either release. The amounts of chemicals as well as the quantities of solutions on both reports were entered while they were known to be false. Both reports have independent corroboration as to these entries being written falsely and

with full knowledge beforehand. These false entries cannot be argued. They are black and white. They are clear. They are simple and they are easily identifiable. Motives and reasons can be argued. They played an important part in why these type two reports were written with inaccurate information which is a falsification. Motives and reasons have played an important part as to why the situation has brought me here today. It's any persons choice as to any motives or reasons. However, for whatever reason, these two reports were written purposely to not reflect the truth. If there are good reasons, that should allow this type of reporting, it should be added to the NRS codes or publicly stated.

Another thing these reports had in common, each had two authors, yet each report had only one signature. On each report the innocuously placed additions were necessary to validate severity or non-severity of these reports. On each report the additions were written in by the same person, yet never initialled or signed. These reports have a specific place to sign. In addition to the designated supervisor who was writing the report and in charge of the release cleanup, there are also specific areas for other signatures when changes or additions are necessary. Specifically, general foremans, superintendents, as well as any bioremediation specialist who may be needed. There was no signature by the general forman who wrote in the additions that created the severity or non-severity of the reports. Additions of this type make a release report either reportable or non-reportable. Those that had their signature on each report did not write a report that would be needed for an environmental program. Without the unsigned additions, these reports would not have been filed with the NDEP. It needs to be said. I found both reports by accident. I found out about the additions by accident. I then retrieved them from our internal environmental department. I have never seen any other two environmental release reports after they've been submitted, but the two that I have here. There's one glaring difference to the type of falsifications on each report. One report, the unsigned additions, showed chemicals were involved. There were no chemicals involved. The other report was opposite in nature, meaning the volume of the chemicals and solutions were reported well below the actual amount. This created a lower level of reporting requirements.

There's one other difference that's not so evident. One report was falsified after it left the custody of the person that signed it. I feel it is important to advise the Commission that some of the State agencies fail to see the importance of truthful reporting practices while they may very well have investigated, they never looked at these documents. These documents are facts. What's written on them is false. At present, the mining operators, as well as other state and federal programs instruct employees through on-site training programs that any person who falsifies environmental release reports can and do go to jail. This advisement is very clear through these instructional classes. I would like to suggest that a program be instituted to advise employees and their managers who are involved in environmental releases as to what their legal liabilities and responsibilities are. I would also like to ask this Commission that if these two examples of reports are acceptable, would it be in turn acceptable that these types of changes be introduced into this record? How can this public record be trusted as long as these types of reports are acceptable or permissible? On May 9, 1997, I told a large mining corporation, "You can't do this." They told me to go home. They got nothing to change. I take this as serious as well, sir. I can't control the environment, but I can control my part in it and that's what I'm doing here today. That's all I have prepared. Thank you. Any questions?

AC Coyner stated thank you Mr. Bennett. I believe for background, let me help the Commission on this. Mr. Bennett was a former employee of Newmont Mining Company and your position is that reports that are normally filed with the NDEP with regards to chemicals that are used on properties are, in your opinion, being falsified or have been falsified or through oversight have not been filed truthfully or timely, that's kind of the issues you're addressing here with your statements?

Mr. Bennett stated I'm stating publicly and I want it on the record, both these reports were written with full knowledge, falsely.
AC Coyner asked o.k., that's your position?

Mr. Bennett stated there's 40 documents.

AC Coyner asked and to your knowledge those documents were transmitted to the NDEP?

Mr. Bennett answered yes, sir, they were.

AC Coyner asked and you have supplied copies of them to NDEP and asked them to explain, etc?

Mr. Bennett answered yes, sir, I did.

AC Coyner stated all right. That's kind of the background, I think, on Mr. Bennett's situation and I guess I'd entertain questions to Mr. Bennett from the Commission.

Commissioner Iverson stated I have a question. I was trying to listen to you as closely as I could but, who wrote those reports. I mean were they supervisors, were they managers?

Mr. Bennett answered a manager, yes. A manager of both myself. I beg your pardon. The reports were written by an operator and one was written by myself and we were the signatures. The additions that were made that were false were put in as additions, but not signed or not initialled.

Commissioner Iverson asked so you wrote one of those reports yourself?

Mr. Bennett answered I did, yes.

Commissioner Iverson asked and then after they left your hands, there were additions added to that report?

Mr. Bennett stated that's correct.

Commissioner Iverson asked and that weren't signed?

Mr. Bennett stated that's correct.

Commissioner Iverson asked what were the releases?

Mr. Bennett answered one release was water and that was the January 18th spill of 1997. It was water. It flowed into an area that had a serious contamination of mercury from previous times.

Commissioner Iverson stated o.k.

Mr. Bennett stated the report was changed to reflect cyanide. That would have been fine. That would have been signed. But that wasn't true and that was written in with full knowledge that it wasn't true.

Commissioner Iverson asked and the other one was what?

Mr. Bennett answered the other one was a release that probably in the neighborhood of 80,000 gallons, 25 lbs. of cyanide. It was undercut and it was written in as 8,100 gallons and 7 lbs. of cyanide. I found the spill. I stopped the spill. I reported the spill. I initiated the cleanup for the spill and that spill was precisely the reason I took issue with the first spill.
Commissioner Iverson asked you indicated that - the report says how many gallons? 8,100?

Mr. Bennett stated that's correct.

Commissioner Iverson asked and how much was actually released according to you?

Mr. Bennett answered I could - with all corroboration I could show 12,000 gallons at least, 80,000 gallons probably, in that neighborhood. I believe it ran for 24 hours. That's what I was advised prior to this report being written up, prior to this being reported.

Commissioner Iverson asked 80,000?

Mr. Bennett stated yes sir.

Commissioner Iverson asked so there's a zero missing in what the report is according to what you think. You had indicated the report says 8,100?

Mr. Bennett answered yes.

Commissioner Iverson stated o.k., thank you.

AC Coyner stated procedurally I guess we could ask NDEP to give a comment now or ask them to take Mr. Bennett's reports and report back to us on it and investigate further. Does the Commission have an opinion? Leo would you like to talk? All right. Thank you Mr. Bennett. Stand by we might have you back up.

Leo Drozdoff, Chief of the Bureau of Mining Regulation and Reclamation, stated as this isn't an action item, what I'd like to do here is just give you a little bit of background as to what the Division's actions regarding Mr. Bennett's allegations have been over the course of the last two years. I'm going to be referring to several of these documents in this package. I think these are germane to the issue. And, again, it's just an attempt to try to give you a complete picture of what we were faced with and what we've done.

Mr. Bennett phoned our office on June 12, 1997 and essentially laid out what he laid out for your here today that he was aware that there was two spill reports that were filed incorrectly and knowingly. The first one earlier in 1997 was probably less of an issue for him. What he basically described was that the report was filed as a spill, that is it contained cyanide and he felt that the process solution was not process solution, but rather water, a non-reportable matter. The second matter had to do with a May spill where again I think articulated what he told us which was that there was a much larger spill that occurred than was reported and at the time, you know, he said that he was very concerned because that was a knowing violation and that the area of disturbance, the amount of impact to the environment was a lot larger than reported. That's probably the one that we focused our attention on. To support his verbal discussions with our office, about a week later, on the 17th, he provided us a written summary of the events. We did take those matters very seriously. He told us that there was folks that could support his contention out at the site that the area of disturbance was a lot larger than noted.

So what we decided to do was, in fact, do a formal investigation. We opened up an investigation with the Attorney General's office and met with the A.G. on the 18th of June and then on the 19th of June we went out to the site. We gave the mining company (Newmont Twin Creeks) we gave them about a day's notice to make sure that the people that we needed to talk to would be available. And we sent senior people. We sent our branch supervisor and our lead inspector, combined 14 plus years of experience. We focused on three areas. We focused on the internal reporting. We focused on talking to the folks that we were given names of that could corroborate the story and we focused on walking the site because, as Mr. Iverson noted, if there's a zero missing, that's an order of magnitude. The allegation was that the area disturbed would be a lot larger than it was. Just to cut to the chase, we were simply unable to corroborate that. We did look at the internal reporting. We did speak to the folks that we were given the names of. This is specifically outlined in an interoffice memorandum to our Attorney General that's date stamped July 17th '97 where we interviewed about a dozen officials, about 10 officials, out at the mine site. We did walk the mine site and the area of disturbance. What we were looking for was simply, the allegation was that there was process solution a lot further than anticipated and so we looked at the area that was "reported" versus was there any odd looking things associated with that? You know, was there discoloration or plants dying? Was there evidence

of recent earth work? And we didn't find that.

So, again, what we did find was that we did think that the spill reporting requirements that Newmont basically articulated in their spill document to us says that they'll get on things immediately. And what our investigation did find and I'll refer you to a July 17th letter to Newmont. We did find that things were a little bit slower than they should have been in that measures should have been taken immediately. This spill happened at night as opposed to the next morning. We did find that it would have been better had they been able to articulate the photographs or etc. exactly at that time. It would have made for less of a point of consternation as opposed to the next morning. And these are things that the company did agree to essentially with the Division as part of their spill prevention procedures. And last, we would have liked to seen that a more senior person communicate with the Division as opposed to a clerk. But, these essentially would warrant what it got - a sort of a warning letter and that's we felt the appropriate response to the investigation. We've written letters to Mr. Bennett as well as the Attorney General and there's actually one from the Governor as well that would welcome any new information and we're willing to reopen or investigation and the like, but I do want this Commission to know that in my opinion with certainty the Division acted, took these matters or these allegations seriously, acted on them in a quick time frame and we believe the record is clear and we just want the Commission to be aware of what we've done.

AC Coyner stated thank you Leo. Questions from the Commission for Leo? What is the will of the Commission? Any need to pursue the item further or call for further investigation, report, action?

DAG Mischel stated at this point the only choice is to agendize it for the next meeting if you want to.

AC Coyner stated well, o.k., I'm sorry. Action was the wrong choice of words.

Commissioner Johnson stated simply, I had received a fax sometime earlier I suppose, in March, from Mr. Bennett, and my machine only delivered the final page. I have not seen any of his actual statements of proof of this. I hear his opinions and he's expressing his personal knowledge, but the information that would document this I haven't seen. The corroboration independent of his accusations show these numbers to be known to be false and I haven't seen any of that information and I understand the Division has looked at this and, again, I see the handout here and that's essentially communication of what they did, but I don't have the information there.

AC Coyner stated I have a procedural question, Leo. Is there any back-check that ever goes back, excuse me I'll give you time to come up, that would go back and look at a filed report and ascertain whether the person's name, who was signed on the report actually filled it out. I mean, is there a way to - a quality check type procedure to find if there might be falsification? Have we ever had any other reports of falsified report, ever?

Mr. Drozdoff answered, the answer to the last question in so far as to reports to the Mining Bureau, is no. Typically what we rely on is reports that are generated from the company to the agency, to DEP. In this case, we did look at the internal, if you would, correspondence of I should state, Mr. Johnson, what I have presented, the only other information I can present to you from Mr. Bennett would be letters that are probably similar to the one you've got. I don't have any copy of any report. That would be some of the type of new information that I certainly act on. What we did look at, though, was the reports, the internal reports that the company does file. We normally don't do that, but in this case, based on the allegation we did. So as far as a quality check, again, it's at our disposal to do what we did. The need to do it is generally rare, but it's at our disposal to do it.

AC Coyner stated so I guess the correct conclusion was there's no pattern to it at this point in time of falsification reports. We don't have any other evidence that it's been happening.

Mr. Drozdoff stated no, absolutely not.

AC Coyner stated o.k., any further questions, comments? We do appreciate you coming forward Mr. Bennett with

the information and are welcome and anxious to hear any new information you might bring to the subject in the future. We appreciate your taking your time to come and talk to us. Any other public comment today to bring before the Commission?
Commissioner Crawforth stated I'd just take a minute and introduce the Deputy Director of the Department of Conservation and Natural Resources. The distinguished gentleman in the dark coat sitting next to Allen Biaggi in the back. Those of you who do not know, Freeman Johnson. And I would ask a question of counsel, maybe for a future meeting. Again, new kid on the block, but it strikes me when we're talking about settlement, we cannot raise the ante on settlement violations, we can only send them back to a negotiating table, which I appreciate and understand, I'm sure that's what's right because we wouldn't want to offend the offending party, if you will. It seems to me we ought to lay the same standard on reducing them. Because you have two parties in the negotiation and so I wonder how then we offend the Department I guess. Am I too new on the block here to understand that, or is that just past practice or maybe something you could look at and advise us on?

DAG Mischel answered no. That's a legitimate question. The only difference between the private party that has a right to a hearing in lieu of settlement and that's why you would send it back, if they didn't agree to that dollar amount. The Division's decisions are reviewable by the Commission on the Air Quality matters so that we're just kind of circumventing - if you sent it back for negotiation and the Division came back with a higher number than the Commission wanted, you might go through the process a couple of time. But that's something - I mean is it policy this Commission could certainly do as you state there are two separate parties that have negotiated that fine and I think Eric always does a good job explaining the rationale behind the fine. But you could send it back for renegotiation for a lesser number if that's your will but you do have ultimate decision making authority over that fine, that violation on air quality issues.

Commissioner Crawforth stated o.k., thank you.

DAG Mischel asked does that make sense?

Commissioner Crawforth answered yes. I didn't know (inaudible) . . .

DAG Mischel stated you cannot impose a fine on the appellant without a hearing that they haven't agreed to.

Commissioner Crawforth stated but you can impose one on the other appellant without asking them.

DAG Mischel stated they're not paying a fine.

Commissioner Trenoweth moved for adjournment.

Commissioner Iverson seconded the motion.

AC Coyner adjourned the meeting at 3:50 p.m.

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Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: April 9, 1999

Location: Nevada Commission on Tourism - CC

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	Overview Document	CAPP Overview of Proposed Regulation LCB No. R121-98	98007	Yes
2	Resolution Dated 03/23/99	NV Board for the Regulation of Liquified Petroleum Gas	98007	Yes
3	10 Page Letter Dated 03/31/99	City of Henderson Recommendation to Amend Proposed Regulation	98007	Yes
4	2 Page Letter on NV Propane Dealer's Association Letterhead	Issue: Risk Management Plan Summary and Position	98007	Yes
5	1 Page Letter Dated 07/13/98	TRPA - Comments	96015	Yes
6	1 Page Letter Dated 04/09/99	Dept. of Comprehensive Planning Support of Resolution Emission Reduction Measures - LV Valley	Agenda Item V	Yes
7	1 Page Letter Dated 04/08/99	Dept. of Motor Vehicles Support of Resolution Emission Reduction Measures - LV Valley	Agenda Item V	Yes
8	1 Page NDEP Document	Proposed Amendments to R121-98	98007	Yes
9	1 Page Memorandum Dated 01/15/99	Division of Emergency Management Request to Change NAC 445A.347	1999-06	Yes
10	1 Page Letter Dated 4/7/1999	Nevada Mining Association - Pete Bodily letter dated April 7, 1999 to Jolaine Johnson, Chief of the Bureau of Air Quality supporting temporary petition 1999-07.	1999-07	Yes
11	2 Pages of Section 85 of R-121-98	Bureau of Waste Management proposed amendments to Section 85 of Petition R-121-98 (98007)	98007	Yes
12	1 Page letter dated 4/9/1999	Notes for State Environmental Commission regarding MTBE, by Micheal Naylor, Director of Clark County Health District Air Pollution Control Division	Agenda Item VI	Yes

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: April 9, 1999

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#	Item	Item Description	Reference Petition #	Accepted Yes/No
13	1 Page letter dated 4/9/1999	Suggested Amendments to the Proposed Resolution of the State Environmental Commission for Air Quality Improvement Evaluation in Clark County by Michael Naylor, Clark County Health District Air Pollution Control Division	Agenda Item V	Yes
14	3 Page presentation report	Presentation on the State Visibility Standard as prepared by the Nevada Division of Environmental Protection, Bureau of Air Quality dated April 9, 1999	Agenda Item IV	Yes
15	3 Page web report	California Governor Gray Davis Executive Order D-5-99 regarding MTBE	Agenda Item VI	Yes
16	37 Pages	Gregory Bennett correspondence relating to a spill a Newmont Mine Chronology of Spills - January 18 Spill May 2 Spill	Public Comment	NO