NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF April 20, 2000

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
APRIL 20, 2000

The Nevada State Environmental Commission will conduct a public hearing commencing at **10:00 a.m. on Thursday, April 20, 2000**, at the Grant Sawyer State Office Building, located at 555 East Washington, Room 4412, **Las Vegas**, Nevada.

This agenda has been posted at the Clark County Library, Grant Sawyer State Office Building, and the Clark County Commission Chambers in Las Vegas, the Washoe County Library in Reno, 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 21, March 29 and April 6, 2000 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 16, 1999 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. Petition 1999-08 (LCB File R-070-99) is a permanent regulation amending NAC 445A.055 through 445A.067, the laboratory certification program. The existing regulations are proposed to be repealed and supplanted with the standards of the National Environmental Laboratory Accreditation Program. The amended regulations provide for definitions, scope of accreditation, categories of certification, laboratory certification criteria, certification requirements, and proficiency testing requirements. The regulation adopts by reference many of the provisions that have been listed. Fees in NAC 445A.066 are retained but are amended to reduce the fee for toxicity bioassays from $ 400 to $ 125. All other provisions from NAC 445A.055 to 445A.067 are proposed to be repealed. This regulation was previously publicly noticed for the September 9, 1999 hearing which was published on August 10, August 18 and August 26, 1999.

B. Petition 2000-04 (LCB File R-019-00) is a permanent regulation amending NAC 444.850 to 444.8746. The proposed petition adds new language and amends NAC 444.8633 and 444.8634 to allow the Division of Environmental Protection to issue U.S. EPA identification numbers to hazardous waste generators, transporters and facilities in Nevada.

C. Petition 2000-05 (LCB File R-031-00) is a permanent regulation amending NAC 486A.100 to 486A.250, the alternative fuel regulations. The proposed regulation adds a definition for "Ultra low-emission vehicle" (ULEV) that meets the federal standards for ULEV vehicles. NAC 486A.140 is proposed to be amended to limit designation of alternative fuels if a designation would adversely impact an Air Quality Implementation Plan. NAC 486A.160 is proposed to be amended to allow operators of public fleets to obtain "ultra low-emission vehicles" as certified by the U.S. EPA. NAC 486A.180 is proposed to be amended to exempt hybrid electric vehicles from operating in areas where alternative fuels are limited. This section is also proposed to be amended to allow for the leasing of vehicles to meet the requirements for meeting the alternative fueled vehicle quotas. NAC 486A.200 is proposed to be amended to include ULEV vehicles to be exempted by the acquisition by the Director of the Department if these types of vehicles are unavailable. The section is also proposed to be amended to require to limit exemptions if the action would adversely affect an Air Quality Implementation Plan. NAC 486A.230 and 486A.250 are proposed to be amended to reflect changes in addresses and zip codes.

D. Petition 2000-06 (LCB File R-054-00) proposes to permanently amend NAC 459 by adding new provisions establishing a Voluntary Cleanup Program for eligible contaminated properties. The proposed regulations establish that eligible parties must comply with the "consultant certification" NAC 459.970 to 459.9729, establishes an application process for eligible properties including the type of information required by the application, fees for processing and review of applications are defined and provisions for remedial agreements are defined. The proposed regulations also define financial capability and responsibility for eligible parties, and a process for eligible parties upon completion of remediation activities to receive a full or partial certificate of completion.

E. Petition 2000-07 (LCB File R-055-00) is a permanent regulation amending NAC 445B.400 to 445B.774, the air quality regulations governing the Inspection and Maintenance (I/M) programs in Clark and Washoe Counties. The proposed regulation adds a requirement to inspect the system that monitors the proper operation of a motor vehicle's emission control onboard diagnostic (OBD) system for model year 1996 and new motor vehicles. A definition of "certified onboard diagnostic system" is defined. This regulation is proposed to become effective on January 2, 2001.

III. Settlement Agreements on Air Quality Violations * ACTION

A. Granite Construction Company; Notice of Alleged Violations # 1424 & 1425
B. SMI Joist; Notice of Alleged Violation # 1369
C. Nevada Power Company; Notice of Alleged Violations # 1394 to 1404

IV. Exemptions to NAC 486A - Alternative Fuel Regulations * ACTION

A. Request by the City of Mesquite for an extension to compliance with the NAC 486A regarding alternatively fueled public fleets.

B. Request by the Clark County Health District for an exemption pursuant to NAC 486A.135(3) for year-round use for the summers of the years 2000, 2001 and 2002.

V. Adoption by Commission of Form #4 and #5 Regarding compliance with Assembly Bill 486 of the 1999 Session (NRS 233B, the Administrative Procedures Act). These forms relate preparation and appeal of the Small Business Impact Statement. *** ACTION**

VI. Discussion and Action on a due process Strategy for Collection of Bad Debts by the State Environmental Commission *** ACTION**

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

VIII. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (775) 687-4670, extension 3118. The public notice and the text of the proposed permanent regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at **http:/www.leg.state.nv.us.** In addition the State Environmental Commission maintains an Internet site at **http:/www.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 14, 2000.**

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **10:00 a.m. on Thursday, April 20, 2000**, at the **Grant Sawyer State Office Building, Room 4412**, located at **555 East Washington Avenue, Las Vegas**, Nevada.

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

1. Petition 1999-08 (LCB File R-070-99) is a permanent regulation amending NAC 445A.055 through 445A.067, the laboratory certification program. The existing regulations are proposed to be repealed and supplanted with the standards of the National Environmental Laboratory Accreditation Program. The amended regulations provide for definitions, scope of accreditation, categories of certification, laboratory certification criteria, certification requirements, and proficiency testing requirements. The regulation adopts by reference many of the provisions that have been listed. Fees in NAC 445A.066 are retained but are amended to reduce the fee for toxicity bioassays from $ 400 to $ 125. All other provisions from NAC 445A.055 to 445A.067 are proposed to be repealed. This regulation was previously publicly noticed for the September 9, 1999 hearing which was published on August 10, August 18 and August 26, 1999.

2. Petition 2000-04 (LCB File R-019-00) is a permanent regulation amending NAC 444.850 to 444.8746. The proposed petition adds new language and amends NAC 444.8633 and 444.8634 to allow the Division of Environmental Protection to issue U.S. EPA identification numbers to hazardous waste generators, transporters and facilities in Nevada.

The proposed permanent regulation is not anticipated to have any significant adverse short or long-term economic impact on Nevada businesses. The proposed regulation should make it easier for affected businesses to comply by simplifying the requirements to secure a hazardous waste generator, transporter and facility number. 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.

3. Petition 2000-05 (LCB File R-031-00) is a permanent regulation amending NAC 486A.100 to 486A.250, the alternative fuel regulations. The proposed regulation adds a definition for "Ultra low-emission vehicle" (ULEV) that meets the federal standards for ULEV vehicles. NAC 486A.140 is proposed to be amended to limit designation of alternative fuels if a designation would adversely impact an Air Quality Implementation Plan. NAC 486A.160 is proposed to be amended to allow operators of public fleets to obtain "ultra low-emission vehicles" as certified by the U.S. EPA. NAC 486A.180 is proposed to be amended to exempt hybrid electric vehicles from operating in areas where alternative fuels are limited. This section is also proposed to be amended to allow for the leasing of vehicles to meet the requirements for meeting the alternative fueled vehicle quotas. NAC 486A.200 is proposed to be amended to

include ULEV vehicles to be exempted by the acquisition by the Director of the Department if these types of vehicles are unavailable. The section is also proposed to be amended to require to limit exemptions if the action would adversely affect an Air Quality Implementation Plan. NAC 486A.230 and 486A.250 are proposed to be amended to reflect changes in addresses and zip codes.

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. Public agencies will receive a benefit of having more options in acquiring vehicles to meet the requirements of the alternative fuels program. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. Chapter 486A of the NAC mirrors the federal U.S. Department of Energy's Energy Policy Act of 1992 and 1996 amendments. 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.

4. Petition 2000-06 (LCB File R-054-00) proposes to permanently amend NAC 459 by adding new provisions establishing a Voluntary Cleanup Program for eligible contaminated properties. The proposed regulations establish that eligible parties must comply with the "consultant certification" NAC 459.970 to 459.9729, establishes an application process for eligible properties including the type of information required by the application, fees for processing and review of applications are defined and provisions for remedial agreements are defined. The proposed regulations also define financial capability and responsibility for eligible parties, and a process for eligible parties upon completion of remediation activities to receive a full or partial certificate of completion.

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 regulation should be beneficial to the public, businesses and regulated communities by providing an additional avenue to clean up contaminated properties. The program provides incentives to remediate property by removing liability of future landowners and lenders. 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 is a voluntary program which, if an individual wishes to participate, requires an application fee. The fee covers the costs by the Division to review the application and determine the application's eligibility to participate in the program. It is unknown as to the amount of revenues to be received from the application fee.

5. Petition 2000-07 (LCB File R-055-00) is a permanent regulation amending NAC 445B.400 to 445B.774, the air quality regulations governing the Inspection and Maintenance (I/M) programs in Clark and Washoe Counties. The proposed regulation adds a requirement to inspect the system that monitors the proper operation of a motor vehicle's emission control onboard diagnostic (OBD) system for model year 1996 and new motor

vehicles. A definition of "certified onboard diagnostic system" is defined. This regulation is proposed to become effective on January 2, 2001.

The proposed regulation will have a one-time economic impact on the inspection stations that are regulated under this program. There are approximately 400 stations in Clark and Washoe counties, including automotive dealerships and fleet stations. New equipment costs are estimated at about $ 5,000 per station. It is expected, however, that many of these stations already own a computer that can be used with existing equipment, thereby reducing the cost for capital investment to approximately $ 2,000 for the necessary OBD system equipment. The proposed regulation for On Board Diagnostics (OBD) may in the long term result in the replacement of existing tail pipe testing, thereby reducing station equipment and maintenance costs. The proposed amendments will not have an economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. This amendment duplicates in part the U.S. EPA final rule for Inspection and Maintenance Program Requirements for On-Board-Diagnostics Checks; Amendment to the Final Rule (May 4, 1998 Federal Register, Volume 63, No. 85, pages 24429-24434) 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.

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

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

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

A copy of the regulations to be adopted or amended will be on file at the State Library, 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 has 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. **The regulations will be available on the web site on April 3, 2000.** It is 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.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on **April 14, 2000**.

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

# # # #

STATE ENVIRONMENTAL COMMISSION
Meeting of April 20, 2000
Grant Sawyer Office Building
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:
Melvin Close, Chairman
Mike Turnipseed, Vice Chairman
Alan Coyner
Demar Dahl
Mark Doppe
Fred Gifford
Joseph L. Johnson
Roy Trenoweth
Paul Iverson
Robert Jones
Terry Crawforth

MEMBERS ABSENT:
None

Staff Present:
Deputy Attorney General Sara Price - Deputy Attorney General
David Cowperthwaite - Executive Secretary
Sheri Gregory - Recording Secretary

Chairman Close called the meeting to order 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 16, 1999 meeting.

Commissioner Turnipseed stated that the minutes showed that Chairman Close was present and acting as chairman; however, on pages 16, 17, 19 and 34 refers to Chairman Turnipseed. He wanted the minutes to reflect that he was sitting as a Commissioner and not as Chairman. He moved for acceptance of the minutes as amended.

Commissioner Johnson seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item II. Regulatory Petitions**

(Petition 1999-08 (LCB File R-070-99) is a permanent regulation amending NAC 445A.055 through 445A.067, the laboratory certification program. The existing regulations are proposed to be repealed and supplanted with the standards of the National Environmental Laboratory Accreditation Program. The amended regulations provide for definitions, scope of accreditation, categories of certification, laboratory certification criteria, certification requirements, and proficiency testing requirements. The regulation adopts by reference many of the provisions that have been listed. Fees in NAC 445A.066 are retained but are amended to reduce the fee for toxicity bioassays from $ 400 to $ 125. All other provisions from NAC 445A.055 to 445A.067 are proposed to be repealed. This regulation was previously publicly noticed for the September 9, 1999 hearing which was published on August 10, August 18 and August 26, 1999.)

Tom Porta with the Bureau of Water Quality Planning with NDEP introduced himself and Dr. Jack Ruckman with the State Health Division's Bureau of Licensure and Certification. He stated the regulations before you today

address laboratory certification concerning water quality analysis. Two workshops were conducted: one in Reno, one in Las Vegas. Comments were received and a majority of those comments were incorporated into the regulations before you today.

Because there are many technical references in these amendments, with your permission Mr. Chairman, I'd like to give a brief history of laboratory certification followed by a summary of the 46 sections contained in those regulations.

Nevada Revised Statute 445A.428 gives the authority to the State Environmental Commission to provide standards for laboratories performing water analysis pursuant to the Clean Water Act. Nevada Administrative Code 445A.055 through 067 are the implementation regulations for laboratory certification.

NDEP has contracted with the Bureau of Licensure and Certification to administer the laboratory certification program for us. NDEP contracted this work to coordinate with the existing Safe Drinking Water Act laboratory certification program administered by the Bureau of Licensure and Certification to optimize our State resources. While laboratory certification regulations have been effective in Nevada, issues have arisen with other states. Some states have no certification program or less equitable certification programs. In other states, the problem has been additional or duplicative certification requirements which have added unnecessary time and cost to laboratory certification. The inconsistency with laboratory certification programs among states prompted the formation of the National Environmental Laboratory Accreditation Conference or NELAC in 1995.

NELAC included federal, state and private sector representatives who determined appropriate national standards and methodologies for all environmental laboratory work and designed the National Environmental Laboratory Accreditation Program or NELAP. NELAP continues its work today by revising standards and methodologies as new scientific information becomes available.

The regulation amendments being considered today were modeled after the NELAP program and contain national standards which ensure consistent, quality data regardless of the state in which the analysis is performed.

He gave a brief summary of each section contained in the regulation amendments. The first section, section 1 is a declaratory statement that sections 2 through 42 are amendments to the Nevada Administrative Code 445A, the water quality regulations.

Section 2 states the new definitions contained in sections 3 through 23 have the meaning ascribed to them for these regulations.

And then in sections 3 through 23 are the definitions that are used in the laboratory certification program beginning with "Accuracy" and ending with the definition for "Standards."

Section 24 is the adoption by reference of the actual NELAC standards.

The next three sections 25, 26 and 27 are adoption by reference of 23 technical references, manuals and specific methods used in performing various water analysis.

Section 28 addresses circumvention and resolution of conflicting requirements.

Section 29 identifies the four disciplines: chemistry, whole effluent toxicity, microbiology, and radiochemistry, which a laboratory can be certified under. It also provides additional approved methods of testing reference documents. And lastly, section 29 allows for alternative testing methods to be approved.

Section 30 identifies certification categories or analytes under a discipline for which a fee may be charged.

Section 31 outlines the requirements of the Nevada State program and Section 32 outlines the requirements of the NELAP program.

The only difference between the two programs is that under NELAP a certified auditor must perform the on-site inspection. Both certification programs must comply with the NELAP standards and will give laboratories the option to participate in either program. For instance, a city or county laboratory may opt for the State program because they only perform in-house water analysis and may not be concerned with reciprocity in other states.

Section 33 outlines the application requirements for certification and the minimum elements for a complete application.

Section 34 is a requirement for the laboratory to notify the Division of a substantial change, such as a change in ownership or location.

Section 35 are the proficiency testing requirements which are blind audit samples obtained by a laboratory for analysis. A proficiency test is required for each category and analyte every six months. The results are submitted to the State for verification and a laboratory must pass two out of three proficiency testing rounds in order to maintain their certification.

Commissioner Johnson asked is that information public information?

Mr. Porta answered yes. If a laboratory fails two nonconsecutive rounds, their certificate is suspended and the suspension will be lifted upon satisfactorily analyzing an additional proficiency test sample requested from the Division. If a laboratory fails two consecutive rounds, their certificate is suspended until satisfactorily analyzing the next two consecutive rounds of proficiency testing. Typically, this is about a two-month period, or in fact, a two-month suspension. Failing three rounds of proficiency testing will result in revocation of a certificate for the analyte until a laboratory can satisfactorily analyze the next two proficiency tests and then reapplies for certification for that analyte in accordance with the requirements listed in section 38. So they don't lose the certification for the entire lab, just for that specific parameter.

Section 36 requires laboratories to adopt quality assurance manuals and adhere to them.

Section 37 contains the on-site audit requirements. Upon request, during an audit, the laboratory may be required to perform a proficiency test for an analyte, provide records, submit to interviews with employees and provide other information necessary to determine compliance with the standards. The Division shall inspect each laboratory once every two years or if it is a new laboratory seeking certification, the Division shall do an inspection within 30 days after receiving a complete application. Section 37 also provides for more frequent inspections for such things as complaints or suspected fraud. It should be noted that all inspections are unannounced unless it is determined that an unannounced inspection is necessary, particularly in a case of fraud. Right, excuse me, they are announced. The unannounced inspections take place if we suspect wrong doing or fraud. The Division shall prepare an inspection report within 30 days. If deficiencies are found, the laboratory shall prepare a corrective action plan and submit it to the Division within 30 days after receiving the inspection report.

Section 38 gives the time under the NELAC standards before a laboratory may reapply for certification after revoking a certificate.

Section 39 identifies the conditions under which a certification may be renewed. All certificates expire on June 30th of each year and the Division must mail a notice of renewal no later than June 1st to each lab.

Section 40 outlines the requirements for displaying a certificate and for surrendering it. This section also describes what must be listed on that certificate.

Section 41 allows for a certified laboratory who does not possess a certain analyte certification to contract with another laboratory who does possess the certification.

Section 42 contains a list of the conditions for which a certification may be denied, revoked or suspended by the Division. The list includes making false statements, failing to report required information, and use of methods which have not been approved.

Section 43 amends 445A.057 of the Nevada Administrative Code concerning the certification of out-of-state laboratories and adds language to incorporate the new sections 2 through 43 which have just been summarized.

Section 44 amends Nevada Administrative Code 445A.066 and reduces the fee for toxicity bioassays from $400 to $125 and clarifies that the fee for certification must be paid before a certificate can be issued.

Section 45 amends NAC 445A.067 to incorporate the new sections 2 through 43 publications.

And, finally, section 46 amends NAC 445A to repeal the existing and conflicting, redundant laboratory certification regulations that we have.

Small business questionnaires were mailed out to each of our 45 regulated laboratories concerning economic impact on the proposed regulations. We received two responses: one lab indicated no impact and one out-of-state laboratory indicated an impact because of costs associated with on-site audits.

I contacted SVL Analytical this week who thought these regulations would pose an additional cost. I explained that under the NELAP program, which we are adopting, if his laboratory was audited by NELAP accredited auditors, he would not need additional on-site inspections from other NELAP participating states. I further explained that Nevada should have NELAP accredited auditors by the end of this year. He stated that he was unaware of this benefit and he could support the regulations as it does reduce the costs incurred by out-of-state labs. It should be noted that on-site inspections were required under the existing regulations and the proposed regulations do not increase or decease the frequency of those audits.

And finally, we believe these amendments will resolve equity issues with other states and provide a level playing field for laboratories competing in the market place. I'd be happy to answer any questions you might have.

Commissioner Jones stated about four or five years ago a major issue erupted between the private sector and the State lab process because they were competing with labs and I'm glad to hear that you've done the survey with that and you have the private sector involved in that. They have no difficulty with this?

Mr. Porta answered right.

Commissioner Jones asked and we're not in a competing position for labs?

Mr. Porta answered no. It really levels the playing field for everyone now.

Commissioner Jones stated perfect. Okay.

Chairman Close stated the testing for, the recertification or certification, the labs can analyze two out of three specimens correctly. I mean that's not a very good average with that 66 percent I mean how did you feel about

allowing a lab to continue its practices of analyzing sensitive material maybe if they can only do it right two out of three times?

Jack Ruckman explained the proficiency testing program is something that they do once every six months unless they do have a problem. If they have a problem and usually if they miss it's by a tiny amount. Most of the misses are very close because their quality assurance program is of necessity a very rigorous program. But, it doesn't matter whether they miss by an inch or by a mile, we count it as a miss and they then must ask of the proficiency test provider the opportunity to do another test. They need to give us an indication of what their corrective action is. What the problem is, what they deem is their corrective action and then they prove that corrective action by doing another proficiency test. And if they miss that, they will have then missed three and that will revoke it. So, it really is a more rigorous program than what it appears there.

Chairman Close asked if they miss two out of three then they're re-licensed or do you go back and test them again?

Dr. Ruckman answered if they miss two out of three, then they're suspended.

Chairman Close clarified one out of three.

Dr. Ruckman explained if they miss one out of three, we give them the opportunity of doing another test. If they miss that second one, they will have now have missed two out of three and they're suspended. So, just missing one is the trigger, so to speak. And everything else is following a process of seeing if they really have the capability or whether it was a fluke. The program is set up so that if they miss, that miss may be a statistical miss and it isn't necessarily true that the laboratory was at fault. So, it's possible to have 5 percent of the time for a laboratory that's totally in control to still miss and so we have a little leeway for that. But if they miss we treat it as if it were not a statistical problem, but ask them to investigate all of their data to see if they can find a reason for that miss, give us a corrective action report, prove it with another proficiency test. All of the proficiency tests, whether they're in the six-month period of time, or whether they're consecutive trying to show that they have resolved any problem are treated the same so that you don't take a miss and replace it with a hit. So the record remains whatever historically they have done.

Chairman Close asked these proficiency tests are given every six months?

Dr. Ruckman answered every six months.

Commissioner Johnson stated I used to be an analytical chemist so the issue of instrumental variability when you're talking about a miss in this case, you're talking about a value that's outside of the accepted distribution. We aren't talking about a drug test being positive or negative, we're talking about an absolute number that would be 100 and whether it's 91 or 89 may make the difference between a pass and a fail.

Dr. Ruckman stated that's right.

Chairman Close called for further questions from the Commission and the public. Since there were no further questions he closed the period of public comment and called for a motion.

Comm. Turnipseed moved for approval.

Commissioner Jones seconded the motion.

Commissioner Doppe stated I admire the Division. As a private business person, I'm seldom consulted when a regulating body wants to change a rule, raise a fee, or do anything else like that. I can't recall the last time the city

or county called me up when they wanted to change the way they were going to impose a regulation so I appreciate the way that the Division consistently acts in a user friendly manner toward the group that it regulates. It goes out to them, explains to them, I can't recall when I was even consulted never mind if I had a comment that they actually phoned me back and explained to me the way it was going to work so I appreciate the way the Division does its job.

Chairman Close called for further comments. Since there were no further comments he called for the vote.

The motion carried unanimously.

Commissioner Coyner stated I would like to make a comment about analytical laboratories just for the Commission's information and what I'm struck by is the detail and the well thought out nature of this regulation with regards to laboratories that analyze water and things associated with water. My comment involves laboratories that involve themselves in the analysis of rocks and minerals. In contrast to these regulations, the laboratories in the State that analyze rock samples and so forth for precious metals and other quantities are totally unregistered and have no certification process. And I bring that to your attention because I am a member of what's being called the Mining Fraud Task Force. We continue to look in this State for those operators and entities that would perpetrate fraud upon the public and oftentimes that fraud is tiered off of analytical results from mining properties or other properties that are false or fraudulent and those labs continue to be a problem in this State. So, my advice to the Commission and my thought to the Commission is that maybe that's something that needs to be taken and if we take a look at it, I don't know if that's in our purview, but I bring it to your attention as a problem that continues to exist in our State. Thank you.

Dr. Ruckman stated I know that Mr. Coyner's expression has nothing to do with the reason that I'm actually here, but I had an interesting experience not too long ago where I had some acquaintances send a sample to one of the laboratories that they were looking for precious metals in that particular material. The people came back to me and said, "These analyses do not corroborate all of the rest of the work that we've had. Could you look into it for us?" So I called the laboratory and began to ask them questions the same as we would in an environmental laboratory. I wanted to know what their quality assurance program was, what they used for standards, how they documented what they were doing and they had no documentation on their standards. I asked them how then that they knew if the standard was correct. "Well I do it so often I just do it in my head." I asked them some other questions, pretty soon the (inaudible) was quiet and he said, "I need to get back to you." I gave him my phone number. He got back to me. He said, "I made a dilution error" and after he read his analyses of his own data, then the data showed that the original assays that the people had were close. So, I join with you indicating that there is a need for doing something to help that industry feel that their laboratory analyses are correct.

Chairman Close stated that may be something that we want to look into. I don't know if it's our purview or the purview of the legislature to look into that.

Commissioner Iverson stated Mr. Chairman as you realize I came from Minerals, spent 13 years there in the same department that Alan was in. About 10 years ago we went through the same conversation. It was a major, major, major issue in the State. Hundreds and hundreds of thousands, if not millions of dollars being lost on wonderful labs that were showing great amounts of titanium and gold in dirt, so, not titanium, but platinum and gold in nothing but worthless dirt. A lot of that problem ended up in these telephone centers where people were calling, a big issue and we went through and labs now, I thought, we changed the law so that they had to put a sticker on every sample that said, "Go out and get at least a couple of more samples, assays before you purge this." I thought that sticker had to be on everything. But, it is a real issue with good labs and I feel for Alan trying to find all of the bad ones because one of the biggest problems we had down here at that time was they guy running the lab out of his garage on the middle of town. And using that as an investment tool for lots of people to find platinum in anything you brought in to him. So, it's an issue that's been going on for a long, long, long time. Before this Commission gets involved with it, Alan probably could fill up that table with books on all of the information and data that went into

it. In fact, Assemblyman Hettricks was the one that started the move because he had some constituents in his district that had been swindled out of some money because of an assay.

Chairman Close moved to **Agenda Item II.B. Petition 2000-04.**

(Petition 2000-04 (LCB File R-019-00) is a permanent regulation amending NAC 444.850 to 444.8746. The proposed petition adds new language and amends NAC 444.8633 and 444.8634 to allow the Division of Environmental Protection to issue U.S. EPA identification numbers to hazardous waste generators, transporters and facilities in Nevada.)

Jim Trent with the Program Development Branch of the Bureau of Waste Management stated with this petition, the Bureau of Waste Management is proposing to revise the State hazardous waste regulations so that NDEP staff in Carson City may issue EPA identification numbers in lieu of EPA Region IX in San Francisco. A workshop to solicit public comment on the proposed regulations was held on February 9, 2000, in Carson City. Five people attended the workshop. Only a few questions were asked. The proposed regulations and minutes from the workshops were also posted on the NDEP website and were available for review and comment via the Internet. One e-mail question was received from NDOT and was answered in the minutes.

The federal hazardous waste regulations that Nevada has adopted by reference require hazardous waste generators, transporters and facility owners and operators meeting certain requirements to notify EPA and obtain identification numbers. These site-specific identification numbers facilitate the "cradle to grave" tracking of RCRA hazardous wastes. Revising our State regulations so that NDEP can issue these identification numbers will simplify the notification process for the regulated community in Nevada by allowing applicants to work directly with State staff in Carson City instead of EPA in San Francisco. It will also improve the timeliness and accuracy of our information by allowing the Bureau of Waste to update the notification data base without having to go through EPA in San Francisco.

We do receive funding from EPA under our RCRA hazardous waste grant to perform this function. NDEP will provide this notification information during normal business hours. We expect approximately 20 phone calls and 11 applications to be received per month. EPA will continue to be the after-hours and emergency contact.

Let me briefly go over the three items that actually are to be revised. Section 1 revises NAC 444 to include this paragraph which advises hazardous waste generators, transporters, facility owners and operators (the likely applicants) that information and applications for EPA identification numbers may be obtained from the Division of Environmental Protection in Carson City.

Section 2 is a technical correction which adds the newly adopted federal requirement to obtain an EPA identification number at 40 CFR 264.1(j)1 to the list of exceptions to the definition of terms that are included in our general adoption by reference of federal regulations.

And section 3, the terms "Administrator" and "EPA" in relation to the issuing of EPA identification numbers are redefined to include the director of the Department of Conservation and Natural Resources and thus allow NDEP to issue EPA identification numbers.

There's also an additional correction of section 3. An unrelated technical revision recommended by LCB to delete the redundant "Part 2" from the reference in that section to 2.120 of 40 CFR.

Commissioner Jones asked did you say that the after-hour contact was going to remain with EPA?

Mr. Trent answered it's going to remain with EPA in San Francisco. They have, currently the way it's set up, there

is a number and I believe it's actually staffed by a contractor where if there was an emergency situation where someone needed to get a most likely a provisional or one-time number, they can call anytime during the day or night or after hours and reach someone.

Commissioner Jones stated well, that presumes then a sharing of that information.

Mr. Trent answered right. There will be a sharing of information. We are in a process of finalizing a re-draft of the current MOU that we have with EPA and subsequent to the approval if it happens today of this regulation we will finalize that and the various technical details will be spelled out specifically regarding issues such as that and data sharing.

Commissioner Johnson asked this is just for issuing numbers, it's not for incident reports or . . .

Mr. Trent answered no sir. We will not be changing our rule in that regard.

Chairman Close called for further questions from the Commission and the public. Since there were no further questions he closed the period of public comment and called for a motion.

Commissioner Doppe moved to adopt Petition 2000-04.

Comm. Trenoweth seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item No. II.C. Petition 2000-05.**

(Petition 2000-05 (LCB File R-031-00) is a permanent regulation amending NAC 486A.100 to 486A.250, the alternative fuel regulations. The proposed regulation adds a definition for "Ultra low-emission vehicle" (ULEV) that meets the federal standards for ULEV vehicles. NAC 486A.140 is proposed to be amended to limit designation of alternative fuels if a designation would adversely impact an Air Quality Implementation Plan. NAC 486A.160 is proposed to be amended to allow operators of public fleets to obtain "ultra low-emission vehicles" as certified by the U.S. EPA. NAC 486A.180 is proposed to be amended to exempt hybrid electric vehicles from operating in areas where alternative fuels are limited. This section is also proposed to be amended to allow for the leasing of vehicles to meet the requirements for meeting the alternative fueled vehicle quotas. NAC 486A.200 is proposed to be amended to include ULEV vehicles to be exempted by the acquisition by the Director of the Department if these types of vehicles are unavailable. The section is also proposed to be amended to require to limit exemptions if the action would adversely affect an Air Quality Implementation Plan. NAC 486A.230 and 486A.250 are proposed to be amended to reflect changes in addresses and zip codes.)

Jim Smitherman, Mobile Sources and Planning Supervisor in the Bureau of Air Quality introduced himself and Adele Malone as the person who implements the Mobile Sources program. He stated we're here to present some proposed amendments to Nevada Administrative Code Chapter 486A which addresses vehicle fleets and alternative fuels. I'd like to start with a brief description of the program regulations as they exist today if that would be helpful to the Commission. Okay, I'll go ahead and go through those quickly. The program aims to reduce air pollution contaminants specifically emitted from motor vehicles. The regulations define alternative fuels. They authorize the administrator to designate alternative fuels. They define fleets which are state and local government fleets of 10 vehicles or more. They require fleets to acquire alternative fuel vehicles at a designated percentage rate based on total vehicles acquired each year. They require fuel use record keeping. They require annual vehicle acquisition reports. They authorize the director, which he has delegated that authority to the administrator, to exempt fleet operators from portions of the regulations for up to one year if they can't get the alternative fuel vehicles or they

can't get the fuels that they need. And there are also some provisions for violations and appeals.

There are three main proposed amendment areas that are on the agenda today. The first addresses a criteria for the designation of an alternative fuel. The second allows gasoline vehicles certified to have extremely low emissions to be substituted for alternative fuel vehicles as part of the required alternative fuel acquisitions. There are also some record keeping reporting and fuel use modifications. And then the third area deals with the director's authority to grant exemptions to fleet operators.

Our outreach - public workshops targeted fleet operators, entities involved in the fuels business and other regulatory agencies involved: Clark County, Washoe County air quality programs and the Department of Agriculture who, they perform and set fuel standards.

We held four workshops in January and March: two in Reno and two in Las Vegas. So, in January we had a Reno and Las Vegas workshop and then again in March we had a Reno and a Las Vegas workshop. Forty-two and 49 people attended; 42 in January, 49 in March. We presented our proposed amendments. We engaged in discussions with the participants and we tried to address all the concerns that were expressed. The Air Quality programs in both Clark County and Washoe County are supportive of the proposed amendments and they participated in the workshops held in their respective locations. I've got a letter from Washoe County air program that I'd like to read briefly. I believe David has a copy of that for the record. It's from Andrew Goodrich, who is the interim director. It says, "Dear Mr. Cowperthwaite, after reviewing the proposed amendments to Chapter 486A of the Nevada Administrative Code, LCB File No. R031-00 the Washoe County Health District Department Air Quality Management Division wishes to express its support. The district recognizes the importance of a viable and effective alternative motor vehicle fuels program in the pursuit of clean air in Nevada. We believe the proposed amendments provide flexibility to fleet operators as the clean vehicle technology matures to meet the challenge of clean emission vehicles. In addition, the proposed language changes allow for full implementation of adopted and proposed air quality plans ensuring the maximum effectiveness of those strategies. I would be happy to provide additional comments or answer questions if this is necessary. Sincerely, Andrew Goodrich."

We also followed the small business impact analysis process and determined that there would be no direct impact to small businesses. The proposed amendment changes will affect government fleets. We did telephone two shops that we knew of that performed conversions from conventional fuels to propane and we asked them what they thought and both of them told us that they didn't think that it would affect their business and they also told us that they didn't know of anybody else in the State doing that kind of business. So, we thought we had covered that base pretty thoroughly.

I'd like to review in detail the proposed amendments now. If the Commission will allow, I would not like to not discuss the proposed changes in sequence as they appear in the LCB draft, but rather address the most substantial changes first in those three topic areas and then move to the associated minor changes and definitions once I've established the context. Thank you. I'll follow that process three times, one for each of the topic areas.

Please refer to LCB File No. R031-00 that's under Petition C, 2000-05 tab, line one, or page 1 rather, line 18. NAC 486A.140 authorizes the administrator to designate alternative fuels which can be used in alternative fuels in the regulated fleets. The fuel must meet criteria shown on the next page subsections 2 through 4. In short, the fuel must: 1) reduce the emission of one or more regulated pollutants compared to the conventional fuel, 2) keep emissions from all regulated pollutants under the applicable limits, 3) generate emissions which are measurable using adopted test procedures, or approved test procedures, and then 4) not cause safety problems during transport and handling. We're proposing to add a fifth criteria shown on page 2, line 20, I believe that's section 4, which reads, "The administrator shall not designate a fuel as an alternative fuel if he determines that such a designation would have a significant adverse effect on a control measure or a contingency measure." This is why I started here first. This sets the context, now we need to define some terms, control measure and contingency measure, in

particular. So, if you'd turn back to page 1, line 13, section 4 "Control measure means a measure that is included in a state implementation plan to attain . . ." it should be "or maintain the national primary and secondary ambient air quality standards set forth in 40 CFR Part 50. I need to leave "contingency measure" undefined for just a second while I cover "State implementation plan" which is in section 5, line 16. "State implementation plan means a plan adopted by the State of Nevada pursuant to 42 U.S.C. subsection 7410 and U.S.C. subsection 7502." That's the Clean Air Act. State Implementation Plans or SIPS as they're called by their acronym are required by the Clean Air Act to assure EPA that national ambient air quality standards are attained or maintained. That is maintained if standards are being met and attained if the standards are not being met. Clark County, Washoe County, and the State, NDEP in particular, write and submit SIPs for EPA approval and then implement the measures as necessary. SIPs for non-attainment areas contain both control measures such as enforceable emissions limits and contingency measures, also enforceable, but which kick in if the control measures are not enough to make progress toward the attainment of the standards.
Section 3 on line 10 covers the definition of "Contingency Measure." "Contingency measure means a measure that is included in a state implementation plan." It also takes effect in the manner prescribed in 42 U.S.C. in the Clean Air Act as I had indicated. They kick in if the control measures are not enough.

In summary, why we're doing this, it's important that the State's alternative fuels in fleets program not hinder the success of any of the county's or the state's implementation plans. That's why these are proposed.

Now we skipped over a couple of minor word changes made by LCB just for clarity on page 2. I don't know if I need to go through those individually. They've substituted the word "if" for "when" a couple of times.

Chairman Close answered no.

Mr. Smitherman continued. So that pretty much brings to close topic area number 1. Topic area number 2, please refer now to section 7, which is on page 2, line 23. NAC 486A.160 requires that fleets obtain alternative fuel vehicles following percentages in the table located at the top of page 3. Fleet operators can meet the percentage requirements by obtaining new or used alternative fuel vehicles or converting vehicles already in their fleets. We are proposing that the acquisition of certified vehicles, which I'll define in a second, also count toward compliance. This language appears on page 2, lines 25 and 26. The new language is just for certified vehicles on those two lines.

Back on page 1, line 3, "Certified Vehicle" is defined. That means, ". . . a motor vehicle that complies with: 1. The standards for the control of emissions from an ultra-low vehicle . . ." excuse me, ". . . from an ultra-low emission vehicle set forth in 40 CFR subsection 88. . ." and on. Those are federal regulations setting the standards for the ultra low emission vehicles. These are vehicles that are run on gasoline, but had extremely clean tail pipe emissions.

Chairman Close asked how do you determine those vehicles? Is there a list? Is there a, are they common, ordinary road cars?
Mr. Smitherman answered yes they are. They are commercially available. Some are available in a limited supply. Some of them are still in development stages, but there are some that are available right now.

Chairman Close asked these will be cars that can be bought and purchased at a dealer's warehouse, show house?

Mr. Smitherman answered yes. One that I've seen some literature on recently is a Nissan Sentra. It's a small car, compact car that meets those emission standards and I believe it meets the emission standards on California reformulated gasoline. That's correct so, the vehicles aren't readily available. You and I couldn't just run down to the Nissan dealer and order one and get one in a week. But this is somewhat a forward-looking regulation to allow more flexibility in the vehicles that the fleets could acquire and meet the requirements.

Comm. Turnipseed asked is it the manufacturer that does the certifications?

Mr. Smitherman answered I think EPA does the certification. I know under a hood on those vehicles there's a sticker and it says it's certified to ULEV standards. EPA sets the standards.

Adele Malone explained EPA has a set of certification standards that new car manufacturers have to meet and they range from Tier I emission standards through LEV, which is Low Emission Vehicles, ULEV, well, SULEV is a California, that's Super Ultra Low Emission Vehicles. That Nissan is a SULEV. But, the new cars have to be manufactured to these certification levels. Some of them are certified on California reformulated gas and then they are called certified to a California standard. Some of them are certified on federal test gasoline and then they are 48 or 50 state certified to a certain emission standard.

Commissioner Johnson asked the regulation is written, is silent to this, whether it's certified to California formulated or to national formulated or is that something that would be developed in a MOU or should it be in here?

Ms. Malone answered it is in there actually and the way it is in there is that it says that the vehicles have to meet the federal standard. So, the vehicles that are counted for compliance or will be or would be if this passes are certified to the U.S. EPA standard and that means they've been tested on nationwide gasoline.

Commissioner Johnson stated I guess my problem to this is that our gasoline may be something different than that.

Ms. Malone stated well, our gasoline is what's called the federal test gasoline or the baseline gasoline. That's what you get in most of the states except for about five states that are using reformulated gasoline throughout the state.

Commissioner Johnson stated our gas composition is tied to California standards and I guess my question is how does it relate to their standards. I understand that it's not reformulated, but exactly, in our major metro areas, what gasoline are we looking at? You say federal standards, but I'm not certain that I understand the difference.

Mr. Smitherman explained that the certification is going to have to be for 49 state gasoline or the commercially available gasoline, not just the California reformulated gas. If it falls into that category, into the ULEV category, for all of the types of gasoline available across the country, then it would be in, then it would be certified for the use in our program.

Commissioner Iverson asked aren't most gasolines certified through the ASTM standards and requirements throughout the country?

Ms. Malone answered that's the testing of them is done through the ASTM and they have to meet, the specs have to meet ASTM standards.

Commissioner Iverson asked that's the criteria to meet the specifications for gasoline, correct?

Ms. Malone answered yes. Well, the California gasoline has about eight components that are more tightly regulated and that's more tightly regulated than Nevada gasoline. The gasoline in Washoe County and Clark County have their own standards for oxygenate and Clark County has additional standards. But none of the gasoline that's sold in Nevada is considered federal reformulated gasoline, which the California gasoline is. And so, when we're allowing the vehicle to comply with the alternative fuel regulations here, we're allowing a vehicle that is certified on the federal gasoline, which is what's basically available in Nevada with a few tweaks.

Commissioner Iverson stated our fuel regulations, the law basically says that our specifications be as close as practicable to the California standard, since most of our gasoline does come from that area, so I think there are, the

specifications in Reno and Las Vegas, for instance with the vapor pressure at certain times of the year, that are different, but, again, those are part of the standards still, that gas is still coming from California and they still meet the California standard.

Commissioner Johnson stated I still see the problem that we're using a federal standard, 49 state standard to identify these models of cars and still, again, the gasoline that's being, and we're limiting this gasoline and not speaking of diesel and diesel standards, but that's not the same gas that we're burning in Washoe and Clark County. I don't know what the difference in the effect that would be from our gas that we actually have distributed versus the 49 state federal standard and the certification of these vehicles. I'm just concerned that we're accepting a certification that's a broad-based thing that doesn't directly apply to the gasoline or the fuel that we're using.

Ms. Malone stated actually, if the gasoline that we're using is cleaner than the typical 49 state gasoline, then the emissions from these vehicles that we'll allow would be even lower.

Commissioner Johnson stated but that's carbon monoxide and not necessarily particulates. Oxygenation isn't addressing particulates.

Ms. Malone stated particulates would be more of a diesel issue.

Commissioner Johnson stated more of, but not necessarily and that, of course, gets into the other issue of what fuel standards do we have in place for diesel and addressing the particulate problems? And certification of diesel vehicles is one of these low emission vehicles. I'll continue hearing and I may come back with questions.

Mr. Smitherman stated I'm looking to see if, I don't know whether these cites in the 40 CFR address diesel fuel or if we're just talking about gasoline vehicles at this point. That's something that we could look at. But you bring up a good point.

Ms. Malone stated I think he's correct that if a diesel were certified as ULEV it would be accepted the way it is written.

Mr. Smitherman agreed. The second half of that section, number 2, was just to state that if there were tighter standards, even cleaner vehicle categories that they would be acceptable in the program as well. We had to add the phrase, "or certified vehicles" in three places throughout the language just to keep the language in the regs. internally consistent. They're on page 2, a couple on page 4, I don't want to go to them in detail actually either because it's pretty clear what those changes are for. If we move ahead to section 8, that's on page 3, line 14, NAC 486A.180 requires that alternative fuel vehicles in a program be operated solely on the appropriate alternative fuel except in areas where the fuel is not available. Bi-fueled alternative fuel vehicles can be operated on conventional or alternative fuels, depending on what you put into the tank and what's there. We drove over in one of those vehicles actually. It runs on propane until the propane's gone and then it switches over to gasoline. It does that automatically. Some of those vehicles can be switched back and forth by the driver's choice. So, that's why this regulation is there. On line 15, "the vehicles" is replaced with "an alternative fuel vehicle" so that the certified vehicles are excluded from this requirement since there's no fuel choice in there. They're running on gasoline or perhaps diesel at some time in the future.
In addition, beginning on line 17, the sentence is amended to exclude hybrid electric vehicles which run on gasoline and electricity, but there's no choice by the operator there either. These already fall under the definition of alternative fuel vehicle as a flexible fuel vehicle that we had to address that type of technology as well.

And, finally, in subsection 2 on line 20 of page 3, fuel use record keeping requirements appear. With additional language on lines 20 and 21 we're proposing that records be kept on alternative fuel vehicles only, not certified vehicles. So that we're just keeping records of those that there's a fuel choice, what the fuel usage was. And then

there's some minor language changes in this section too. We propose to add "least or otherwise acquired" on page 4, lines 1 and 2 just to keep the language consistent with the acquisition requirements that are earlier in the regs. Now both places the language "purchased, leased or otherwise acquired" will be there and be consistent.

Commissioner Coyner stated Jim, on page 3, section 8, which you just reviewed for us, it says, "this will affect government employees" I'm assuming since that's where the bulk of these vehicles reside . . .

Mr. Smitherman answered yes.

Commissioner Coyner continued. If I understand you correctly, if I start off from Las Vegas on an alternative fuel vehicle and I'm headed to Pioche, at some point in my trip I'm going to have to switch from the alternative, if it is a vehicle that has the allowance to manually switch, at some point I don't know where that point is on the highway, I'm going to have to switch from my alternative fuel to gasoline, since the alternative fuel isn't available in Pioche.

Mr. Smitherman answered right, if you can't find propane out there.

Commissioner Coyner asked how would you begin to enforce something like that?

Mr. Smitherman answered they have to keep fuel records and we ask that the records be submitted to us and then we just do a spot-check, go through the records and look at the trip mileages, maybe locations, and if it looks like they're running the alternative fuel while they have the car in the location, basically if it looks like they've got one that's supposed to be in the program as an alternative fuel vehicle and all they have records for is gasoline, we'll call them up and say, "Hey, it looks like you guys aren't using this one correctly." Is there a question Mr. Iverson?

Commissioner Iverson stated I guess I have three questions: 1) I'm not concerned about these certified vehicles because I think our gas here in Nevada, because of our regulations and the ASTM standards we have and the regulations that we do have, it's better gas than most of the gas in the 49 states, which you were talking about so, therefore, the emissions will actually be lower. I guess I have some concern in these new vehicles what happens with age and what happens if something goes haywire on them, when these new vehicle computer chips go out they seem to pollute more than the old ones do. So, I guess I have a little concern about that, but there's not much you can do about it because I think we want to encourage more certified-type vehicles being produced and if states would open their doors to these, I think manufacturers are still producing them at costs that maybe more of us can buy them. They're probably much better than the electric cars as far as driving from here to Pioche because at least you've got a vehicle that's doing a good job. I guess I have a concern that from my administrator's position, if I was to call the federal government right now and ask them if diesel was an alternative fuel, what would they tell me? If I was to call the EPA and say I'm buying alternative fuel vehicles, is diesel be considered an alternative fuel? Would they tell me yes or no?

Mr. Smitherman answered they might tell you that an extremely low-sulfur content diesel fuel might be an alternative fuel.

Commissioner Iverson stated yes, but most likely they'd tell me that it's really not considered on their list as an alternative fuel. Are we going to get into the position, and I know we've allowed that, and I think it was one of the nicer things that this Division did for State government, allowing us to all buy diesel vehicles instead of really going out trying to purchase vehicles, like Alan and I, we're out so much in rural Nevada it's really difficult for us to look at other alternatives unless we do convert to propane or something like that. But natural gas is not a, it's something that may be a little difficult for us unless there's some stations built out there. Are we going to be in a position two or three years from now where the federal government comes down with you and says, "You've been allowing . . ." or comes to this Environmental Commission through you and says, "You've been allowing diesel to be purchased by these public fleets, when in fact we shouldn't be doing it and that doesn't count any more." And so, now we're

in a position where we're converting or, should we be looking at, we continue to purchase vehicles every year and are trying to get motor pool to purchase vehicles every year for agencies that are out a lot and I think if you look around here at Wildlife and Water and us, should we start looking at getting away from more from diesel and going into propane or something that is at least available?

Mr. Smitherman answered I think that's something that it would be prudent to anticipate, but I think that in order to remove diesel as an alternative fuel, I think we'd have to go to the legislature with something like that.

Commissioner Iverson stated well, yeah, I know. I guess the third question I have, and that helps me because I still don't know where to go with this thing, we've got to think down the road we're going to be looking at coming back in front of this Commission and saying we're going to change. Alan brings up a good point, I've got an alternative vehicle, I'm driving it out towards Pioche and I change it over to fuel as soon as I leave motor pool and I drive halfway across the freeway and I don't like it and I push it into gas now. Where is an attainment area and where is this control (inaudible) and I guess this was brought up because of an issue we have in Laughlin with some gasoline. Is Laughlin, since it's in Clark County, is that in the attainment area? Are we concerned about the gas we're buying in Laughlin?

Mr. Smitherman answered Laughlin is outside the non-attainment area.

Commissioner Iverson asked non-attainment area?

Mr. Smitherman answered it's essentially a topographic area boundary.

Commissioner Iverson asked so as we change the vapor pressure on fuels at certain times of the year, we don't need to be concerned about that in areas like Laughlin or Primm?

Mr. Smitherman answered yeah, or Mesquite.

Commissioner Iverson asked or Mesquite?

Mr. Smitherman answered or out that direction. Not as concerned. You're not in a non-attainment area anymore. You know, it's not doing the air quality, you know, lots of good.

Commissioner Iverson asked where is the non-attainment area? Is it just the valley, including Boulder City?

Mr. Smitherman answered it's just the valley. I don't know if it, do you know if it contains Boulder City?

Comm. Turnipseed explained no, it doesn't include Boulder City. But, yes, they use the hydrologic basin, the basin that I've described for water purposes as the non-attainment area for the Las Vegas basin. It's basically from Sunrise Mountain to Mount Charleston. I-15 when you leave the Las Vegas basin you go into Garnet Valley or California Wash, I can't remember which, but out there by Apex anyway. You're out of the non-attainment area. The same on 95 going north. As soon as you hit Indian Springs Valley, you're out of the non-attainment area. Boulder City is actually in Eldorado Valley. As soon as you pass Railroad Pass you're out of the non-attainment area.

Commissioner Iverson stated maybe what we need to do then, Mike, is on our regulations, and I guess Mike's back here, is ours say Clark County. Our regulations say the appeal standards, especially vapor (inaudible) are for Clark County. I guess we need to go back then and change it to the non-attainment area.

Commissioner Johnson stated the designation of the responsible authority is Clark County and what they say determines what the boundary is and they have the artificial non-attainment area, but their area of responsibility is Clark County.
Commissioner Iverson stated okay.

Commissioner Johnson explained the way they administer it is different from attainment to non-attainment, but they're concerned about commuters, and if you live in Boulder City you're probably not smogged or carb'd, but the question that's a different section of law, but the delegation of the state authority and responsibility is designated to counties. (Inaudible) in Washoe County is still under the administration of Washoe County Board. The question of whether your testing of the gasoline is important at what area is something you deal with Clark County on. It's their . . .

Commissioner Iverson stated no, I understand that, yeah. Okay.

Commissioner Johnson stated the concern is that there's different administrative boundaries between the non-attainment and attainment and the area of responsibility.

Commissioner Iverson stated because we set fuel standards, we have certain fuel standards that are for Clark County and those standards we infer that, or we think that that means all of Clark County, including Laughlin, Mesquite, Boulder City, Primm or whatever. But Alan brings up the point and I guess that's what brought it up to me is the non-attainment area. If you shut down your alternative fuel before you get out of the non-attainment area, we really haven't accomplished what we need to do. I guess that's what brought it up. We had a question. And your answer helps me a lot, okay? I know Mike's here too and if he has an answer too that would help.

Commissioner Jones stated I like the allowances you've made in here for the hybrid vehicles kind of along the electric which used then standard gas, it doesn't have to meet that. Has there been any testing to determine the overall pollutants using that combination versus the alternative fuel? I mean, is there going to be a substitute clearly that it's actually less pollutants using the hybrid?

Mr. Smitherman answered well, less or equal. That's why we're going to this. Because if we look at the standard compressed natural gas vehicle and we look at the tailpipe emissions there and we compare those to the ultra low vehicle, we're talking about the same range of emissions. We thought, "Hey why not allow these in if they're just as clean as the alternative fuel vehicles?"

Commissioner Jones stated I think it's great, but Paul I think in answer if they bring that along quickly enough as they seem to be, it may be your transitioning out of the diesel that saves you from that problem.

Commissioner Iverson asked are we ever going to be in a position where we have to do tail emissions from, we don't have to do that now for natural gas vehicles, correct?

Mr. Smitherman answered I don't think so. No, we don't.

Commissioner Iverson asked are we going to be in a position down the road especially when we start bringing in certified vehicles where we have to, because it really is a gas vehicle, where we have to start doing emissions checks on alternative fuel vehicles?

Mr. Smitherman answered I can't say that we'd never be in that position. Right now I think it's kind of an incentive for people to use alternative fuel vehicles because they don't have to go through the annual smog checks. Okay, let's move onto section 9 then on page 4, line 10, NAC 486A.200 authorizes the director to exempt fleet operators from any provision of the regulations that we're talking about. Like I said earlier, the director has delegated the authority to the administrator for those exemptions. Exemptions can be granted if the alternative fuel vehicles or the certified vehicles are not available if certified vehicles if all this passes, or the necessary alternative fuel is not available. There's an example in Washoe County right now, the compressed natural gas station that is used commonly by the fleets is going down. It's going to go through some kind of a transition so they can't get the fuel, so we're not going to push them to use that if they can't get it where they are. For the same reasons discussed during the first proposed amendment, we'd like to add language shown in subsection 3 of section 9 it shows up on line number 22. "The director shall not exempt the operator of a fleet from the requirements of any provision of this chapter if he determines that such an exemption would have a significant adverse effect on a control measure or a contingency measure." So, again, if there's going to be significant adverse effect to the SIP implementation, we would check in with our SIPs or with the county SIPs, respectively, and find out from them if they think an exemption that's been proposed is going to hurt their program and that would open up a dialogue, which really takes place anyway, we're just codifying something that we do anyway because we don't want to get in the way of the successful implementation of those plans.

Commissioner Jones asked is cost ever an analysis in this because I appreciate having the, allow the director to exempt, but as we move closer to having a bigger percentage, having to meet this criteria, I can see certain departments, and I just off the top of my head, DOT which has a tremendous amount of heavy vehicles that has to do heavy work, I mean CATs, graders, that may be very expensive to convert to these kinds of fuels, I mean, does cost ever come into play into the consideration of this? Is that an allowable exemption if it gets so expensive to convert a vehicle that it doesn't make sense?

Mr. Smitherman answered the regs. are silent regarding cost. But to address something you said earlier, the grader the off-highway equipment doesn't come into the program. They would just be, the fleet would just have to be . . .

Commissioner Jones stated it was a bad example, but (inaudible) . . .

Mr Smitherman stated there might be some heavy vehicles though, right.

Commissioner Johnson stated there should be a consideration and may have something that's in Clark County. It's a significant issue presently and was last legislative session. There are study groups working on this and will become a major issue next session just about this, well it gets back to the diesel and the standards that we do or do not have. But, I'd like to go back to the section under discussion and the existing statute and existing ability, the reason that we adopted these alternative fuel programs is to drive the demand side so that there would be suppliers. But it appears that there's an escape clause in this section 9 that essentially says that if it's not presently available, we're not going to make the fleet operators purchase it, so there's no incentive for a private sector to supply the fuel, which means that they continue to get exemptions. I find this difficult that it's averting the original intent of legislation, but that's existing.

Mr. Smitherman stated we don't hand out the exemptions blindly. I think if you talk to maybe the Department of Transportation's fleet operator you would, he would assure you that we've questioned that agency thoroughly as far as their efforts in acquiring the alternative fuel vehicles. We don't grant that many and Adele is pretty amazing at her resourcefulness in finding out the availability of these things really. The Internet has helped out a lot and they don't get the exemptions easily. It's not an easy program to comply with. We push them that direction. Mr. Jones, cost is an issue that has come up at our workshops. But, like I said, the way the regulations are written right now the director can exempt on availability of vehicles and fuel.

Commissioner Jones stated well, I don't want to subvert the purpose of what this is in clean air, but I've got to tell you at some point cost has got to come into play somewhere because if, in fact, diesel ever gets to the point where, you know, where they disallow it as an alternative fuel, if EPA generally says that's not an alternative, I mean, we've got a serious problem having certain fleets be cost effective in conversions and I don't know how we do that, but somehow that's got to be addressed, in my opinion, because to spend hundreds or millions of dollars to comply with something, there may be more cost effective ways to create the same sort of air quality correction without doing it this way and I think we've got to be alerted to that instead of chasing this with dollars when there may be more effective ways to do it. I would suggest you just constantly monitor that. I don't happen to know, have any idea how, but I think you've got to be aware of it because dollars certainly should come into play.

Mr. Smitherman stated yeah, that's a broader picture perspective. I mean, we're kind of focused in with our magnifying glass on these regs. right now. Something that I should have stated earlier I think is that what we're trying to balance here is, especially Clark County and their carbon monoxide SIP and trying to get that approved and implemented and we're, you know, now we're balancing getting this SIP going so that we can preserve the way of life that we know in Clark County right now and the dollars spent on the fuels program on the other side. So, those are really the things that are in the balance when we're talking about these changes.

Well, that, let's see, brings me to minor changes in this section. LCB recommended that we put in, let's see, the requirements of line 12 and then following, let's see, in sections 10 and 11, really what we're talking about there are changes for clarity, language changes, that's the one on line 26 and then there are some address changes and availability of forms from the Commission, all things that are just kind of clarity issues to wrap up. So, really that brings us to the end of the draft and of my presentation on the proposed changes.

Comm. Trenoweth stated back on page 1, 1, 17, there is no 42 at the first part I heard Jim say, "42." Does 42 have to be in there?

Mr. Smitherman answered yes it does.

Comm. Crawforth stated I may need advise of counsel on this, but as an administrator of an agency who is affected by these regulations, who operates fleets in both Las Vegas and Reno, I guess I need to disclose that I'm impacted by these regulations and I'm not sure if I can vote or comment on them.

DAG Price asked aren't others going to be in that position also?

Comm. Crawforth answered well, I don't know what the size of people's fleets are with other agencies and I know that we have some vehicles that are, of course, involved with enforcement or fire protection, so those are exempt and that may relieve Forestry, for example, for that. I don't know if Agriculture has enough vehicles in either of those locations to apply, but I can assure you we do.

Chairman Close stated I would imagine that most all of the governmental department heads here have vehicles that use alternate fuels because government is one of the things that we are trying, who fall under this category. But I think everybody is basically affected the same. I don't think anybody . . .

DAG Price stated the conflict of interest really speak more generally to you somehow securing a private benefit or a private gain. You in your official role making decisions about how to organize and how to administer your particular area, that in and of itself would not exempt you out, would not conflict you out from being able to vote on a measure like this. So, I would say that you are in good standing and you have the ability to vote. Most of the other members would probably be impacted as well, but in a governmental role, not because of their private business interest or personal interest.

Comm. Crawforth stated I have a couple of other I guess questions and comments, because we have, the Division of Wildlife has struggled substantially with this and it appears to me that the situation we're in is that the rules are substantially ahead of the technology and when it was mentioned earlier about leaving metropolitan areas and going into rural areas, which is a regular event for many of us and performance of those vehicles is substandard and, in fact, in the last couple rounds of acquiring new vehicles, you cannot get the vehicle that you need to do the job, so that frequently, as Mr. Jones has mentioned, puts you in a position of substantially increased costs to get a vehicle that will do the job for you and it's been a real struggle for us and I can assure Mr. Johnson that exemptions are not handed out lightly. They are sticklers, if you will. So, I'm just concerned that, I'm glad to see that the Division is looking at being proactive and looking ahead for new technology and I hope that we would continue to do that because it is a challenge and I know it's frustrating to me is as an agency administrator to not be able to provide the equipment to people to do the job and to even get into attainment because, as you've mentioned, conversions are simply not available for newer vehicles. That technology is two or three years behind vehicle acquisitions and then when you do get them, $2,800 to $3,500 conversion cost to make a vehicle basically nonfunctional in rural situations is a real challenge and I know there are other agencies that struggle with that in remote areas where fuel is not available and they've been wrapped in to some of these because of their geographic boundaries. So, I think we need to be looking at attainment for this, but I think there needs to be some consideration for the, trying to force the issue to make these vehicles available is a good approach, but it doesn't seem to be working very well at this point in time.

Colleen Cripps, Chief of the Bureau of Air Quality stated when we first started proposing these changes to the alternative fuel regulations one of the things that we had in there was a stay of the acquisition rate at 75 percent for another five years. The reason that we dropped that was during the workshops we were working with Clark County, as you know they're in the process of developing a carbon monoxide SIP. They're having a lot of problems getting enough control measures and contingency measures. One of the ones that they had used in their SIP was the alternative fleet program and the emission reductions that it generates. And so, based on that we were unable to include that hold at 75 percent and that was also the reason that we included in the regulation changes that you see here, the specific language that does not allow the administrator to grant a variance or to designate a fuel without county concurrence. So, anyway, we really would like to work with the fleets. We understand it's a huge problem. But right now there's no way that Clark County would be able to get their SIP approved by EPA without the changes that we have adopted here and they would not have been able to get this approved and use that as a control measure if we had granted or held the acquisition rate at 75 percent.

Commissioner Iverson stated one of the alternative, I think Terry brings it up with agencies, there are so many agency people on here because we represent, you know, there's a reason for having agency people on the Environmental Commission and I think when you look at the public sector, especially in State government, conversions in that do create a little bit of a problem in that the way our budgets are set up and, you know, new equipment and replacement equipment, whether it's an operating expense or whether you're buying new equipment, whether it's an enhancement or maintenance. Maybe what an alternative down the road and just looking at possibilities of what might happen if we don't, this air pollution problem is not going away. I mean it's always going to be here and I don't think standards are going to get any lighter, or any easier, I think they're going to get harder with time. In looking for the next eight years as Governor Guinn has asked us to do, maybe what DEP needs to do is get with some agency folks and take a look at that and make a run at the legislature and the Governor's office as far as some funding abilities for conversion down the road so that we're not fighting our own battles as far as conversions because I think there's some real possibilities out there. But, you know, maybe the State needs to take a look at that as a whole and say, "Here's some air pollution, air monitoring, air quality things that we as a state are going to put some dollars into this thing and we're going to use it to help all of the agencies, yours, the health agency, Wildlife, Forestry, Agriculture, whoever be prepared for those times when we have to look at conversions because as agencies those are hard dollars for us to get and maybe as a joint executive branch decision we should look at a pot of money being funded somehow.

Ms. Cripps stated right. The Governor's office is actually very well aware of these issues and what it means to the State fleets. We've been working with them and we have sent briefing documents to the Governor's office about the problems that the fleets are having and some things we think need to be done to address that and we've talked with them about additional funding that would be required in order to support vehicle acquisitions and the modifications that are required sometimes. Also, we've talked to them about changing purchasing practices, for instance, so that it would make it easier and I think that's one of the other reasons that we included the ULEVs in this proposal was in the hope that it would provide the fleets with additional alternatives because I agree with Jim, I do think diesel is going to become a thing of the past as far as an alternative fuel. We hear that all of the time. There are regulations in California where they have designated diesel emissions as toxic air emissions. So I think that is probably something we're going to be seeing on the horizon.

Commissioner Jones stated you know, not to belabor the point, but let me just share with you if I could a little bit of an analogy and it may shed a little light in. We get so focused. First I want to compliment you. You guys have taken a regulation and you're running with something that is very important in air quality containment. But to step away from it and look at a little bigger picture, now let me use my analogy in some health things that we had to pursue. We were trying to pursue a way to save health dollars and we started looking at traumatic injuries as one of the big size of costs in health and we all of a sudden came to the conclusion that we may be able to save dollars ultimately by giving more money to the highway program to divide roads so that we reduce the accidents that would save health costs. So what we're saying is that we stepped outside our paradigm for a moment and all I'm saying is maybe that's what we need to do here too. It may be that we're pushing so hard in emissions in vehicles that there may be an easier, more cost effective way to do air containment by looking and approaching it in another direction and stop all these folks from having to step through these hoops that they have to step through to meet this particular criteria. Now that's not bad, I mean what you guys are doing is perfect. I mean you're trying to take and wring the most out of what you've been given the responsibility to do. But it may be that you need to step back from it and look at it in a larger global scale and see a better way to do this thing and achieve the same goal.

Ms. Cripps stated I'd like to be able to respond to that as well. We have worked very closely with EPA and with Clark County in trying to address the SIP issue and I cannot tell you how many hours we've spent trying to figure out what other control measures we could possibly use. They are at the limit. There are a lot of federal programs at the moment that are on the horizon and the timing is just not working for Clark County. There are things out there that we know eventually we'll be able to use. But EPA either hasn't finalized the process or they haven't determined how much credit they would be able to allow for those programs. And so we're really left with these few things and we're hoping that within just a couple of years that this may not be an issue any more and that we will be able to provide some flexibility. But in the interim, we need to be able to, you know, give the county the help that it needs to get that SIP approved. Otherwise, transportation dollars are going to be affected and which is why the Governor got so involved.

Commissioner Johnson stated just a comment and I think that we politically need to change the paradigm certainly because we, the easy things have been done, the inexpensive things have been done. Now we're starting to talk about lifestyle changes and those are difficult and the next thing is the technology and it hasn't arrived yet, but we have to reach out for it and I think certainly addressing the issue of the cost of and I would counter the argument that this is probably one of the cheapest things that we can do to have maximum effect. But, yes, we need to look at the variation in cost. We need to change the way government, school districts, fund their capital improvements in vehicle areas and we need to get out in front, at least the agency folks and talk about these issues and the budget process because these are ingrained and we're not used to doing those kinds of things. And I think that in the next couple of years there will be very, very firm believers in obtaining health standards and healthy air quality and how we approach that and we've passed a resolution that we will support the health districts as part of our agenda and I see this as a step in that direction. I still have concerns about just how you're implementing it and we may hear some other things, but thank you.

Comm. Crawforth stated I think we all believe in what we're doing here and we're working very hard to accomplish that and I think for the most part people have gone above and beyond that. But, I could bore you with a couple of real-life examples. We have a number of vehicles that we can exempt because they're classified as law enforcement vehicles. There are some of those vehicles that are used, for example, purely in the metropolitan Las Vegas area that we could use alternative fuel in a law enforcement vehicle. It's very difficult to get an exemption to do that to include it in your fleet which I think is contrary to what we're trying to do and I would assume that there's others in the same position. Being a user-funded agency the hunters and anglers who pay my bills don't understand when I'm trying to have a bottom-of-the-line larger model SUV to get the job done and show up because of the unavailability of things like Expeditions, Yukons, etc. You can't get diesel. You can't get alternative fuel in those vehicles. So, instead of showing up in a $20,000 vehicle like that at a meeting, I drive in in a $40,000 Ford Excursion diesel and that doesn't wash and the public needs to be aware of those and the attainment of compliance. And I understand that, well there's a certain element of public who would think, "Good. We're glad government's getting stuck with all these silly rules they adopt too." But, I really support the thought that we need to look for some other alternatives. But right now attainment is going to be increasingly difficult and if we lose diesel and we lose this, we're just not going to be able to get the job done in some areas of government.

Commissioner Coyner stated the natural resource guys are having their heyday with staff today. I would like to echo Mr. Crawforth's comments because in the abandoned mine lands program we have a very specific need for a specific type of truck that will best suit our needs. For instance, I'm looking at the Ford Quad-Cab because it seats four people, yet has a short wheel base and we need the ability to carry our fencing and our barbed wire and so forth in the back of a pickup truck type vehicle. So if my hands are restricted by what type of vehicles I can buy because of this program, it's going to effect my ability to get my job done. My specific question is: in the percentage allocation in section 4, what's your lowest common denominator when you talk about operator of a fleet? Is it a department? Is it a division? Is it some others? How do we aggregate the vehicles within any governmental where you have to meet the percentages?

Ms. Malone explained what we've done is gone down to levels within departments in agencies, division level usually. Sometimes lower than that, but basically we've identified the unit that has purchasing authority and so can control what vehicles they are purchasing and that's how we've identified the fleet.

Commissioner Coyner stated well, as a geologist and the administrator of an agency, the goal is where most white men don't normally go. Mr. Smitherman, I'd like your home phone number, because for the first time when I get stuck out there on a mountain with an alternative fuel vehicle I'd like to be able to call you and tell you about my problem.

Ms. Malone stated it has happened. NDOT has towed some vehicles back.

Mr. Smitherman stated Mr. Coyner my number is in the book. You can call me. As a fellow geologist, I'd be happy to come out and pick you up.

Chairman Close stated we went to a location in Reno one time probably four or five years ago that had an alternative fuel program going.

Commissioner Jones stated A-55? Yes. They're just getting ready to do an IPO on that (inaudible)

Chairman Close asked what's the status of that thing now?

Mr. Smitherman answered they're still working on it. Their formulation is different, but they do have a designation as an alternative fuel. I know that Washoe County School District has some buses running on the fuel and they're working on some kind of a gasoline substitute too that we actually saw a vehicle running on it, or at least it looked

like it. If it wasn't, it was a good trick because the guy pulled the fuel line right off and filled a bucket up with the stuff.

Chairman Close stated we saw the same things, okay, very good.

Mr. Smitherman stated they're still working on it. I don't think it's widely used yet.

Commissioner Jones stated I think they're trying to capitalize the company right now. I understand they're going to go with an IPO to try to fund it and capitalize so they can expand it.

Chairman Close called for further questions from the Commission and the public. Since there were no further questions he closed the period of public comment. He acknowledged that there were two amendments to the document. On the first page, line 14, change "the" to "or" and on 17 add "42" before "U.S.C." He called for a motion.

Commissioner Johnson moved for adoption of Petition 2000-05 as amended.

Comm. Turnipseed seconded the motion.

The motion carried unanimously.

Chairman Close stated if there's no objection we'll add to our record the letter from Mr. Goodrich from the Washoe County District Health Department as part of our exhibits.
Commissioner Johnson stated I'd like to enter into the record a request for a follow on the information regarding the issue of diesel and diesel standards just for information. I'm sure it'll be forthcoming anyway, but I'd like to see that at some six-month interval or thereabouts.

Chairman Close asked can you provide that to us?

Mr. Smitherman answered yes.

Chairman Close moved to **Agenda Item II.D. Petition 2000-06.**
(Petition 2000-06 (LCB File R-054-00) proposes to permanently amend NAC 459 by adding new provisions establishing a Voluntary Cleanup Program for eligible contaminated properties. The proposed regulations establish that eligible parties must comply with the "consultant certification" NAC 459.970 to 459.9729, establishes an application process for eligible properties including the type of information required by the application, fees for processing and review of applications are defined and provisions for remedial agreements are defined. The proposed regulations also define financial capability and responsibility for eligible parties, and a process for eligible parties upon completion of remediation activities to receive a full or partial certificate of completion.)

Tim Murphy with the Bureau of Corrective Actions stated I'm here to present Petition 2000-06 which proposes to permanently amend NAC 459 by adding new provisions establishing a voluntary cleanup program. If I could, I think it might be helpful to the Commission to just briefly touch on the enabling legislation which kind of gives a history of what took place that was introduced by Senator Titus of Clark County. Senate Bill 363 created a program which would promote the revitalization of vacant, unproductive, environmentally contaminated, industrial and commercial properties throughout the State. This bill provides incentives to cleanup properties by limiting the liability to people undertaking that cleanup. These sites typically are properties that are abandoned or vacant due to hazardous substance contamination in soils or groundwater. Some examples, and I think there was a visit yesterday, are landfills, salvage yards, plating shops and gasoline stations. Due to the perceived or actual contamination at these sites, land owners, prospective buyers, and developers are reluctant to proceed with redevelopment even

though these properties may be ideally suited in prime locations. One thing the fiscal note did provide for was that this program be self-supporting and costs allocated to the users of the program, no cost to the State or the general fund. One thing somewhat unique, I guess, on this bill was that it did pass the Assembly and the Senate without any opposition and I guess that doesn't happen too often. In favor of the legislation were Nevada Manufacturer's Association, Sierra Club, Southern Nevada Builders Association, the Bankers Association and other organizations. What I would like to point to out before I get into the actual regulations is that the legislation, 363, did contain extensive programmatic detail and these regulations are to supplement that legislation and if I could, I do have a flowchart which I think might be beneficial as we go through these regulations. Could I hand that out?

If we could then, we did conduct a number of different workshops throughout the State: Elko, Carson City, and Las Vegas, and at the request of the Consulting Engineer's Council of Nevada two additional workshops were held, both in Las Vegas and in Reno. Let's start with the proposed regulation. The first section there, 2 through 8, are definitions that are identified in the statute.

Section 9 is a requirement of the statute that requires any application, remedial agreement, or certification to the administrator to be submitted pursuant to the certification regulations which were adopted by this Commission, I believe, back in '91.

Section 10 is the application. Essentially what that is is to get the individual in the front door, so to speak. That provides information about property ownership, current property use, proposed property use, any written communication with other regulatory agencies of any activity that took place on that piece of property and the nature and extent of any contamination released at that piece of property.

The next section is section 11 which is also a requirement of the statute is the fee schedule. There are five sections there, the residential section and then we broke it out into four separate commercial sections and that is based on property size. The way we evaluated that is essentially through the Corrective Action program, typically how much staff time does it take to evaluate a corrective action site, a work plan based on size and as you see there we broke it out into acreage, the largest being greater than 100 acres.

Section 12 is the actual remedial agreement. That gets into the nuts and bolts of it. They actually have one year from the application process to submit a remedial agreement and that gives them an opportunity to go out and do extensive sampling, prepare their financial plan, which is required. They have to show the division that they have the actual capability of cleaning up the site. In addition to that, the Phase II which identifies soil contamination, potential groundwater contamination, essentially a map of exactly what took place on that piece of property.

Section 13 with that detailed cost estimate they have to show time frames, how much it would cost to actually clean it up and that they, again, have that ability and must demonstrate that ability to the satisfaction of the administrator that they can complete the actual cleanup activity.

Section 14 is the cost recovery which includes direct and indirect costs. That includes site visits, overseeing and supervising the actions that have been specified in the remedial agreement, issuing the certificate of completion. Part of the statute requires that we actually hold public workshops, public hearings for comment by the public before that remedial agreement is fully certified and approved by the administrator.

Section 15, the last section there, once they have followed through in good faith in the whole program, completed the remedial agreement, cleaned up the site to the satisfaction of the administrator, they will be issued a certificate. This certificate is filed in the county that the site located. In addition to that, number 2 there of section 15, one of the issues that came up in some of the workshops is they obtain a loan from a lending institution and they have extensive soil contamination and they also identified some groundwater contamination, as you all know groundwater contamination can take, you know, years to correct. What they wanted to do is clean up the soil

contamination, get the loan approved, build what other structure or business establishment they want to build on there and maintain the corrective action of the groundwater. We would issue a partial certificate which they could take to the lending institution that shows that soils are cleaned up. They will continue to do groundwater cleanup and at that point they would receive a full certificate of completion. Are there any questions as to any of those sections or the voluntary cleanup program?

Comm. Turnipseed asked can the person make any use of the property, you mentioned a partial certificate for a partial cleanup, can he make any use of the property until it's totally cleaned up?

Mr. Murphy answered that would be agreed to in the remedial agreement, depending on the type of contamination, the existing activities on that piece of property. If it was a gas station that remained vacant for an extended period of time and there was identified, whether they were dumping solvents or what have you in the back and there was also groundwater contamination. Part of that agreement would be where, yes, once they've cleaned up the soils, the immediate contamination surrounding that facility, we would allow them to occupy that piece of property, that business, but the stipulation would be that they would continue to complete the groundwater cleanup before they would receive a full certificate from the Division.

Commissioner Coyner asked since "participant" isn't defined here, it's in another section of the statute, can participant be another government agency?

Mr. Murphy answered yes sir. Anyone can participate in this program and that's identified in the actual NRS, governmental agencies.

Commissioner Coyner stated well, my question ran that way because I was thinking in terms of abandoned mine sites and the State may actually be the owner at an abandoned mine site if it was on private property and it went tax forfeit for instance.

Mr. Murphy stated yes sir.

Commissioner Coyner asked so you've thought about that inside of this? Okay.

Commissioner Johnson stated I do have a comment and it's on section 14. The provisions for the financial responsibility and program costs are defined within the agreements, but this rather open-ended future charge from the agency, would you provide the applicant an estimate of what it's going to cost for your oversight of his program?

Mr. Murphy answered yes. That was discussed in the workshop. That was a concern that before they got into this whole program what kind of costs would they be looking at that would be incurred by the participant, by the Division. To give them kind of a ballpark, you know, as to what they were getting into. Yes sir, that was definitely an issue that we would enter into in that remedial agreement and we would discuss that.

Commissioner Johnson stated for comfort level, should we address that in the language of the bill, or the regulation? I certainly don't want to tie you to have a hard cost estimate, but I think the applicants would be more comfortable if they had some view that you would do this.

Mr. Murphy stated good point. Some of those things were discussed, again, in the workshops and some of the things we had decided initially to work out would be some kind of a guidance document that would be attached to the application or the remedial agreement which would allow that participant to sit down with us based on what they're proposing in their remedial agreement, how extensive it was. As an example, let's say the site was in Elko and we would want to make at least an initial first visit to the site to see if yes, in fact, this is the issue out there and

maybe some follow-up visits, that is a cost they would incur by Division staff to make that site visit. If it's extensive contamination, that would require a lot of technical data, how long that would take to review that, those are things that we would want to discuss in that remedial agreement as we're communicating with that participant. We don't foresee this as just here's the remedial agreement and the quick approval or disapproval process. There will be some ongoing communication, depending on the specifics of the site. A lot of them do get pretty extensive and there's a lot of, I guess you could say, variety out there as far as the type of contamination they find.

Commissioner Johnson stated I would be comfortable I think just leaving it the way it is, but I wanted to hear that the issue had been discussed and your intents to do that.

Commissioner Jones asked the purpose for the certification program is to allow a certain amount of comfort on the part of the lending institutions that, in fact, the title will be clear from environmental charge against it. Am I correct?

Mr. Murphy answered yes sir. That is identified in the NRS.

Commissioner Jones asked how extensive has that been tested? I mean a certificate from us is going to carry weight with State institutions? Have we done any testing to find out of national institutions will feel comfortable with this certification process achieving what it wants? In other words, if this bank is from New York and you go to them for the application, are they going to feel comfortable that this cert. protects them? Has that been tested? Have we talked to lending and financial institutions outside the bounds of Nevada I guess is the question.

Mr. Murphy stated I can't answer whether or not, I assume a lot of the banking institutions are probably ones outside of this state and they did actually speak at the actual legislation and were in favor of it. I would assume by that that they haven't spoken in opposition to that activity.

Commissioner Iverson stated that brings up an interesting point. I'm not real familiar with the legislation and I have read this and I think it's a good incentive, and I think that's what the program was, an incentive to get some of these areas possibly cleaned up and usable again. Is there an assurance from other agencies, federal agencies that once this is signed that's it? That they're not going to come back a year from now, two years ago when the players are gone, when Allen is gone, you're gone, the Commission has changed and say, "Whoops, we're changing the rules now and we need this done?"

Mr. Murphy answered that is actually, again, addressed in the legislation where and I guess the government can change their mind any time they want to change their mind, but it does, and I think we've all seen that, the legislation does address that this certificate of completion is in effect even if a subsequent law changes. So that once you receive that certificate if, for whatever reason something changes, it's still in effect for you as a property owner. There, again, . . .

Commissioner Iverson stated the courts would have to decide at that point.

Mr. Murphy agreed.

Chairman Close called for a lunch break at 12:00 a.m. and reconvened the meeting at 1:15 p.m. He then called on Mr. Murphy to continue with his presentation.

Mr. Murphy stated I think I had, before we broke for lunch, concluded my testimony on the proposed regulations and we had opened it for questions and if there are any further questions in reference . . .

Chairman Close asked out of curiosity, I'm not aware of this bill or how it went through the legislature, but how

does this benefit me? I mean, if I have a piece of property or I want to acquire a piece of property that has an environmental hazard on it, I still have to pay to have it cleaned up. I'm going to have my own private engineer do the survey for me and do the remedial work, and so what does this do for me when it's all said and done?

Mr. Murphy answered I think the problem that has occurred in the past is that with a lot of these properties because of the fact that there's a perception that they are contaminated or they were actually contaminated and these perspective purchasers or individuals that wanted to develop this piece of property, that cloud that hung over that piece of property, that you know, they wanted that relief from liability so that if they did in fact go through this process and comply with the remedial agreement and clean it up that they would have a legal document that would relieve them from that liability where we could not take an action under 459.537 to adjoin both the Division or the Attorney General to take action for costs on that piece of property.

Chairman Close stated but that does not preclude the EPA or somebody else from coming in and saying there is a problem. What if there is still a problem? What if there is still a problem and I've got your certificate, then what happens to me?

Mr. Murphy stated you would not receive a certificate of completion if there was still an existing problem. You would have to conclude the remediation on that piece of property and that is spelled out in the NRS. If, in your remedial agreement, you identified let's say a solvent contamination of some sort. You did clean up that piece of property and later on it was found, by no fault of your own or anyone else's, that there was some other bit of contamination, other constituent of contamination, that would not be covered under that remedial agreement, or that certificate of completion.

Chairman Close stated right and so I mean where's my benefit? I mean from going through all these things it looks like this is kind of a feel-good statute to me. What real benefit and what real protection do I ever get from going through all these steps? If I hire my own hazardous waste engineer, you're not going to let me do anything out there until you're satisfied anyway and if you give me the certificate and there's still something there, I mean how, what protection do I have from going through all these steps?

Mr. Murphy answered there again, that protection would be if you had completed this program that that certificate would be placed on the record in the county of that site where we, the State, or the federal government could not take an action against you, against that piece of property for that type of contamination that was cleaned up.

Chairman Close asked so this includes the federal government? They've signed off on this?

Mr. Murphy answered they have seen the statute and they have seen these regulations, yes sir, they have. And that is actually addressed in the NRS, Chapter 459. And I could site that for you if you'd like.

Chairman Close stated no. Any other questions?

Commissioner Dahl asked if I sell that piece of property and it's later found that there's some kind of a contaminant on it and the person I sold it to sues me, but I have a certificate having gone through the program, do I have the State of Nevada on my side in court when I am sued for . . .?

Mr. Murphy answered legally, I don't think I could speak to that. But if you had a piece of property that you entered into this program with and you cleaned it up to the standards established in the remedial agreement and received a certificate of completion and you decided to sell that piece of property, that certificate is transferrable. Now the question you posed was that, it depends on if it was not addressed in the remedial agreement . . .

Commissioner Dahl stated nearly every land transaction now has language in it that deals with possible

contamination and every purchaser tries to put the responsibility on the person who sells it. And so if the certificate can go with the . . .

Mr. Murphy stated the title transfer with the certificate would follow with that.

Commissioner Dahl stated right, okay.

Mr. Murphy stated now I don't think there's anything that precludes anyone from suing anyone for any reason, but there again per statute, if you followed the application and remedial process for those contaminants and did receive a certificate of completion, that would be transferrable if you did decide to sell a piece of property.

Commissioner Jones stated Mr. Chairman in answer to your question, I think the primary benefit this accrues to, I understood it as it was debated, was the banks and lending institutions needed a comfort zone to do lending for the people building on these properties and, as a result, once that certificate was issued, they had a degree of comfort. Now that doesn't answer the question that ultimately if something showed up that didn't who's legally, I mean, responsible, but I think that was the, that's why I asked if the banks were going to be comfortable with these certificates as far and extending financing because of this now. Because previous to this I think environmental issues could step in front of title and that was the front-end reason that motivated this I think.

Comm. Turnipseed stated and I'm just speculating now, when you talked about the cloud being over the piece of property, is there an uncertainty out there on how clean is clean? In other words, if it's going through this program you're going to dictate how clean is clean. You're going to set certain standards for whatever . . .

Mr. Murphy answered those have already been set in other program area, the corrective action levels, and the regulations do identify that. They do have to clean up to those standards regardless. So those have already been established.

Chairman Close called for further questions from the Commission and the public. Since there were no further questions he closed the period of public comment and called for a motion.

Comm. Crawforth motioned for approval of Petition 2000-06.

Commissioner Dahl seconded the motion.

The motion carried unanimously.

Chairman Close moved to Agenda Item II.E. Petition 2000-07.

Allen Biaggi, Administrator of the Division of Environmental Protection stated Petition 2000-07 was intended to be a permanent regulation relating to the Air Quality program and on-board diagnostics for vehicle emissions and this was primarily a Clark County issue, which as Colleen mentioned this morning, is in the process of developing a State Implementation Plan for carbon monoxide. This was to be a contingency measure within that SIP. We have had a lot of problems getting information out of EPA with regard to the OBD regulations, where that program is going to go, and the amount of credit that will be given for that program within the SIP. As a result of those uncertainties, we have been in dialogue with Clark County, both air quality and comprehensive planning and we respectfully request that this petition be pulled before you today and we will likely bring it back at some other date.

Chairman Close called for questions from the Commission and the audience. Since there was no objection, this item was removed from the agenda. He then moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**

A. Granite Construction Company; Notice of Alleged Violations # 1424 & 1425

Eric Taxer, Compliance Enforcement Branch Supervisor in the Bureau of Air Quality, reported Granite Construction, as you are all well aware of, is a large company that operates numerous construction facilities throughout Nevada. In particular, for this case, they have a surface area disturbance permit for a 40 acre parcel in Carson City, commonly known as the Graves Lane extension project. This project has since been completed and the permit was canceled earlier this year. However, we had received two fugitive dust complaints on this project. The first one was received November 15, 1999. Early in the morning we received the complaint and we contacted Granite Construction at that time to make them aware of the complaint that we had received and requested that they get a water truck out at the site pursuant to their surface area disturbance plan. We visited the site at approximately an hour and one half later and noted fugitive dust coming from the site and no evidence of water trucks ever being at the site. The second fugitive dust complaint was received on December 2. At that time we observed major quantities of dust coming from the site to the extent that it was creating a road hazard, or diminished visibility on Highway 50 East out of Carson City. And again, no water truck was at the site pursuant to their surface area disturbance plan.

We conducted two enforcement conferences with Granite Construction. The first on December 2, with a follow-up on January 15 of this year. Pursuant to those conferences, it was agreed that we would issue two separate Notices of Alleged Violations Nos. 1424 and 1425. As part of the corrective action that was agreed upon with those NOAVs and conferences, Granite agreed to apply a palliative to the site with a multi-year product guarantee and to re-vegetate the site as agreed in their plan. On top of that, on their own initiative, they are developing dust control training for their new hires and ongoing refresher training for their existing employees. We also agreed on a penalty for these two violations. These were Granite's fourth and fifth fugitive dust violations and are, therefore, classified as major violations, which is why we are here with you for fugitive dust violations. Both of these violations represented a major deviation from the regulatory requirements, specifically because they were not following the surface area disturbance plan as required in their permit. The potential for harm ranged from minor for the first violation that occurred in November to moderate for the second violation due to the road hazard that was created. Both of the penalties were increased by a factor of 60 percent to reflect Granite's history of past noncompliance pursuant to our policy. And we also increased the penalty for the November violation by another factor of 25 percent to reflect Granite's degree of noncooperation and that they were given a warning to get a water truck out at the site, given ample opportunity to do so, and had not taken that action. The total penalties amounts for these violations are $1,665 for Violation No. 1424 and $5,120 for Violation 1425 for a total negotiated penalty amount of $6,785. We recommend ratification of these proposed penalty amounts.

Commissioner Doppe asked these are not the same violations that we heard at our last meeting?

Mr. Taxer answered correct.

Commissioner Doppe asked so these are new ones yet?

Mr. Taxer answered correct.

Commissioner Doppe stated just a comment to my fellow Commissioners, it strikes me as though one day the public is going to show up at one of these meetings and ask us if we've lost our minds. These people have 22 violations in the last few years and at some point you have to say it isn't working. And, you know, what we're trying to do is to protect the air and it almost strikes me as though Granite Construction waives off the cost of the penalty versus the cost of compliance and apparently continues to come to the conclusion that it's cheaper to pay a $5,000 penalty than it is to appropriately, you know, mitigate the dust off the 40 acre site. And I know that our hands are tied by way of what we can do with regard to fees, but I would ask the Division if they feel that Granite is continuing to work in good faith. Because if I'm just looking at the rap sheet, it doesn't look like it. So, what's your opinion of that?

Mr. Taxer answered well a lot of their history is with respect to emissions from process units and these particular violations aren't for fugitive dust, so there is a difference in how they would address those two types of pollutants. With respect to the Graves Lane project, there were numerous instances where we did go out and inspect the site and noted that everything was being handled appropriately. So, I think they are making an effort, but for whatever reason, on these particular days they just do not get the control measures out there as identified in their plan and as they had done previously on other occasions. I can't speak to why that did not occur on those days.

Commissioner Doppe stated we, in Clark County right now, are wrestling, as you well know, with not only a SIP for carbon monoxide, but also one for PM10 and as the industry is trying to come to grips with what are we going to do to regulate dust coming off of construction sites, among other things. We've spent a lot of time debating these issues, but one of the things that we've come to conclude is that if we are going to go to the trouble of establishing a permit process within which a company agrees to follow certain preventative measures to try and mitigate, you know, the dust effects of their activities, and if that company is then guilty of a fugitive dust emission, but they've been following those measures, well that's one, you know, you look at that one way. If the people did what they said they were going to do and they're doing what everybody agreed should work, it didn't work, so let's do something else. But at least they put out their best efforts. If, on the other hand, their company is guilty of violating the dust regulations, and they haven't even done what they said they were going to do, that puts it into, that's a whole 'nother kettle of fish because now you've got somebody who you have to sit back and question their intent as to whether or not they ever agreed to do it in the first place.

And we are in the process in Clark County, like I say, of coming up with recommendations for the Health District that are going to be markedly more dramatic in the latter case where someone has agreed to do something and then they just blow it off, you know, and to the extent that we're actually talking about, in those cases, putting people, we're setting them on the sidelines for awhile. You say, "Look, you know, we cannot legally fine you to the moon, but we can prevent you from drawing further permits in the future for a period of time. If you're going to demonstrate continued bad faith, particularly on the same project, and bad faith meaning you're not doing what you said you were going to do, never mind whether it would have worked or not, but you're not even doing what you said you were going to do, so we're going to set you on the sidelines for a period of six months or a year." Now this hasn't been adopted, but this is the industry saying, "Look we have to do something to make the people who are flaunting the regulations come to the table and if we can't penalize them because of legal and statutory things, we can sure go after them by not allowing them to continue to do business in the same fashion." So, how does the Division feel about that sort of activity? I tell you what, because it's a real thing that we're staring right in the face in Clark County. So it doesn't make any sense if the rest of the State can do otherwise.

Mr. Biaggi stated just this last week we had a panel hearing on a dust violation where some of these same issues came forward, where, was the company trying to do the right thing? Or were they just paying token lip service? Or were they really doing anything at all? And I think what we try and do from an enforcement perspective is try and weigh those considerations and then proceed accordingly. Granted, we are somewhat hamstrung by the abilities to levy the fines that we can do, but those are already things that we take into consideration when we decide to issue notices and decide how to proceed with an enforcement case. With Clark County, you're in an extreme situation now where the control of PM10 is critical for your attainment status and so extreme measures are being taken here and I applaud those measures. But there already are considerations, as you are mentioning, taken when the Division takes an enforcement action.

Commissioner Jones stated without defending the action here of this particular company too, I have some familiarity with them, but when you talk about the rap sheet, the reality is we also have number of occurrences the fine goes up and if you have a very large company that has a lot of projects it's very easy to find yourself going up that scale simply because you have a lot more work going on. I haven't found Granite Construction to kind of throw it in our face the fact, either locally in Washoe County, or at the State, I mean that they didn't. As a matter of fact, I remember this Commission, didn't we take Granite Construction specifically to task improperly here not long ago

and had to write them a letter to say we were sorry because we were wrong with it? I'm just saying I don't think the company, I don't think they have a habit of just not listening to us. I think they have a habit of being so big and a lot of projects that sometimes they drop the ball and I think that's more the case in this company's case I believe anyway.

Commissioner Dahl stated I'd kind of second that sentiment. It's a big company that does a lot of work. I personally don't think that's a very long rap sheet when you consider the amount of, or the number of projects they have going. And I'm fairly familiar with Granite also and hadn't noticed them thumbing their nose at . . .

Chairman Close stated I don't know how many projects they have going, but a lot of these seem to be within months of each other, or weeks of each other in Carson City. Are these all the same projects that we've got where we have these violations going in Carson City?

Mr. Taxer answered they are the same project; however, not all of these are violations.

Chairman Close stated well, let's look at the violations. I understand some are not violations.

Mr. Taxer stated right. Some are, the others are days where we went to inspect the site and found them to be in compliance, but we include these on the list of the companies history so that the Commission gets an idea of both their record of compliance and noncompliance history.

Chairman Close stated 1386 says it's still pending. Why is that still pending?

Mr. Taxer answered that would be a typo. That was settled.

Chairman Close asked that is resolved now?

Mr. Taxer answered yes.

Commissioner Coyner stated with respect to the hearing we held last week, there's an interesting aspect of this fugitive dust issue in that in most cases we don't hear about them because they happen in Clark County or Washoe County where the county controls the process. And in terms of wind blowing dust around and the citizen population complaining, that's essentially where it's going to happen most of the time. Now if you look outside of those two urban centers, the other urban center that it falls to is Carson City. So, normally on a fugitive dust issue, and I think Eric would back me on this, we would hear about it more in Carson City than any other place around the State. So my concern is, after sitting through that five hour hearing on a $250 fine, was that are we staying abreast in the Carson City urban corridor relative to the efforts that are being taken as Commissioner Doppe indicated in Las Vegas and Allen echoed that, versus Reno. In other words, in Reno are they out, is the county out there red-tagging projects, etc. and enforcing a higher level, let's say, of enforcement relative to NDEP? So, I'm a little bit concerned about equity around the State.

Comm. Crawforth asked the top ones on the list here from Carson City, it's my understanding those are all at the same project, not necessarily exactly the same site, but they're all, all those inspections and minor violations are at the same site?

Mr. Taxer answered that is correct. All of those actually are for the Graves Lane extension project.

Comm. Crawforth asked so we're here with a major compliance violation because there are five violations here at the same site?

Mr. Taxer answered no, because Granite has previous fugitive dust violations, not necessarily at the Graves Lane site, but at other project sites throughout the State. Pursuant to the regulation we don't count the violations per project, but we count the violation per facility owner.

Comm. Crawforth stated but they had five incidences in four months.

Mr. Taxer stated two. The five incidences that you are looking at in Carson City, not all of those were violations. There was just two of those that were violations, the others are in compliance periods.

Comm. Crawforth stated you didn't give a violation notice, but there are some of these that say "minor." And, so, I assumed there was something there, but you just . . .

Mr. Taxer stated maybe it would be more clear to say minor amounts of fugitive dust were noted, but Granite was taking the efforts to comply with their surface area disturbance plan. The amounts of dust that were being created were so small that it just didn't make sense to issue a violation, especially with respect that they were out there watering the site. And, also, so that the Commission doesn't get an entirely slanted view against Granite, they did submit a surface area disturbance plan for this project and to their credit, it was a rather detailed plan. They had taken into consideration the fact that there was limited availability of water trucks in the Carson City area and the difficulty in getting those trucks filled up. So they had installed their own water tank on the site for their own personal use to make sure that they were controlling the dust appropriately and had adequate water supply for that effort.

Comm. Crawforth stated it just seems to me, I have to agree with Commissioner Doppe, if we're at the same site, you know it's going to be a problem site, obviously we've already had a couple, so I would think that it would be prudent to be making extra precautions and so we didn't have to be here.

Chairman Close called for further questions. Since there were none he called for a motion.

Commissioner Doppe stated I'll actually move that we accept the settlement along as my comment's on record that personally my patience grows thin on this and I think that our Commission is going to be taken to task at some point in the future if we don't institute some sort of penalty mechanism that really starts to work and it doesn't look to me like this one's working. Having said that though, I will make the motion on this one to accept the settlement.

Comm. Crawforth seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**
B. SMI Joist; Notice of Alleged Violation #1369

Mr. Biaggi reported SMI operates a joist manufacturing firm outside of Fallon, Nevada. In December 1996 the Bureau of Air Quality received a Class II Permit application for this facility. Often what happens with new industry coming into Nevada is that they may have emissions that are exceeding Class II criteria, but in order to get them up and operational in a quick fashion so they can begin operating in Nevada, we will issue a Class II permit to them with certain limitations upon that permit so that they can become operational. We can issue Class II permits in relatively short order. Class I permits often take a year or more to issue because of the public noticing requirements and the EPA review periods. That was the case in this situation and in March of 1997 a Class II permit was issued to this facility. In June of 1997 SMI officially began operating. A dialogue was then had with SMI regarding what constituted fugitive emissions at the site. Of concern were paint dipping tanks which are used for the joists. The

Division made a determination that some of the emissions that SMI would like to call fugitive were not, in fact, fugitive and there was a rather long dialogue with them over that. We also obtained rulings from the U.S. Environmental Protection Agency, which essentially agreed with us that those emissions were not fugitive.

In July 1998 SMI submitted a Class I application in order for them to increase their emissions. During the public comment period for that Class I application there were five complaints received by neighboring residents of odors in the area and in February 1999 BAQ inspectors visited the SMI site in response to those odor complaints. At about the same time, the Bureau of Air Quality received information that suggested the Class II permit had been violated and VOC emissions had exceeded the 100 tons per year that are contained in that permit. In March 1999 the Class I permit was issued which upped that amount, yet the violation had occurred with regard to the Class II permit.

In March 1999 BAQ issued NOAV 1369 for failure to operate a source in accordance with the conditions of the operating permit and the indications that that permit had been violated were demonstrated in the 1998 annual emission report that was submitted to the agency by SMI.

In May 1999 BAQ issued NOAV 1378 for failure to obtain a Class I operating permit before commencing a modification to a Class II source and that resulted in total emissions of a regulated air pollutant to exceed the thresholds defined in the regulations. SMI Joist appealed that NOAV, both of those NOAVs at May 1999, soon after they were issued.

The Division then went into a prolonged period of settlement discussions and negotiations with SMI which culminated in a meeting in December of 1999 between myself, Verne Rosse, Administrator, Deputy Administrator of the agency, and our Ombudsman. As a result of those ongoing discussions in March of this year a Consent Agreement was signed by myself and a representative of SMI and that Consent Agreement is contained within your packet. In summary, the Consent Agreement has made a determination that SMI and the Division of Environmental Protection shall resolve the aforementioned issues for $45,000 and that penalty can be assessed in the form of a combination of a cash settlement and supplemental environmental projects. A supplemental environmental project, as you'll recall, are things that the company can do for the community that are beneficial that act as the same as cash in lieu of a cash settlement.

So, with that we would encourage your ratifying this settlement document as presented to you today. I'd be happy to answer any questions you may have.

Commissioner Dahl asked they were in violation of their Class II permit?

Mr. Biaggi stated that's correct.

Commissioner Dahl asked had they had a Class I permit would they have been in violation?

Mr. Biaggi answered no they would not have.

Commissioner Dahl asked so the damage that was done had they had the proper permit wouldn't have been considered damage?

Mr. Biaggi answered that's correct.

Commissioner Dahl asked so they were charged the $45,000 just because they didn't have the proper permit? Not related to any damage to the environment?

Mr. Biaggi answered there was no environmental damage that was noted at that time other than the odor complaints

by the residents and SMI is being responsive to those complaints and is working to deal with that.

Commissioner Dahl stated right, okay. I have one other question and that is the supplemental environmental projects . . .

Mr. Biaggi answered yes.
Commissioner Dahl asked if they decided to do some of those projects rather than pay all of the money, who decides, does the Department and SMI, they work together to decide what project to do?

Mr. Biaggi answered that's correct. We will enter into discussions with SMI and those discussions are already taking place of looking for things in the community that SMI can undertake to resolve those SEPs. We jointly identify the projects and we jointly identify the value of those projects.

Commissioner Dahl asked can you give me an example of what one of those projects would be?

Mr. Biaggi answered recently with a mining company we had some violations which they undertook some supplemental environmental projects and the mining company undertook rip wrapping of a stream course and this was in the Winnemucca area in order to prevent water pollution and also put some boulders in place in order to restrict access to some areas that had been trespassed on by off-road vehicles and other things. So those are the types of activities that can be undertaken. Some of the things we're talking about with SMI is, this is a very large company, in other states they have helped fund environmental programs with community colleges and have sponsored training courses and they have indicated that they would be interested in doing something similar to that at the community college in Fallon. So the door is pretty wide-open. The only thing that we don't allow is a supplemental environmental project, which would be something that they would be required to do under the regulations anyway. And we also make sure that it has some sort of an environmental spin to it.

Commissioner Dahl stated you know I have some problem with the Department deciding what is a good environmental project for a company to do in order to mitigate damage that they, in this case, haven't done except their failure to have the proper permit. But, just as an example, if the Department may determine that fencing a certain riparian area or something may be an environmental advantage. Where, to some people, that is not, you know, it's a detriment to an operation or, and I got involved in one of these mitigations and it was decided by the local soil conservation office that a good environmental project would be to fix part of a river and the project was headed off before it actually happened, but the staging area for where they were going to do this turned out to be some guy's alfalfa farm that was adjacent to the river and it just doesn't seem to me like the proper role for a governmental agency to be determining, especially, well, to be determining what is a good environmental project for a company to do in order to mitigate environmental damage that they may have done.

Mr. Biaggi stated well Mr. Dahl, first of all, it's not necessarily to mitigate environmental damage, although that may be a component to it. It's usually to resolve some sort of a fine or penalty. The companies have come to us asking for these types of projects because they feel they can get some positive benefit out of it in the view of the community. The community gets something out of it, other than just these companies paying a fine. Now, there's been some comment and concerns associated with doing those supplemental environmental projects. I would like to know about it because that's certainly not the intent of doing SEPs. We don't want to harm anybody in the pursuit of SEPs. But there has been some very good work done around the State with SEPs by companies who have desired to proceed in this fashion and it's always at the company's discretion whether or not they pursue it. We don't force them into using SEPs.

Commissioner Dahl stated right. I just still have that concern. I just don't think it's the proper role of the agency to be proactive in deciding, I mean, the role of the agency is to police the environment and to change that rule, I don't think that was ever legislatively designed to be in that position. That's just my own opinion. I just have a problem

with that.

Chairman Close asked has the odor problem been resolved? I mean just because you've got a Class I or Class II the neighbors still have a problem and my curiosity is if that's, if they're still happy.

Mr. Biaggi answered I toured the facility in the December time frame and SMI is aware of the neighbor's concerns and they are looking at alternative products for their dip tanks that don't off-gas the volatiles quite as much which helps eliminate a lot of the odor complaints. So they are looking at alternative products and alternative paints to mitigate that and, Eric, I don't believe we've had any odor complaints since then?

Mr. Taxer stated we have received just maybe some grumblings, not grumblings, but some comments from some of the neighbors, but no formal odor complaints have been received.

Chairman Close asked these complaints were instigated due to complaints of neighbors due to odor, is that correct? And, so, whether we call it a Class I or Class II really is irrelevant as far as the people are concerned that are being affected. So I'd be interested to know whether or not, you know, they are being protected regardless of the fact that we've given them a more liberal permit.

Mr. Biaggi stated we can bring you back a status update at the next meeting of the efforts of SMI to find those alternative paints and alternative products to mitigate those odor complaints.

Chairman Close stated I'd appreciate that.

Comm. Crawforth asked Allen, is the SEPs of the SMI conducted in other states, are those a result of violations?

Mr. Biaggi answered I believe some of are, but I believe some of them are not. In one case with the community college, I think that they did that out of the spirit of community and cooperation. Another effort that they referenced to me was the installation of a paint booth at a community college and sort of doing a technical effort on how to spray paint and technically paint items. So I think it would be presumptuous of me to say that they were all done as SEPs in other states.

Chairman Close called for further questions from the Commission and the public. Since there were none he called for a motion.

Commissioner Dahl asked I guess SMI agrees that they should go ahead and pay the $45,000?

Chairman Close answered and it's signed off.

Chairman Close called for a motion.

Comm. Crawforth motioned to ratify the Consent Agreement with SMI.

Comm. Turnipseed seconded the motion

.

The motion carried unanimously.

Chairman Close moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**
C. Nevada Power Company; Notice of Alleged Violations #1394 to 1404

Mr. Taxer reported Nevada Power operates a coal-fired utility plant at its Reid Gardner station near Moapa. Part of

its permit requires the quarterly reporting of meteorological data and ambient air quality data and the permit has specific guidelines that are to be followed in conducting and in preparing those monitoring reports. For over two years prior to the issuance of the NOAVs, the Division has extended quite a bit of compliance assistance to Nevada Power to help them comply with these regulatory guidelines. We have developed specific guidance documents for the problems that had been encountered by Nevada Power in the past and we've provided detailed evaluations and guidance on their quarterly monitoring reports that have been submitted. In addition to that, we've also conducted numerous meetings with Nevada Power Company to discuss the issues and to help them develop an understanding of the requirements contained in their permit for submitting those reports and conducting that monitoring program. However, after several years of providing this compliance assistance, in 1998 we received their third and fourth quarter ambient air monitoring report and still noted 11 specific deficiencies in those reports. Those deficiencies, including the knowing submittal of incorrect data, missing audits, incorrect audits and the use of an incorrect flowmeter, that after being previously told in writing by the Division and acknowledging that to us that they were going to replace that flowmeter at a specific date, they still have not performed that activity. As a result, 11 notices of alleged violations were issued to Nevada Power Company. These are NOAVs Nos. 1394 through 1404 and they were issued August 17, 1999. They were issued after we met with them on numerous occasions during the spring and summer of 1999 to discuss these issues.

Part of the corrective action that was included in the NOAVs was to get them to state that they do, indeed, need to follow their monitoring guidelines contained in the permit and, more importantly, to implement a peer review to insure the accuracy of the data submitted prior to the submittal to the agency. And then each specific NOAV has a corrective action that's specific to the deficiency noted within each respective NOAV and these corrective action measures have been completed.

We then went about the task of negotiating a penalty to settle these NOAVs. All of them represent a minor potential for harm in that there were no emissions, excess emissions, or any other types of emissions associated with these penalties. They're all with respect to how they conduct their monitoring and submit their reports to us. The deviation from the regulatory requirement range from moderate to major, depending on whether we had given them prior notice to specific instances of noncompliance or whether the deficiencies noted were something that had occurred that were serious enough to take an action on but had not been noted prior such as the knowing submittal of incorrect data. The base penalties then range from the amounts of $200 to $600 per day per violation. Each of those were increased by a factor of 10 percent for their history of noncompliance. And the cases where they had been given prior notice on the specific deficiencies, these penalties were increased by a factor of 25 percent to represent the degree of cooperation. The total negotiated penalty amount came to $9,190. We then entered into further negotiations to develop a supplemental environmental project to help off-set the penalty amount and what was decided was for Nevada Power Company to conduct a systems audit. This would be an independent, third-party audit of their entire monitoring program for the ambient air program to insure that the permit-required monitoring guidelines are being followed. This isn't something that Nevada Power would be required to do. It's not something that's part of their permit. It's something above and beyond what is required and something that the Division felt would be necessary to get them to, to help them identify some of the problems that are going on instead of us continuing our efforts to provide further regulatory guidance. The estimated cost of this systems audit is $5,000. The remaining portion of the penalty would be settled either by a cash payment or by a negotiation of a further supplemental environmental project. At this point the Division recommends that the stipulated order be ratified.

Commissioner Jones asked when we fine a utility like this, does the money come from above or below the line? Is it to the stockholder or is it to the rate payer?

Mr. Taxer answered I'm not sure. I believe that the Public Services Commission has regulations on how that is handled.

Comm. Crawforth asked do I understand that the major portion of their SEP will be to do an audit of their own activities?

Mr. Taxer answered yes. They will be hiring an independent third contractor to perform that audit.

Comm. Crawforth asked isn't that something that they ought to be doing anyway? Why would that be a good SEP?

Mr. Taxer answered it's not an audit that's required. They are required to do certain audits on their program, audits on the specific data that's collected. This is more of a procedural audit, how they're going about following the guidelines and it is quite a bit different from the audits that are currently being performed and it's something that isn't required of any of the other utilities who do conduct these monitoring reports.

Comm. Crawforth stated it just seems to me it diminishes the fine on their behalf and lessens the encouragement for them to perform appropriately in the future.

Commissioner Doppe stated as I was following along, it strikes me as though the only beneficiary of the audit is themselves because the State has the right to insist upon and obtain compliance irregardless of whether they do this audit. So the one who's really benefiting is Nevada Power. It strikes me as though a more appropriate SEP would be something that was outside of any question where they were the beneficiary otherwise, you know, fundamentally what you are doing is you are paying for their audit. They're handing you $5000 and you're giving it right back to their auditor who can go tell them what they're doing wrong which they had to fix anyway to comply with their permit.

Commissioner Dahl stated and for 11 violations they're charged $9,100 compared to SMI because they have not yet worked from their Class II permit into their Class I they're charged $45,000. So, it's a little lop-sided.

Mr. Taxer explained the penalty amount for Nevada Power considered the gravity of harm for the violations. It also considered, both violations considered economic benefit.

Commissioner Dahl stated yeah, but we determined that there was no harm with SMI.

Mr. Taxer stated right. SMI did have an economic benefit for producing at levels above which they were permitted at. There were other facilities in that area specifically that had gone through the proper channels and had received an appropriate permit and had waited until they received the permit before they produced at that level.

Commissioner Dahl stated the whole community of Fallon benefitted from them producing beyond their permit. I mean that wasn't the harm to anyone there.

Mr. Biaggi stated this is sort of a follow-up to Mr. Doppe's question with regard to Granite and, you know, Mr. Doppe brings up a very good point that some facilities may make that cognizant decision to continue to produce their product or continue operations in direct violation of a permit or a requirement because the potential cost of a fine is much less than the value that they're going to receive. In the SMI case there was the opportunity for SMI and they did admittedly continue production activities at their site in violation of their permit knowing full well that they would probably be in violation. So there was an economic benefit to a violation by SMI by continuing operation in the fashion that they did. If they wanted to be in strict compliance with their permit, they should have stopped, ceased operation when they had calculated their 100 ton limitation and held off on production until the following calendar year and then proceeded again. So there was an economic benefit component to the SMI settlement. The 11 violations here are violations with regard to reporting to the Division and errors and inaccuracies in that reporting per se. So there was not an environmental benefit out of the Nevada Power situation like there was in SMI or perhaps some of the others.

Commissioner Dahl stated yeah, but do you see what I'm saying? It seems to me that the fine should be tied to the amount of environmental damage that was done and if there is no environmental damage, but they are only acting outside of their permit and that they are producing more than their permit allows them to produce, in what's actually happening the community benefits, the company benefits, employees benefit because they're producing more and they're not hurting the environment in doing so. All they are is in violation of the permit which, their Class II permit is in the process of becoming a Class I permit anyway and if they had that then they'd be alright. It just seems like $45,000 doesn't, if there's no damage to the environment, it seems excessive.

Mr. Biaggi stated well Mr. Dahl often damage to the environment is a very difficult thing to get a handle on and very rarely are we able to put a dollar value on the discharge to a waterway or an air quality emission. Also there's the issue of equity among companies and we try and make sure that there's a level playing field out there of all of the companies. In the SMI situation there's a rival joist company that does the exact same thing that is in the same area in Fernley. That's a company that secured a Class II permit, same as SMI, so that they could get operational. They immediately went to a Class I permit and insured that they did not violate that Class II permit. So there's an equity and a fair play issue over here as well.

Commissioner Jones asked Allen could you just follow up and check for me about where the fine is assessed? Whether it's, I mean it's important because if we're going to try to get them to comply, there's not a big harm if they pass it on to the rate payer. If it's the stockholders, they'll address it.
Mr. Biaggi answered I believe there's a representative of Nevada Power here and perhaps he can address that issue.

Commissioner Johnson asked is a fine, a portion of that goes to the State school fund. How is that made up when you accept a in-lieu of payment and is it legal for us to do that?

DAG Price answered with my tremendous experience with this Commission, I don't think I can answer that today, but I would assume that that is something that has been looked at and if it's not then certainly I will let Jean Mischel know and you guys can be in discussion about whether the procedure meets with the statutory requirements.

Mr. Biaggi explained there's discretionary authority on the part of the Division in resolving any sort of a penalty. So I would anticipate that this would fall under that discretion, but I think you do bring up a very good point and it is something that we will come back at the Commission meeting with. As the Attorney General's office has indicated, with a read.

Commissioner Johnson stated this is an area that's always been problematic to me. In doing this their legislative intent is that we don't want to make you overzealous in seeking fines, but as I recall the discretion is in the establishment of the fine and this is kind of a concern that I've had in the past of, you know, we want to make this as objective and with a nexus between the offense and the fine, but this is a question that looked at that, do you have the discretion of saying that this fine can be offset some way? And I guess we've asked the question and we'll wait to hear. But I think it would be inappropriate for us to find on these issues when we really don't know the legality of what we're doing.

Mr. Biaggi stated I believe the Division has that broad authority under its administrative powers. Supplemental Environmental Projects have been a way of life for the Division for a number of years and there's been some very good work that's been done through the SEP process and it benefits, perhaps this matter aside, the communities that the fines occur in as do the penalties when they go to the school districts. I would encourage the Commission to adopt these today and we will get back to the Commission at a future meeting.

Commissioner Johnson stated actually from my interest I think that I would like to see, the record show that this Commissioner is in favor of you having that discretion because I think there is opportunity to fill some needs.

Comm. Turnipseed stated I believe the Division is charged with not enhancing the school fund, but enhancing the environment and if we can get an environmental benefit in lieu of a fine I think that's where the Division is headed. And then just a question for Eric, and maybe he hasn't been with the BAQ long enough and I'm glad there's a person here from Nevada Power, but something has happened in Nevada Power's management and I don't know if you perceive it the same as I do, but I used to get excellent cooperation from Nevada Power whenever I asked them to do something I'd get it right away. That has all changed in the last five years. Now I don't know if you've been with BAQ for five years. Have you had any similar experiences?

Mr. Taxer answered no I haven't. I've only been with BAQ for two years and I've only been dealing with Nevada Power probably for about a year.

Comm. Turnipseed stated I notice they don't have a sterling track record, but they haven't had much in the way of violations or fines for a number of years, in fact dating back into the '90's, but at least in my business our relationship with Nevada Power has gone way downhill in the last two, three, or four, or five years.

Chairman Close called for any further comments or questions. Since there were none he called upon Dennis Schwer.

Dennis Schwer, Environmental Services Department of Nevada Power Company, asked your question was who pays for penalties? The regulations that we have to follow for accounting are the Federal Energy Regulatory Commissions and the Internal Revenue Service. And I know that the Federal Energy Regulatory Commission requires us to put penalty payments under a certain account code. That account code is below the line, the shareholders pay for that. I might go a step farther though and say that if a portion of that penalty or settlement is in the form of a supplemental environmental program or project, then that portion of the cost probably would not go below the line. But as to do the rate payers pay for it in the case of generation, probably not. The rate payers are not going to be paying any more money for its generation, as you know or divestment generation. Does that answer the question?

Chairman Close called for further comments or questions. Since there were none he called for a motion.

Commissioner Gifford moved that the settlement agreement be accepted in the amount of $9,190, but that the $5,000 SEP part of that be rejected and, if necessary, another agreement be reached, but I would like to exclude the $5,000 SEP audit as part of my motion.

Commissioner Dahl seconded the motion.

DAG Price stated the options that you have in deciding whether to accept a settlement agreement is really to either accept it in full or you can certainly send it back for renegotiation. You can certainly not approve the settlement agreement. But those are pretty much your limited choices as opposed to providing alternates or here today renegotiating that without the parties present. It's something, if you're not happy with the agreement and you want to send it back, you have that ability, but it needs to go back to the parties to negotiate.

Commissioner Gifford motioned that it be sent back for renegotiation.

Commissioner Doppe seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item IV. A. Request by the City of Mesquite for an Extension to Compliance with the NAC 486A regarding Alternatively Fueled Public Fleets.**

DAG Price stated just for the Commission to keep in mind as they're considering both of these items, the request by the City of Mesquite for an extension, their original exemption was for a five year period and my guess is it pre-dated an amendment to the regulation, NAC 486A.200 which now limits exemption to 12 months. It can be renewed on an annual basis, but they can only, the length of the exemption is for one year, 12 months. And that would certainly apply to both A and B just in terms of your considering these requests. That you keep in mind under the regulation if you're going to approve an exemption and they meet the requirements, it's limited to a 12 month period.

Chairman Close called upon Bill Tanner.

Bill Tanner, Public Works Director for the City of Mesquite, stated the City of Mesquite has asked for an extension, or we asked for an exemption to 486 in June of '95. That exemption expires in June 30th of this year. We've asked for an extension from compliance to those regulations. We fully expected to probably ask for one for longer than the 12 month period. The reasonings for the extension, we don't really have much of an opportunity to incorporate alternate fuels in the location that we're in. I've wrote a letter to Mr. Cowperthwaite explaining some of the reasons. Smog checks aren't required in Mesquite as they are in Las Vegas and Reno. We are not in an attainment area. I've checked on reformulated or California gasoline and low-sulfur diesel and it would kind of be an impact to the general fund budget to purchase these fuels. They're talking 10 to 15 cents a gallon more to deliver them. Natural gas is not even available in that area. So, I don't know where we go from here. I wasn't familiar with the one year extension.

Chairman Close stated so, I guess you've heard now that if we do grant the extension to you it's only going to be for 12 months.

Mr. Tanner stated I realize that.

Ms. Cripps stated I'm a little confused I think because I think the 12 month exemption only applies to the director of the Department and I think your ability to exempt by the Commission is not bound in any way. And if you look at 486A.135 it indicates that the provisions of this chapter do not apply to and subsection 3 says any person exempted by the Commission and there's no other criteria which is why they were given a five year extension in the past.

Ms. Price stated under NRS 486A.150 is what gives the Commission the authority to establish a procedure for approving exemptions to the requirements of the chapter. Okay? And then the procedure that you really set forth is what you can see under 486A.200. I think, legally, you need to read those consistently and not as contraindicated. There's no other procedure set forth in the regulations other than what you'll find in 486A.200.

Ms. Cripps stated but 486A.200 gives the director the authority to exempt, not the Commission.

Chairman Close stated but that's regulatory.

Ms. Price stated right. And that's basically the process that the Commission set up for reviewing and granting exemptions.

Ms. Cripps stated we have applied those in the past as two separate types of exemptions. One where they apply to our Department for an exemption or they can apply to the Commission as an exemption and those in the past have been done on two separate, in two separate ways.

Chairman Close asked when does your exemption expire?

Mr. Tanner answered it expires June 30th, I believe, of this year.

Chairman Close stated you know what we might do is we might let you go out in the hallway for a second and discuss this. We'll go onto something else, because we want to do it right. If we're constrained to give the longer exemption, and then if we want to do so, then I think that we should know that we can do it. On the other hand, now we've been told we can't. Maybe you can talk about it for a few minutes and see if you can come to a conclusion and we can go on to something else and then come back to this matter. We do have some other things left on our agenda unless you have something else you want to talk about or questions for Colleen on this matter.

Comm. Turnipseed stated in his letter he says that they have 81 vehicles, 21 of which are police. Those are exempt anyway right now?

Ms. Cripps answered right.

Comm. Turnipseed asked fire and ambulance, 16, so those are exempt, right?

Ms. Cripps answered yes.

Comm. Turnipseed asked public works vehicles such as graders, tractors, loaders, they're exempt as well as administrative vehicles, 15, those are the only ones that are not exempt right? The 15? So that falls in the fleet category?

Ms. Cripps answered right.

Commissioner Johnson stated what I heard, one, we're talking regulatory authority and the other issue is statutory authority and certainly statutory is what I want to hear.
Chairman Close stated well, since we want to do this right let's just take this off for a second and give you both a chance to think about it and then maybe if you can't come back and tell us today, then that would be, you know, we will (inaudible) comply with what we have to comply with.

Comm. Crawforth asked are we concerned about are we getting close to having some non-attainment in the Mesquite area? There's not a problem out there is there?

Mr. Tanner answered we are not, we have applied, we're working on a regional airport into the future and that's why I feel confident that a five year extension would be something that we'd want to be addressing in five years, depending on where we would be going with the airport issues and the growth in that area. Right now we're not even close to a non-attainment area.

Ms. Cripps stated I would agree.

Comm. Crawforth stated but you're looking out at the future at the potential that maybe you won't need another five year one, you'll either have to do something or . . . The city is paying attention to that issue?

Mr. Tanner answered I took over public works in July and I got this probably just in time to try to retrofit it or make it work. In the next five years we're going to evaluate alternate fuels. We're going to see what our options are in the five years. I can make alternate fuels work in five years. I can't make it work in six months. Natural gas is, you know, we have a natural gas pipeline closer to us, it's just a matter of tapping the line and bringing natural fuel into the area. That would certainly change the playing field. The low-sulfur fuel that we're in a contract with the

provider now, who hauls out of Utah, that may change in the next year. So a five year extension would certainly give me the opportunity to work on being in compliance in five years.

Comm. Crawforth stated Mr. Chairman I wonder if that can't be worked out if we could do the one year now and give everybody time to come back.

Chairman Close stated that's what I was thinking. You know, if we can do it with, you know, without bringing him back, with a short conference on their part, I think that would be good. If it cannot be resolved quickly, we can give them a year's extension because we all agree we can give you one year and then we can give you time to think about it more. Does the next item also have to do with the same subject matter?

Ms. Cripps answered yes.

Chairman Close stated and so they want to go more than one year also obviously.

Ms. Cripps stated I'm not sure that that's the case. I think it's just a one year extension.

Chairman Close stated so, why don't you talk about it? If we can resolve it now, then we'll save you from coming back again and putting it back on the agenda. We'll do it. If we cannot, when you get through talking, we'll come back and consider your application.

Ms. Cripps stated okay. You may want to hold off on Michael Naylor's proposal too so that I can get back in here in case you have some questions as well.

Chairman Close stated okay. We'll hold off then on the next item, which is the request by Clark County and then go down to article number . . .

Mr. Biaggi asked could I make a suggestion that we go down to number VII and I'll do that one really quick and then David can do his things and we'll hopefully sort of tap dance and buy some time here while they're out doing that.

Agenda Item VII. Status of Division of Environmental Protection's Programs and Policies. This agenda item relates to policies, procedures, and other activities of the Division of Environmental Protection and I'm handing out to you just some general outlines of what I'll be speaking to hopefully very quickly, but not so quickly that Colleen and the AG's office can't work something out.

The first item of my discussion is the Governor's fundamental review. This is an initiative that has been established by Governor Guinn and is as a result of his looking at both the expenditure side of State government and the revenue side. The Department of Conservation and Natural Resources is one of the departments that has been subject to this review. Probably the biggest issue for the Division of Environmental Protection has been an initiative that has come forth for consideration of consolidation of programs within the Division of Environmental Protection and the State Health Division. The idea is that there is some activities that are somewhat overlapping in terms of what the Health Division does and what our office does. As a result, there was an audit that began on January 5th of both of the divisions and the idea is to evaluate the desirability of a consolidation effort between those two agencies. We've seen some of the preliminary results, but the actual outcome of the audit is expected to be made public after May 8th, which is the next meeting of the Governor's fundamental review task force. So we'll just have to see what comes out of that. I don't believe, though, that consolidation is going to be recommended. I think just getting sort of a feeling and vibration from the auditors I think that probably consolidation is likely not in our future for a variety of reasons.

With regard to the budgets of the Division of Environmental Protection, we are undergoing budget preparation at this time. All budgets for the next biennium need to be submitted by August 15, 2000. In accordance with the directives of the Governor, the Division of Environmental Protection is not anticipating the need for any programs, nor are we anticipating significant cost increases in any of our programs. We're essentially, once again, going to have a hold-the-line-type budget. However, we will be asking for four new positions based upon the existing workload and the growth of the workload that the Division is experiencing. The Bureau of Air Quality, which Colleen Cripps heads up, is our largest bureau. It has 31 staff members in it. We would like to split that bureau into two: a permitting and regulatory bureau and then a planning bureau. This is something that we did in our Water Quality programs about a decade ago and it has worked out very well. Consequently, we're going to be asking for a new bureau chief position for Air Quality. We're also going to be asking for a new program assistant in the Water Pollution Control Program with our State Revolving Loan program. For whatever reason, our SRF program in the last two years has taken off like wildfire. Historically, we couldn't give the money away, right now there's probably twice as many projects out there as that we have money available for. We're also finding that under the State system and under the federal systems, we are obligated to watch our costs and audit our program costs to a greater and greater degree. Consequently, the PA would be for the SRF and that would be paid out of SRF funding. We're also looking for a new accountant. We have an increasing amount of requirements placed upon us, as Mr. Turnipseed and Mr. Trenoweth know to track our expenditures and to make sure that we're fiscally responsible within the agency. Because of that, Mr. Crawforth knows that as well, because of that we will be asking for a new accountant position to be paid for out of our indirect cost rate for the agency and then we'll be asking for a new computer technician to assist us with development of our GIS and our internal computer systems, once again being paid for out of indirect cost rate. Mr. Turnipseed, with the State Engineer's office in Water Resources, and I are asking to split half-time for a new attorney general. Our case load has risen dramatically over the last year and a half due to bankruptcies in the mining industry. Right now we're watching, I think, 41 or 42 bankrupt mines. It's taking up a tremendous amount of our time in the mining program and taking up a tremendous amount of time with our attorney general's staff and we find that we're falling behind in other programs so we will be asking for some additional services.

Outside of the budget process, in January the Division received approval for two new positions in the Bureau of Water Quality Planning. This will include a contracts manager to help us manage our contracts and our invoicing to the nonpoint source projects, the voluntary projects that we provide grant money for. Also we'll be securing the services of a groundwater modeler to help us out with groundwater modeling in the establishment of total maximum daily loads on the waterways within the State of Nevada.

With regard to legislative issues, we're not anticipating the need for any additional legislation for the 2001 session. I have a feeling that things will be out there that we haven't requested that we'll have to address of course, but we're not anticipating the need for an agenda of our own at this time.

Commissioner Johnson asked this obviously infers that you're happy with your regulatory ability to deal with the 34 bankrupt mining properties and any future ones that come along?

Mr. Biaggi answered from a legislative perspective we believe we have the authority, but we are proceeding forward and probably at the July meeting of this body we will be presenting modified regulations for three primary areas: bonding for closure, a readiness fund, and one other issue with regard to mining. So, we believe we can do that from a regulatory perspective.

Some program issues very quickly, now that I see people are starting to return, under air quality you've heard today that we're working with EPA and Clark County for the submittal of State Implementation Plans for Clark County for carbon monoxide and PM10. Both Jolaine Johnson, the Deputy Administrator, and Colleen Cripps have been working very, very hard with the EPA and Clark County to get those SIPs in place and the Governor has taken a personal interest in these issues and he has provided us direction to provide any, and all assistance, that we can to

help Clark County on this issue.

We're also working on AB 432, which is a committee chaired by Senator Porter which is a review of air quality regulations and issues in Clark County and really in the State of Nevada in total. And, again, we've been working very hard and putting a lot of time and effort into that.

On the mining front, the Toxic Release Inventory still isn't out. We were anticipating that would be released in late February, early March. Due to some problems with utilities in the eastern United States, that report has been delayed. We're expecting that it may come out in the next week or two and I believe there are some brochures in the back that outline the TRI requirements and each of you should have received a TRI document in the mail of a guidance document that we prepared earlier this year.

There will be a panel hearing of the SEC on the Wind Mountain Mine on May 2nd. This is an appeal by Great Basin Mine Watch and some others on a mining permit located I believe in, help me out Al, is that is Washoe County or?

Commissioner Coyner answered yes, it's in Washoe County.

Mr. Biaggi stated okay. It's somewhere there in northern Nevada. In January of this year, a company called Arimetco went bankrupt and walked away from a couple of mine sites within the State. Probably the major one is in Yerington, but there's also one in Paradise Peak. With them walking away from those sites, there was the need to continue fluids management at those sites to ensure that a release of those fluids did not occur. Since nobody else came forward to do that, the Division went into the mining industry and we are now operating a copper mine and a gold mine. We are laying out approximately $50,000 a month in mining fees to operate those facilities. We have cut expenses to a very significant degree in Paradise Peak to the point where I don't believe we're paying anything at all now other than some periodic site security in Yerington. We are also cutting our security our costs and increasing evaporation. We're working with the former Arimetco company and ARCO to take over much of those costs in order to reduce the impacts to the Division. This is not going to go away in anytime in the near future and we anticipate that other sites of this nature may occur in the future.

In the Corrective Action program there's been a very positive move on the perchlorate issue down here in Las Vegas where a treatment system has been installed for a groundwater seep in the Las Vegas wash. This has reduced the perchlorate load to some areas of the wash and Lake Mead by as much as 50 percent. We're still pursuing that other 50 percent vigorously in hopes of eliminating all of the perchlorate input into the Colorado River system. A public meeting was held a couple of weeks ago concerning the cleanup efforts of the BMI complex here in Clark County. The proposed remedial solution includes the removal of contaminated soils and containment of those soils in an engineered landfill at the BMI site. The cleanup would meet standards for residential use, which is the most conservative use possible and we're soliciting public input into that remedial effort for probably another week or so.

Commissioner Johnson asked the regulations we adopted today, will that be a project covered under the Brownfields, or is this?

Mr. Biaggi answered no, it will not. It's outside of that. Very quickly, past case status of issues heard before the SEC. Western Elite was a case heard by a panel of the Environmental Commission in 1999 and this continues to be an issue. Western Elite has a pile of approximately 400,000 to 500,000 cubic yards of demolition debris at the site. We found that the site was continuing to take waste in opposition to the SEC's ruling from that May 1999 panel discussion. We took that to court and I'm happy to report that a contempt violation was issued against Western Elite and probably as of the middle of March they discontinued taking any waste at the site. The bad news is that on March 30th there was a fire at the site which destroyed approximately $215,000 in equipment and damage. The Division and Western Elite are continuing to discuss settlement options and at the same time we are aggressively pursuing legal actions and attempting to resolve those issues. So I don't have good news on this that there's been a resolution, but we are moving forward on both the legal front and the settlement front and they're not taking any more waste.
Commissioner Johnson asked was the fire in the waste pile? Was it a spontaneous combustion kind of a thing, or . . .

Mr. Biaggi answered it depends on who you talk to. Western Elite will tell you that they believe that it was an act of arson, but there has not been any formal determination or investigation of it to make that decision. It is interesting that it didn't appear to hit waste piles as much as it hit equipment. So, there wasn't a significant amount of waste that burned up, but there was a significant amount of equipment.

On February 1st Judge Wagner heard Elko County's appeal of the State Environmental Commission's ruling on the Jarbidge case. The judge ruled that the State Environmental Commission erred in their determination in the road construction was not a point source discharge. As of yet, a written ruling has not been issued on this matter. Once one is issued, we will take a good look at it and make a decision of whether or not we wish to appeal that to the State Supreme Court. The Division is participating in mediation of the federal injunction for the rebuilding of the road. The Division is involved because under federal law an action taken against a municipality under the Clean Water Act must also include the state where that violation occurred. The next mediation session is scheduled for May 1 and May 2 and Leo Drozdoff is the representative, along with Bill Frey of the Attorney General's office on that case. Mr. Dahl is there anything that you care to add on that? I know you're heavily involved.

Commissioner Dahl answered well I'll save that for next time and we won't meet between now and the 4th of July will we?

Mr. Biaggi answered we probably will, yes. Very quickly then a few things that I anticipate coming up before the Commission in the next couple of meetings. A fee increase is needed in the Chemical Accident Prevention Program. This is the first increase since the program was enacted in 1991. This program was the result of the Pepcon explosion and the release of chlorine from the Timet facility, as well as some modifications that were made as a result of the Sierra Chemical explosion in 1997. We expect that this will be brought to the Commission in June. Right now we're dealing with the public outreach and the workshops. The Division is working on revised water quality standards for the Walker River. This is likely to be a highly contentious issue dealing with agricultural interests, tourism, biological species issues and water rights. Proposed standards will probably be brought to the State Environmental Commission in fall of year 2000. In anticipation of the submittal of State Implementation Projects for Clark County, as you heard this morning, we may bring back the on-board diagnostic regulation and we may do that in a special meeting if that's what it takes. This is such a critical issue for Clark County. We also will probably bring before you in the next year or so some hazardous waste laboratory certifications regulations similar to what you heard this morning. With that, if there's any other questions?

Comm. Turnipseed stated I know you're not bringing any of the legislation forward, but there's a technical advisory committee to the 408 subcommittee to the public lands committee that's discussing water and wells and municipal wells, and domestic wells, and one of the items, we started out with about 18 issues and we've narrowed it down to about 5, but one of them that still exists is somehow tying water quantity, water quality together and I'm not sure

what's likely to come out of that subcommittee. Just put it on your radar screen and I'll try to keep you apprised of it.

Mr. Biaggi stated we may be working for one another pretty soon.
Commissioner Gifford asked in terms of the financial difficulties in the mining industry, are you contemplating any changes in bonding requirements or so forth?

Mr. Biaggi answered yes. As I referenced to Mr. Johnson, probably to the meeting in June or July of this year we will have regulatory changes to bonding requirements, to closure requirements, and others. I'll also report that Mr. Turnipseed took my "A number 1" attorney general away from me. He is now working for Mike. But I am happy to report that we have the replacement already. Her name is Gabrielle Carr. She's a wonderful employee and hopefully we'll have her here for you to meet at the next Environmental Commission meeting.

Chairman Close asked what is the status of the Vegas wash and this committee of 200 people that were trying to resolve everything?

Mr. Biaggi answered the document you're referencing is called the Comprehensive Adaptive Management Plan for the Las Vegas Wash that decides how we're going to fix a lot of the problems in the wash for the future and that has been approved and Senator Reid has actually got a bill before Congress at this time to secure some funding to assist in the implementation of that adaptive management plan. Probably the most critical aspects of that plan is the need to install erosion control structures in the wash to halt the erosion that is ongoing. And one structure is already in place. They're installing another major structure, as we speak, at Pabco Road. In fact, when we were on the landfill tour yesterday you could look down onto the wash and see the installation of that structure and additional structures will be going in in the future. So I'm very pleased with the movement that we're seeing in the Las Vegas wash. The Southern Nevada Water Authority has really taken a leadership role in movement of activities at the wash and we're seeing more progress in the last year than we saw in the previous 20.

Chairman Close asked is there a time frame that's been looked at, a realistic time frame of doing something?

Mr. Biaggi answered it depends on the actual issue that you're looking at in terms of how long that time frame is. The grade control structures, as I said, are going in right now, but I don't think that'll be completed for a number of years. I think there's 15 structures ultimately that have to go in. A lot of the wetlands are being re-established as we speak. There's activities ongoing with regard to securing additional acreage to reestablish those wetlands. I think there's still a couple hundred acres that need to be purchased. So movement is going on, but I would have to have the plan in front of me because each component of the plan has a different time schedule associated with it.

Chairman Close stated I understand there's some risk of the bridge structure on the lake road being undermined because of erosion. Is that, I mean, is that still a possibility?

Mr. Biaggi answered that's a very real possibility. If you go out there today and park along the side of North Shore Road, you'll see graffiti 40 feet up the pillars and that's where ground level was 10 years ago and people were writing graffiti then.

Chairman Close asked you went out and saw it then?

Mr. Biaggi answered we did stop there. What's happening is that center pillar isn't in danger, but the two side supporting structures are the ones that are threatening to fail and where the problems are occurring.

Chairman Close called for further questions. He then asked Ms. Cripps and DAG Price what they had found out about the Commission's ability to give 12 months or 60 months extensions or exemptions.

DAG Price explained it was my understanding that there was one distinct exemption process. But apparently through your, the Commission and the Department's past practice, there have been very two distinct methods for obtaining exemptions. One through the director, who is has not sought Commission approval and then one directly to the Commission itself. My recommendation is that the Department work with the Attorney General's office to review the regulations. I think you have the ability to go ahead and address the two petitions for Commission exemption today and to approve or deny them based on what they're requesting. But it may be worthwhile to look at the exemption process by the Commission and develop some regulations or look at addressing that under NRS 486A.150.

Chairman Close stated so then I think that what you're saying is we will proceed forth with Mesquite and Clark County at this time based upon their requests, and then David then if you would coordinate whatever activities that have been recommended to us as far as review of our exemption process. Okay, Mesquite, where are you? Come on back here. Were there any other questions?

Commissioner Johnson asked you're looking for five years, but had you applied to the director for a one-year exemption, or are you just coming to us directly without having been turned down?

Mr. Tanner answered I'm coming to you directly without being turned down. What I did is take the same exemption we had applied for in 1995 and I read through that documentation and I submitted another exemption, or a, the way I worded it was a extension of the exemption for another five years. That's what the City of Mesquite is requesting.

Commissioner Coyner stated I'd observe that in 1995 they had 15 city official cars and in 2000, despite the fact that their other service vehicle fleet increased, there's still 15 administrative vehicle cars. I think that's noteworthy and good work.

Chairman Close called for further comments or questions from the public. Since there were none, he called the public hearing to a close. He called for comments from the Commissioners.

Commissioner Doppe asked are these type of waivers routinely sought and granted by other jurisdictions? First off, are there other jurisdictions that are impacted like the City of Mesquite and what have we done with them? And second off, what's your opinion, I haven't heard what the Division has to say about this request.

Ms. Cripps answered there have been other requests in the past some of which you have denied as a Commission. There are requests that come through us for approval through the discretion of the director. Those are very clearly spelled out how we, the criteria that we need to look at in order to grant an exemption. One of them is that the vehicles that they need do not exist. The other one is that the fuel itself does not exist. If it's anything beyond that or if they need an extension for longer than 12 months, then we request that they come to the Commission directly. And the next one that you'll see is a case like that, where we don't have the authority to grant that extension.

Commissioner Doppe asked is that why the City of Mesquite is here because they needed more than a year? Or they just came to here first?

Mr. Tanner answered we came here first and that's the exact procedure we used in 1995. This is the same procedure. I would like to add, and I'm not familiar with Washoe County, in Clark County, and the way it reads is that in a county of over 100,000 population, and then it puts it in a municipal government. So City of Mesquite is a municipal city. I don't believe there's another one in Clark County other than the metropolitan area. I think you've got all your other smaller communities out there that are part of Clark County and that's why we would probably be the only ones I know of in this area that would ask for that exemption under that.

Ms. Cripps stated actually there are other communities in Clark County that are part of this program, but they have more access to the alternative fuels than they do in Mesquite.

Commissioner Doppe stated I understand. Knowing what you know about the situation, would, in your opinion, the Division have granted the one year?

Ms. Cripps answered yes.

Chairman Close stated it seems to me that Mesquite is not in the non-attainment area. It's remote. Everybody here has been complaining about buying more expensive cars because of this alternate fuel thing. Mesquite's got 15,000 people to share this expense among them. I don't see why this should not be granted to them. As I understand five years is a long time, and in five years they may not come back before us again.

Mr. Tanner stated I didn't sit down and actually check on the numbers of vehicles that I've got. I'm probably am in compliance right now. With the amount of vehicles we have and the type of fuel diesel vehicles, we could possibly be in compliance. It would be a real fine line. We probably wouldn't stay in compliance in the next few years, depending on which direction we go with our Police Department, our Fire Department, and those type of areas. What I'm understanding is they're exempt anyway. If there was a potential problem, we're going to try to address it in the next five years anyway or we'll look at all those options. I don't believe there's any potential chance of being in a non-attainment area where we're located in the next five years, even with the estimated growth pattern for that area.

Comm. Turnipseed motioned to grant the exemption to Mesquite.

Commissioner Gifford seconded the motion.

Chairman Close called for further comment.

Commissioner Doppe stated I'm in favor of the exemption. I'm a little, actually a little surprised and confused that there's two paths that an entity can go by to obtain that. One, where they have to go before the Division and explain their case and have it subjected to review and if they're successful they get a one-year extension and the other where they can skip that process, come right to this Board, not do anything but appear before us with a plausible story and probably an accurate one, but they get a five-year extension. It makes no sense to me whatsoever. I'm going to, although I oppose, or I favor the extension and I think there's every good reason to give it to them, the concept of that dual process where we don't even get to review this again for five years makes no sense to me at all so I'm going to oppose the motion on that basis.

The motion carried.

Commissioner Doppe and Commissioner Johnson voted no.

Chairman Close moved to Agenda Item IV. B. Request by the Clark County Health District for an Exemption Pursuant to NAC 486A.135(3) for Year-Round Use for the Summers of the Years 2000, 2001 and 20002.

Michael Naylor, Director of the Air Quality Division of the Clark County Health District, stated I trust you have a copy of our letter of March 3rd. And it is a complicated issue. You've been hearing several discussions today about alternative fuels. Since the Commission does meet several times a year, I would be glad to modify our request and ask for only a one-year exemption and then visit the Commission next year, if the need arises, to

continue this. I guess to summarize things, we have 30 vehicles that currently, because of their newness, would require the use of an approved alternative fuel. We have a total fleet of 72. This coming summer, in just a couple of months, we're going to be probably buying 10 more vehicles and those vehicles will be natural gas vehicles or equivalent to natural gas. But our problem is that there are 30 vehicles that currently need to be on alternative fuel and it's not practical to convert those to natural gas. What we want to do is use an approved alternate fuel, or reformulated fuel, that does not contain MTBE. And the only time of the year we can get that kind of gasoline is in the winter months and it would be tank-trucked from Phoenix starting this coming fall. So our proposal is to operate all 72 vehicles of our existing fleet on the Phoenix fuel, which is reformulated, but does not have MTBE and we would do that for six months a year and then for the other six months of the year, for the summer months, none of the vehicles would be using the reformulated alternate fuel. So on an annual basis we'll be using more alternative fuel than is required, but we would be using all that fuel only in the winter time months. We understand that possibly within a year at least one supplier to Phoenix will be able to bring in reformulated gasoline during the summer months without MTBE and if that happens, we may indeed only need a one-year exemption. Right now, as I speak, we're not in compliance with the alternate fuel rule. We're using conventional gasoline in our vehicles. The only way we can be in compliance would be to use California gasoline, but the California gasoline has MTBE and we would rather, for a number of reasons, not be using gasoline containing MTBE. In the winter months when we do have the reformulated gasoline at least what we'll be using next winter, that will be oxygenated with ethanol. In fact we had a problem this past winter, had we used the California gasoline we would have complied with the State rule, because we would be using alternative gasoline, we have been violating our own rule, because the oxygen content in that gasoline is less than what the Health District requires. So we had a real dilemma this past winter season where we had two different masters, so to speak, and we couldn't meet both and we opted to comply with our own regulation first. Anyway we hope, we think this proposal today for an exemption will actually reconcile State and local rules and also bring us into an equivalent compliance with the State's alternate fuel rule.

Commissioner Doppe asked what number of vehicles should you have now that should be complying?

Mr. Naylor answered 30. As of today, based on vehicles purchased since 1996, a total of 30 vehicles are supposed to be using the alternative fuel year around.

Commissioner Doppe stated okay I'm with you.

Commissioner Johnson stated this is where I was going with this. How many of the vehicles that you've purchased from 1996 to the year 2000 were alternative fuel? Just the percentages that were required here or was there some attempt to bring your total fleet into compliance? Presently the ones you buy this year will be 90 percent alternative fuel?

Mr. Naylor answered yes that's correct.

Commissioner Johnson asked and last year there were 75 percent . . .

Mr. Naylor answered correct.

Commissioner Johnson continued, alternative fuels. And how many vehicles? You weren't explicit in that you've complied every year with the fleet mandated, or was their an attempt to bring the entire fleet up? Did you just meet the minimum requirements or did you try to anticipate that there would be an image problem at least that you're asking the citizens to contribute money into control programs and that the Clark County Health Department is still driving non-alternative fuel vehicles.

Mr. Naylor stated I'm losing track of the question. A year ago we were using the California gasoline in about 30 of the vehicles at that time. The entire Health District was not using the alternate fuel, but we were in compliance.

Commissioner Johnson stated okay. You were counting the vehicles, alternative fuel because you had an alternative fuel. Now then you don't have the alternative fuel, so those vehicles don't qualify anymore.

Mr. Naylor stated I don't follow you sir.

Commissioner Johnson stated my problem is that perceptually you're asking an exemption from standards that the State has asked and you, Clark County, is the principal area of concern in air quality in the State and I find it difficult that an agency required to do the implementation of plans to bring the air into a healthy condition has a problem in seeking exemption from the standards.

Mr. Naylor stated well, you recognize California gasoline as an alternate fuel. We could be using California gasoline year around and not request an exemption. Unfortunately, the California gasoline is made with MTBE. That has groundwater pollution issues associated with it. So there was a disadvantage to using California gasoline with MTBE.
Ms. Malone stated I wanted to explain that vehicles that run on reformulated gas are considered alternative fuel vehicles even though they are not specially designed and they can run on, they are considered bi-fueled vehicles. Diesel vehicles are considered alternative fuel vehicles for 486A also. And there are other fleets, UNR in Washoe imports the reformulated gasoline and has a card lock and allows other fleets to "convert" vehicles to be alternative fuel using their reformulated gasoline. So, basically, the health district complied with the required percentages by acquiring, technically, by acquiring alternative fuel vehicles that were acceptable by 486A.

Commissioner Johnson stated this is the point of my concern, in the regulatory revision is that we were accepting a standard of compliance about a fuel that we aren't using in our vehicles necessarily nor is there a guarantee that next year we will be and we will have invested the capital in the vehicles that are then out of compliance because they are no longer fueled in the way that they've met the requirement to begin with. And this is the point of my concern. I am seriously concerned on this issue that there wasn't, the intent was to go for a low-emitting vehicles and whether that's natural gas or propane or electric vehicles, or what, now we're caught in the position that, you know, I can sympathize, I don't want to see MTBE brought in and I don't think that we have adequately addressed the issue of MTBE. There are, in Gardnerville and Carson City at least, a significant problems with MTBE that don't show up in the delivery patterns, but they show up in the leakage characterization. So, where did that come from? But, that's another issue. But this issue of you could have purchased natural gas powered vehicles or converted and that hasn't been done. You can still convert these vehicles to come into compliance with this. And this is my concern that we've accepted a designation of an acceptable vehicle and we don't have a rigid guide or control of the fuel that's going to be burned in that vehicle in the future.

Ms. Malone stated yes. There are definitely problems with designated use in diesel and RFJ for alternative fuels.

Chairman Close asked do I understand then, Mr. Naylor, that you're reducing your request down to a one year period?

Mr. Naylor answered yes, in fact the time period for which we need the exemption is the summer months. So, basically from April 1 through September 30 of the current year.

Chairman Close asked so the year 2000?

Mr. Naylor answered of the year 2000. And if we still need this relief in 2001, we'll come back to you early in the year 2001 with a renewed request.

Comm. Crawforth asked the administrator could have granted that one year?

Ms. Cripps answered no.

Comm. Crawforth asked because this is different than the vehicle, the things we were talking about originally?

Ms. Cripps answered right. The vehicle and the fuel. So we didn't have that authority.

Comm. Crawforth asked is there a Division recommendation on that?

Ms. Cripps answered we have been working with Clark County on this issue and they are proposing to alter their fleet and any future purchases will be made with vehicles that are actually alternative fuel vehicles rather than using the designated alternative, a gas-powered vehicle using a designated fuel. So, from that perspective, and given the MTBE issues, we would support that recommendation.

Commissioner Jones stated I just have a comment along the lines of the effort being done in Clark County because I know what they're up against and the other issues they're doing. Is this going to look right that we're giving the Health Department, which is primarily responsible for enforcing all of this in the midst of a review in Clark County and how to adhere to this, an exemption to not do this? It seems a little bizarre to me, but, I mean you know, I'll go along with it if you think so.

Ms. Cripps stated I agree. It does look a little strange and I think Michael is aware of that.

Mr. Naylor stated that's why we weren't even going to approach a waiver from the director. I mean this does warrant a public hearing and you should all be a part of the decision making process. But we would be using the alternate fuel in all our vehicles in the winter months and in the winter months is when we have the air quality problem. The carbon monoxide problem occurs in the winter months. All of the vehicles, new and old, will be using the cleaner fuel during that time period. If we switched it and did it in the summer and not in the winter, then I think there would be a bigger perception issue. And, finally, we have bragging rights between your rules and our rules, and the Division of Ag. we have the cleanest burning wintertime gasoline in the United States. When you consider Mr. Iverson's re-vapor pressure rules, the State's alternate fuel rules, the clean burning gasoline rules that we have now for low sulphur and the high levels of oxygen required, there's no other State that has the strict wintertime fuel rule as is occurring right now in Nevada.

Comm. Crawforth asked then do you think you're going to be providing a better product this way with your exemption?

Mr. Naylor answered yes. In fact, in terms of perceptions, if nothing else, MTBE is a true four-letter word and we wanted to be free of that particular chemical additive and this request allows us to not have to worry about using MTBE in gasoline.

Comm. Crawforth asked well, still, but meeting other standards?

Mr. Naylor answered that's correct. The gasoline we'll be bringing in from Phoenix next winter will be a lot cleaner than the street gasoline that's otherwise being required next year. So, it will be a true alternate, cleaner fuel than is otherwise required. So I think the community will get the best benefit for that.

Commissioner Jones asked can we have it down to less than one year to make it look better? I mean, do this just for wintertime?

Chairman Close stated you would want it for the summer time.

Commissioner Jones stated I mean, yes. (inaudible)

Ms. Cripps stated I'm sure you have that discretion, yes.

Commissioner Jones stated it may look better.

Chairman Close stated it doesn't really matter because, you don't need it after the summer is over.

Mr. Naylor stated yes, so I guess actually if it terminates September 30, 2000 that would take care of it for this calendar year.

Commissioner Gifford asked it seems to me that the MTBE question is one of, again, contamination of ground waters and so forth which tends to occur with leaky tanks and so if you're storing your gas in non-leaky tanks, which I assume you are, why would you have a problem with the MTBE?

Mr. Naylor answered all the tanks statewide have been upgraded in the last few years and the risk of a leak or a break is greatly reduced, but I don't think you're ever at 100 percent assuredness that there will not be any spillage or leakage. The plumbing lines could break or crack at some time. I mean, there's always some chance of something going wrong. The leak detection systems should pick that up, but even with the newest tanks, there's a lot fewer episodes, but it's always possible to have a leak or a spill even with today's technology.

Commissioner Gifford stated well it seems like we're talking about such a short interval of time there until the first of October, that I know public perception is not pro MTBE by any stretch of the imagination. On the other hand, I'm not sure of the tradeoffs here. I mean there's a perception problem leaning both ways and so you use it and the perception is that MTBE shouldn't be used, but then on the other hand, as the Clark County Health District, in terms of air quality standards and so forth I'm just wondering to myself here which is the best tradeoff because it will be ethanol, is that correct, after October 1?

Mr. Naylor explained the alternate fuel refers to a reformulated gasoline. Or at least the reformulated gasoline is one of the ways to use an alternate fuel, just like natural gas or propane.

Commissioner Gifford stated but it will be ethanol.

Mr. Naylor stated but it will be ethanol which our Board of Health does require ethanol during the winter months. So the gasoline that would be used next winter would be a California reformulated gasoline. It would not have MTBE. It would have ethanol as the specifications that we require locally.

Commissioner Johnson asked how many vehicles would you have to retrofit to CNG to be in compliance and what would be the cost?

Mr. Naylor answered well there are 30 that need to operate currently on an approved alternate fuel and we could retrofit those vehicles. The approximate cost would be about $5,000 per vehicle and those vehicles are up to five years old and that is a potential option. We've not embraced that, but we have committed to the new purchases this summer would be on natural gas.
Commissioner Johnson asked and in scheduling the new purchases there would be CNG and they won't replace these vehicles that are there simply in addition to . . .

Mr. Naylor answered the vehicles we are replacing are older than 1996. We're going to be replacing vehicles that are about nine to ten years old and adding vehicles to our fleet as well.

Chairman Close called for further questions from the Commission and the public. Since there were none he called for a motion.

Comm. Crawforth motioned to grant the exemption to Clark County Health District until the 1st of October 2000.

Comm. Turnipseed seconded the motion.

The motion carried.

Commissioners Johnson and Gifford voted no.

Chairman Close moved to **Agenda Item V. Adoption by the Commission of Form #4 and #5 Regarding Compliance with Assembly Bill 486 of the 1999 Session (NRS 233B, the Administrative Procedures Act). These forms relate preparation and appeal of the Small Business Impact Statement.**

David Cowperthwaite, Executive Secretary to the State Environmental Commission, stated before you in your package is an item related to a bill, it was AB 486 of the 1999 legislative session. That bill essentially established a process and requirements related to small business impact review regarding the regulatory making process. So, what I have before you in your package at the very back-end of the package is an outline of the process and a set of forms that I am asking to be adopted. What this process does, it essentially begins well before the process of defining small business impact occurs at the very, very starting process of the regulatory process and the way this bill works for AB 486, it brings it all the way through the rule making process to the very end of the process. So, what I'm going to do is try to present that to you and to present it to you in the forms of a couple of forms here that would be approvable that would allow for this process to be articulated.

The process is sort of bifurcated between the Commission and the agency that is proposing the rules in that the agency proposing the rules has to do a certain amount of work before it comes to the Commission. And so, what essentially has to happen is that the agency has to define whether there is an impact or not and then based upon this impact they have to prepare a statement and they have to weave that into the public workshop process. After they have done that, these documents, that is the determination of whether an impact is actually discernable and if an impact is discernable that it can be described. So, those documents would come to you for your review and they would also be part and parcel of the items that would be available to the public. Now this, and upon that, you will have before you something that will be an impact statement. After that, after you do your rule making process, there is a subprocess that is defined that allows a small business to challenge the report and come back to you on that. And so there is a form in here that allows this to be able to be presented to the Commission. So, at the fore-end of the process, that is at the beginning of the process of defining whether an impact exists, all the way up to the Commission hearing process, I think there's a good, well-conceived thought about how to be able to approach this. I think in terms of the process, or what is referred to as an aggrievement by a small business, if they disagree with the quality of the report or what it contains or it was not accurate, that they can come back to you. I think that that's going to take a little bit more work and it'll probably end up being as it happens that this will, that will come forward. But I do want to be able to open up the venue through a form.

Essentially, what the process is, what you would be adopting is a Form 4. Now Form 4 has two parts. The first part essentially says there's a test of two questions and these two questions are, (I'm going to read them into the record) "Does this proposed regulation impose a direct and significant economic burden upon a small business?" Now if the agency was to say no to this question, then this is the first test. If they were to say yes, they would automatically go to preparing a business impact statement. The second test that exists is, "Does this proposed regulation restrict the formation, operation or expansion of the small business?" And if it also, if it meets this test, it says, "No, we don't have an impact there," then with both of them "no" that they will have been in compliance at this point. If it's

"yes" then they have to proceed to preparing an impact statement. So, a third question exists, and again, this relates back to the way the law has been set up. It's sort of very oddly set up, but that's just the way it works. What I have to do is I have to come back to the agency that is submitting it to us and I say, "Did you make this available to the public at your workshops?" So, I'm asking the petitioning agency to come back and say, to comply with certain requirements of the law. And at this point, if in fact they both determine on questions 1 and 2 that it's yes, there is an impact, then they have to go to part 2 of the form and they have to submit that report and that report is essentially the aspect that is generally being made available to the public. And this one is much like the existing process that we have in our petition under Form No. 1, which is the petition that is provided to you that initiates the rule making process. That is, when an agency comes to me and they, the Division in this case, when the Division comes to me, a particular bureau, they'll say, "Okay, here is my petition and here is the attached regulation that goes with the petition." Because the petition essentially describes who is petitioning, what are they petitioning, what is the economic impact of it in general, and various other questions that they have to be applicable to. That information, in turn, is used to build the public notice. That information, in turn, is used to build the statement that is used upon filing that is reviewed by the legislature. So this information is very crucial in terms of being able to build the necessary documents that support the rule making process under 233B, the Administrative Procedures Act.

So, in part two of Form No. 2, which is page 2, that essentially says describe the manner which you went out there and did your outreach. Tell me what the economic impact is going to be. And then they have a third one, which is sort of a little tweaky item here, is a description of the method that the agency considered to reduce the impact of the proposed regulation. So they have to go through A, B, C, which says did you simplify the regulation? Did you establish a different standard for compliance for small business? And was there a modification of fees or other monetary interests that a small business is authorized to pay a lower fee? So, what it is, it asks certain tests within the statement process. Did you reach out to the community and did you think about these things when you went about doing that? So, these essentially, all these questions follow essentially what is in the Act. So all I'm doing is just reiterating clearly what is in AB 486 which was eventually codified as NRS 233B as a section inside there.

Okay so that deals with the process of what comes before you and that will be before you. That will be in your packages every time now so you will be able to have a greater background as to the economic consequences of these regulations on small businesses. The next part of it is a process here and I have talked to the Attorney General a bit here and she may be able to expand upon it a little bit more. But, what it essentially does is we provide an out process which is Form No. 5. Form No. 5 says, "Small Business Impact Aggrievement Petition" so that they can petition you and they can come back to you and say, "Oh, the agency was full of phlooey here after all this is done and over with." So, what happens is it's sort of an odd position of where it sits in the regulatory process. It comes in after you've made your decisional process, after all that has gone on. But it's my understanding that this does not hang up the filing of the document, because you remember in the rule making process this regulation goes back down to the Legislative Counsel Bureau, if you had taken any amendments, they would look at all of your amendments here and at that point they would bring it forth to the Legislative Commission if the Legislative Commission is meeting, they would take it forth to them and they would say, "Okay, we don't have any problem with this regulation. We want to go ahead and file and put it into effect." So these regulations that you adopted today, for example, are not into effect today. They will only go into effect upon filing with the Secretary of State and that would be approximately 35 days after I submit that to LCB. So essentially, that is my review. Any questions? Yes Mr. Turnipseed?

Comm. Turnipseed asked LCB is going to see Form 4 when you submit it to them for review the first time?

Mr. Cowperthwaite answered no. It is my understanding that, again, this impact statement is sort of in a very, it was oddly constructed in the language. It doesn't require to be put, this impact evaluation is not required in the public notice. It's not required to be put in the filing statement. What happens is upon filing a regulation there are three documents that go forth. One is the cover sheet that goes to the Secretary of State that shows that there's a stamp, so there's a stamping document. It essentially just contains an iteration of when the hearing was, the dates that the

public notice was put out on the street, that type of thing. So it's a one-page document. Then behind that is another document and that is a filing statement and that filing statement takes in the incorporation of economic benefit, it asks if the regulation was more stringent, is there a fee, how is the fee money being used, what's the economic impact on it and then the other part of it, which is preparing out the remarks of this hearing ends up being what was the public testimony and how was that resolved by the Commission and how was that absorbed? Who was pro and who was con? So I put that inside. They're both from a public level and a business level. So, I essentially do a little iterative document and that document essentially explains, it sort of provides more of a history, essentially, of what the regulation came about. And then the final thing that goes forth is the regulatory language itself, if you adopt it. So those are the three documents that move forward into LCB. And the small business impact statement is not linked into that process from what I can see under the law.

Comm. Turnipseed asked so, when we see this form as part of the package it's going to say that ABC Corporation claims that this regulation is going to put them out of business and 3 is going to say, "Yeah, it probably will put them out of business, but we need the fees anyway" and so on and so forth down through Form 4, right?

Mr. Cowperthwaite stated correct.

Comm. Turnipseed asked and Form 5 then, and then who gets to see Form 5?

Mr. Cowperthwaite answered that will be the small business if they were able to discern this process and I'm going to probably try to weave it into probably the public notice to make that clear. So, I'll come back in and amplify this in some way. I've got to figure that out. As we go into the next rule making cycle, which will be in June. So I'll try to figure out a way to be able to make that so the public is aware of that, yet at the same time, I guess it behooves us not to waive a red flag out there thank you very much. But on the other hand the availability of this new process needs to be made available. So, I'll have to figure out a way to be able to do that. You raise a good point.

Commissioner Jones asked the whole Commission then sees this aggrievement petition?

Mr. Cowperthwaite answered yes.

Commissioner Jones asked and makes a decision, or this isn't done with a panel?

Mr. Cowperthwaite answered no.

Commissioner Jones stated this is done with all of us.

DAG Price explained in the last, the impact statement is what's developed by the petitioner prior to the workshop. So it goes to the workshop. The small business obviously has that opportunity to voice its concerns. It's an ongoing process. They try and work out the issues. When it comes to you, you're going to get a copy of the impact statement. They certainly have the opportunity to appear at the public hearing and voice their comments if they haven't already been addressed and then basically you will, at the close of your pubic hearing, vote on whether you're going to approve or reject the regulation. It gives the small business one more opportunity to voice and an opinion and that comes 90 days, they have up to 90 days after you've already passed the regulation, after you've adopted it, to come back with a petition saying, "We still have a problem with this. This is why we have a problem with it. " You have the opportunity then to look at the petition, determine whether it has merit. If you find that it has merit, you have the discretion of amending your regulation.

Commissioner Jones asked this is the full Commission making the decision then?

DAG Price answered yes.

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Commissioner Jones asked this isn't a panel decision like we do in some cases?

DAG Price answered right, exactly. And again it doesn't require, it doesn't necessitate by statute that there's a hearing and it's not like it requires 30 days notice. You're going to agenda it and decide what you want to do with it. Does it have merit, and if it does, do you want to change the regulation as a result?

Chairman Close asked it's kind of a petition for reconsideration of our action 90 days after the fact, is that what you're saying?

DAG Price answered exactly. Yes.

Chairman Close asked this applies to everybody it's not just the Environmental Commission, right?

Mr. Cowperthwaite answered all those agencies that are defined under 233B. And I will state clearly only those agencies defined under 233B. Mr. Turnipseed is exempt. The university is exempt. The Governor is exempt. And I think Welfare is exempt. But I think pretty well everybody else is wrapped under 233B.

Chairman Close stated okay so think that no action will be taken. I think you're just advising us this is the way you're going to be doing it. This is the form that has been . . .

Mr. Cowperthwaite stated well, what I am asking, and I've laced this as a decisional item, that this becomes an official form and at this point then I can go ahead and push it back onto the agencies to be able to comply. Because otherwise they don't have any real pressure on them to comply with this format and structure.

Chairman Close asked have other agencies adopted this same format or is this a special . . .?

Mr. Cowperthwaite answered this is special to the Commission at this point. I suspect what will happen is everybody else will get clued in and they'll start to, everybody will grab onto this form.

Comm. Turnipseed asked when was this law effective?

Mr. Cowperthwaite answered this was effective as of January 1st and I will point out to you too that the small business impact statements are sitting up there at the desk up there.
Comm. Turnipseed stated well the reason I asked is had before us last meeting I think it was air emissions or stationary sources and we had the complaint from the guy down in Smith Valley, I can't remember the concrete company, and so this wouldn't have affected him. He had a good point, he and his wife and I don't know whatever else . . .

Mr. Cowperthwaite stated yes. But keep in mind at the passage of those regulations the law was not in effect until, again, January 1, 2000. All of these rule makings have been sort of under this, but again, I was not able to get a uniform format and structure into place and the purpose of this is to get that so that the instructions are very clear and succinct to the agency and the bureaus. That's the purpose of this. So that you are in compliance, you know the compliance to you is very clear and straight forward and it protects the rule making process. That's what it's for.

Chairman Close stated so, if there's no objection, then this will be the format that we will utilize to comply with AB 486. And if you want to update it or modify it you'll come back and say we're changing it in this regard for this particular reason.

Mr. Cowperthwaite stated yes.

Chairman Close stated and as you go on you may find there's some modification to this after you start using it and see how it works.

Mr. Cowperthwaite stated yes. And what it may end up coming to be is as we move forward in doing this process we may end up having to modify the rules of practice of the Commission to adopt this process. So at least the forms will be there to be able to do that if we have to do any rule making.

Commissioner Coyner motioned for adoption.

Comm. Crawforth seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item VI. Discussion and Action on a Due Process Strategy for Collection of Bad Debts by the State Environmental Commission.**

Mr. Cowperthwaite stated this issue relates to two issues that have sort of emerged. One out of the 1999 legislative session was the passage of a bill called Senate Bill 500. And it essentially dealt with public financial administration and it provided for a debt collection process. So at this point what I want to do is sort of give you a briefing and background and if you want to give me some guidance that's fine. What I'd like to do is probably come back in the next meeting and have a more clear, gelled picture of what has to be done. What's at hand is that because of air quality ratifications and appeals I'm in the business of having to collect the fines both in terms of the ratifications. You made two ratifications today. I'll have to go through a process of collecting those monies and taking those monies in and sending them to the school districts. All I have to do is act as an agent of collection and I move the money right on to the school district. The other part of it is when the Commission acts in an appeal hearing, and for example, in the issue, we just had an appeal hearing with J.S. Devco, I'll be collecting that money because it becomes a Finding and Order of the Commission and so, therefore, I act as their agent in going to J.S. Devco, who is the appellant in which the fine was upheld for $250. I'll go ahead and collect that money from them.

So, what this essentially does is, so I'm in the debt collection business and so what we circulate back to is the bill and the bill provides for and gave the executive branch agencies a lot of clout and a very clear protocol on how to deal with bad debts. And I want to say at this point in time I've always been able to, in doing this business, have been able to always collect the money. So, I've never had a problem here. So what we're talking about here is a contingency and a set of contingency procedures that would come about if let's say if in a settlement that was ratified by the Commission and that person said, "No, I don't want to pay it." Then the question gets to be, "What do we do?" Now, the way I read it is that we have, there's certain things that I can do that essentially do not burden you and I'm going to explain those. One is that in this law is, this law is not only supported within itself, but it's also is being manifested throughout the State Administrative Manual and various other documents in State government. So, what it does is it provides various levels and degrees in which money can be collected. And so, from my point of view, I can send letters to people and I can tell them they are in arrears and that is certainly the first part of the process of being able to collect if somebody is not paying. So, what my protocol would be automatically, and without having to come back to you, would be to send them another letter every 30 days and say, "Gee whiz, you need to pay your money up and if you don't pay your money up, I'm going to collect it." But there gets to be a point of where I can't do that anymore in terms of if they still continue to resist those letters. The other part of it is in the act it provides for the going out there and doing fee payments. For example, you get an appeal with Cyanochem America, and they owed us $6,000 and after the appeal hearing the guy sort of came forth and said, "Oh, gee whiz, I can't pay you $6,000 but I can pay you $500 a month" is what he wanted. The Chairman, Mr. Coyner said, "No. I want to get this paid and out of the way here. It's $1,000 a month thank you very much."

So we cut some new paperwork that allowed for this.

So, that is probably the first step that one goes through is to go back to a person and say, "Gee whiz, we'll put you on a fee schedule to do that." And my feeling is we can probably work out to be is where I could probably deal with that paperwork in some way and all depending upon what the setting is that we could probably work out the triggers within the settled documents that if we run into a roadblock in doing a fee schedule, a payment schedule for a fine, that dissolves the roadblock. Then that can be done and, again, we don't have to come back to you to be aware of that other than the fact of being aware of the fact that they're on a fee schedule as compared to you making a decision about doing that. So there's some options there. If you want the option of putting them on a fee schedule up front or after the decision is made, that's fine too. I'm pretty open to it, however you want to do that.

The way it works out to be in SB 500, if it becomes a bad debt, what happens it gets reported to the Controller and there has to be an accounts receivable established, and then after a period of time if that bad debt still never gets collected upon, thank you very much, then it goes to the Board of Examiners and at that point then at the very end of the process they can exhaust the debt. But in between there, there's a whole set of things that can be done and some of these things can get pretty draconian here. And so at that point, what I need to do is work out a way to be able to communicate a due process here to be able to deal with that person that owes the fine. For example, one of the easiest ways to do it is to be able to take them to Small Claims Court. Depending upon the size of the fine, there could probably be a process instituted to take the person to the Small Claims Court after they were dutifully notified of that. Another aspect of something that could be done was called a Summary Judgement, which essentially is taking a lien against anything they've got in any particular county or even statewide and that lien would stay with them until they pay that fine. The other part of it is what's referred to as a Controller's Offset. That Controller's Offset essentially is I'm doing money with the State, for example, I've got an NDOT contract and I've got money sitting out there and I can go and tap that money. If they had a contract let's say, you know, for a $1,000,000 or whatever, and in terms of being able to have a payment of a fee, I can, and they're getting paid for whatever job that they're doing, in theory we can go ahead and tap on to that. The other way to do it is if they have a bank account, let's say if they have a bank account out there, I can go out there and theoretically, under SB 500, I'm not saying me, I'm saying that under this law, the State has the capacity to go out there and if you have money in your bank account, I can do what's called and On-Demand to Transmit. That's what it's called. But there's things here that results. Because if I go to the bank to do that, and I'm going out there and tapping their money in that fashion, or their property or whatever, then they have a right to be able to have to go to hearing. So, there's a very (inaudible) process. And, again, it can all get down to the point too, if we all give up, just nothing is working then I send it to a debt collection agency and they get a cut of the money, but oh, well at least the State sort of, or the school districts, in this case, get a share of the money. So those are some of the steps that can be done. I don't think at this point, you know, I have not personally thought it through on terms of how to be able to present it. What I'm doing is trying to present to you what in SB 500 is available as remedies to deal with this.

Commissioner Jones stated this never happened and I can't imagine somebody not paying a regulatory agency that says, "Hey buddy, pay up." So I think you've got a lot of hammer there. Do you mean to tell me you can't just say, "You don't pay your fee, we take the license away?"

Mr. Cowperthwaite answered I have not explored that, and I can certainly weave that back . . .

Commissioner Jones stated you're still in the business, except you're (inaudible) with a regulatory agency and say, "Pay up or..."

DAG Price stated you may always have the potential of bringing them back for further disciplinary action. Also for your information, our office has been work shopped extensively on the new bill and the new debt collection procedures. You know, my recommendation would be that you know our office will work with David and sit down and come up, the whole idea, you guys are very lucky if you've been collecting your debts, or people have been

paying your fines, lots of agencies aren't quite as successful. Our office is generally in the process of working with our clients to come up with established procedures. We certainly can do that with David and once we have an established procedure bring it forth to you.

Chairman Close stated (inaudible) look and see whether or not you can revoke the permit in order to collect as a penalty for not collecting the fine.

DAG Price explained well, if you have, it depends. If you brought them to a hearing and if you brought them before you in a disciplinary hearing and one of the criteria of your sanctions is a fine and then you have an order and the order stands and there's a date definitive for them to pay the fine, they don't pay the fine, they're in violation of the order. That would give you the opportunity, I would imagine, to bring them back for additional disciplinary action on the basis that they violated the order and you might, I do think you can potentially impose additional discipline like suspension of a license until such time as they pay the fine in full.

Chairman Close stated so then you should look at our orders to see if we should add something in there that says, "Failure to pay may result in . . ."

DAG Price stated I can tell you from my own experience representing the Real Estate Commission in the past, they routinely, in their decisions, would require payment or other conditions and unless those conditions were met when they were required to be met, there's essentially, their license would be automatically suspended until such time as the payment was made in full. The difference is your settlement agreements versus your disciplinary action. If they violate a settlement agreement, you're sort of more in a contract dispute and you may not have that ability. So, it might vary depending on the process in which the fine was assessed.

Chairman Close stated except that our settlement agreements from now on will say that if you fail to pay, you'll lose your...

DAG Price stated the difference, though, is you may not be able to do that without a subsequent hearing. And maybe that's just a matter of writing some of that language into the settlement agreement. But if you fail to pay, we're going to suspend your license and we'll give you a hearing to discuss it. But, yeah, I think those are all options.

Chairman Close stated I don't even want to discuss it. I mean I want to have it stipulated in the settlement agreement that if they don't pay up within the time frame that whatever we agree upon in the settlement agreement, then they potentially lose their permit or have it suspended. Look into that for us and see if we can do that.

DAG Price stated sure, absolutely.

Chairman Close stated because that's our easy out. These other things all require judgements and a lot of attorney's time.

DAG Price stated right. And you have their permit. So that's quite a position to be in.

Chairman Close stated we have their permits.

Commissioner Johnson stated a question about the violations of the Clean Water Section where the fines and hearings or appeals are held on a different basis, would those be considered . . .

Mr. Cowperthwaite stated those are, you know, again, what I'm disclosing to you are the processes related to what only I am collecting. Those are things in which the Division is responsible and the Division has to have a game

plan in place to be able to deal with it. I think that they're much more highly at risk in terms of dealing with it because they also have to collect fees from permits and they also have to deal with fines too in various other programs. This is just a very small portion of the enchilada.
Commissioner Johnson stated I keep forgetting that clean water, we're regulatory but not enforceable.

Chairman Close called for further questions from the Commission. There were none. He called for questions from the public. There were none. **He adjourned the meeting at 3:50 p.m.**