NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF May 26, 1994

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

A G E N D A

NEVADA STATE ENVIRONMENTAL COMMISSION
PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing commencing **9:30 a.m., on Thursday, May 26, 1994** at the West Charleston Public Library Branch Lecture Hall located at 6301 W. Charleston, Las Vegas, Nevada.

This agenda has been posted at the West Charleston Public Library Branch and Division of Environmental Protection Office in Las Vegas, Nevada, the Washoe County Library in Reno, Nevada, the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this set hearing was published on April 26, May 4 and May 12, 1994 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 March 3, 1994, meeting. * ACTION

II. Regulatory Petitions * ACTION

A. Petition 94009 (LCB R-060-94)is an amendment to Nevada Administrative Code (NAC) 445.1353, water quality standards for Lake Mead from the western boundary of the Las Vegas Marina Campground to the confluence of Las Vegas Wash. It is proposed to revise the 4-day average concentration water quality standard for un-ionized ammonia from 0.04 mg/l to 0.05 mg/l.

B. Petition 94010 (LCB R-059-94) is an amendment to NAC 445.1339, standards for toxic materials applicable to designated waters. It is proposed to revise the aquatic life standards for selected metals based upon U.S EPA's interpretation and implementation policy.

C. Petition 94011 (LCB R-062-94) is an amendment to NAC 445.7135, air quality operating permit fees. The fee structure is proposed to be revised to establish the fees based on emissions and an annual fee for services and maintenance. This petition amends LCB file R-138-94 as adopted by the Environmental Commission on November 3, 1993.

D. Petition 94012 (LCB R-063-94) is an amendment to NAC 445 and LCB file R-147-93, as adopted by the Environmental Commission on November 4, 1993. This petition modifies the enhanced vehicle emission inspection and maintenance program. The proposed amendments delete the biennial provision of the adopted program for 1968-1985 vehicles and places them in an upgraded version of the currently operating vehicle emissions control program. The amendment also establish a schedule for testing the vehicle fleet affected by the program. 1986 and newer vehicles will remain in the biennial program as adopted on November 4, 1993. A phase-in set of emission standards from 1995 to 1997 is established for carbon monoxide, hydrocarbons and nitrogen oxides.

III. Settlement Agreements on Air Quality Violations * ACTION

A. Iron Mountain Acquistion Company, Inc.; Notice of Alleged Violation # 1022
B. The Moltan Company; Notice of Alleged Violation # 1078

IV. Discussion Items

A. Senate Bill 127 - Strategy Update
B. Status of Division of Environmental Protection's Programs and Policies
C. Future Meetings of the Environmental Commission
D. General Commission or Public Comment

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 extension 3118 no later than **5:00 p.m. May 20, 1994**.

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:30 a.m. on Thursday May 26, 1994**, at the West Charleston Public Library Branch, Lecture Hall, located at 6301 W. Charleston, 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 94009 is an amendment to Nevada Administrative Code (NAC) 445.1353, water quality standards for Lake Mead from the western boundary of the Las Vegas Marina Campground to the confluence of Las Vegas Wash. It is proposed to revise the 4-day average concentration water quality standard for un-ionized ammonia from 0.04 mg/l to 0.05 mg/l.

2. Petition 94010 is an amendment to NAC 445.1339, Standards for toxic materials applicable to designated waters. It is proposed to revise the aquatic life standards for selected metals based upon U.S EPA's interpretation and implementation policy.

3. Petition 94011 is an amendment to NAC 445.7135, air quality operating permit fees. The fee structure is proposed to be revised to establish the fees based on emissions and an annual fee for services and maintenance. This petition amends LCB file R-138-94 as adopted by the Environmental Commission on November 3, 1993.

4. Petition 94012 is an amendment to NAC 445 and LCB file R-147-93, as adopted by the Environmental Commission on November 4, 1993. This petition modifies the enhanced vehicle emission inspection and maintenance program. The proposed amendments delete the biennial provision of the adopted program for 1968-1985 vehicles and places them in an upgraded version of the currently operating vehicle emissions control program. The amendments also establish a schedule for testing the vehicle fleet affected by the program. 1986 and newer vehicles will remain in the biennial program as adopted on November 4, 1993. A phase-in set of emission standards from 1995 to 1997 is established for carbon monoxide, hydrocarbons and nitrogen oxides.

Petitions 94009 and 94010 have been previously noticed pursuant to the provisions of the 40 CFR 25.4. This provision requires the notification of the public 45 days prior to action on water quality standards. The rationale for these petitions is available upon request.

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

A copy of the regulations to be adopted and amended will be on file at the State Library, 100 Stewart Street, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada, Division of Environmental Protection, 1515 East Tropicana, Suite 395, Las Vegas, Nevada for inspection by members of the public during business hours.

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

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 extension 3118, no later than 5:00 p.m. on May 20, 1994.

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

STATE ENVIRONMENTAL COMMISSION
Meeting of May 26, 1994
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:

Chairman Melvin Close, Jr.
Russell Fields
Mike Turnipseed
Harold Ober
William Bentley
Marla Griswold
William Molini

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

The meeting convened at 9:40 a.m. at the West Charleston Public Library Lecture Hall, 6301 West Charleston Boulevard, Las Vegas, Nevada.

Chairman Melvin Close, Jr. read the public noticing as defined in the agenda for May 26, 1994.

Item I. Approval of Minutes

Chairman Close opened the meeting with a request for a motion to approve the minutes of the March 3, 1994 hearing as presented by staff. Commissioner Fields made a motion to approve the minutes, seconded by Commissioner Bentley. The motion was unanimously approved.

Item II: Regulatory Petitions

Chairman Close reviewed agenda item II-A:

Petition 94009 is an amendment to Nevada Administrative Code (NAC) 445.1353, water quality standards for Lake Mead from the Western Boundary of the Las Vegas Marina Campground to the confluence of the Las Vegas Wash. It is proposed to revise the 4-day average concentration

water quality standard for un-ionized ammonia from 0.04 mg/l to 0.05 mg/l.

Wendell McCurry, Chief of the Bureau of Water Quality Planning recalled that the water quality standards for Lake Mead were first adopted by the Commissioners in 1987. EPA has revised the criteria and the standards are now 0.05 milligrams per liter (mg/l) unionized ammonia as N, as nitrogen, rather than the 0.04 adopted in 1987 and that the U.S. EPA concurs with the proposed petition before you. Mr. McCurry noted when this standard was adopted in 1987 the decision was made that the appropriate method of measuring compliance would be to measure a representative of a cross-section at a particular point in the bay. U.S. EPA now recommends that Nevada change the method of measuring compliance so that we measure at each point of a cross-section of where this standard applies rather than doing a representative cross-section where we average the values throughout the cross-section. Mr. McCurry recommended that the measurement method established in 1987 be retained. The letter from EPA concurring with proposed petition 94009 was accepted into the record as Exhibit 4.

Chairman Close asked for public comment. No comments were forthcoming.
Commissioner Molini made a motion that the petition be accepted as written and that the current method of measurement be retained. Commissioner Bentley seconded the motion. The motion unanimous.

Chairman Close reviewed agenda item II-B:

Petition 94010 is an amendment to NAC 445.1339, standards for toxic materials applicable to designated waters. It is proposed to revise the aquatic life standards for selected metals based upon U.S. EPA's interpretation and implementation policy.

Wendell McCurry explained that the basis for adopting toxic standards over the years has come from U.S. EPA guidance manuals that recommend using total recoverable metals as the standard. This petition makes the changes under aquatic life for heavy metals to coincide with EPA's recommendation issued in October of 1993, a revised policy to protect aquatic life, stating that certain metals be changed so they are expressed as "dissolved" rather than "total recoverable". This change does not apply to other beneficial uses like drinking water, irrigation, stock watering, etc. It only applies to aquatic life and it is only for a selected few metals; arsenic, cadmium, chromium, copper, lead, mercury, nickel, silver and zinc. Petition 94010 reflects these

changes to coincide with EPA's recommendation. The action we have taken in the past has been based upon total recoverable so we added a footnote stating that "unless otherwise noted, it is to be expressed as total recoverable". We also added a footnote on the standards that EPA put new guidance on stating "these standards apply to the dissolved fraction". This petition makes the changes under aquatic life for heavy metals to coincide with EPA's recommendation issued in October, 1993. It also makes crystal clear that it is total recoverable unless otherwise noted. EPA has assured me that they are proceeding to investigate some of these heavy metals to try to come up with better science because all the states have questioned them about the quality of the science that was used in determining the standards.

Commissioner Molini asked if these are more rigorous, tighter standards because the methodology has changed from total recoverable to dissolved. Mr. McCurry replied that the standards are in reality, more lax because the number is a smaller number but it is being measured as dissolved. Commissioner Turnipseed asked if this pertained to the lower Carson River, from Empire to Lahontan, where the mercury standard exceed and would it disqualify the river as being a fishery? Mr. McCurry replied this is a white-water standard that applies to the streams and that Water Quality Planning must issue only those permits that assure compliance with the in-stream standard. Commissioner Fields asked Mr. McCurry to explain the measurement standard of mercury. Mr. McCurry replied that it was micro-grams per liter or parts per billion. Commissioner Fields asked why the 96 hour average is different, where you are not looking at the dissolved fraction. Mr. McCurry replied that according to EPA's guidance, the footnote reads that since it is a biocumlative chemical it is not appropriate to adjust for percent dissolved on the chronic side, the adjustment was made on the acute, or one hour. The three metals that have this footnote are mercury, selenium and silver. Commissioner Fields asked if laboratories have the ability to accurately detect the 2 parts per billion value and Chairman Close stated that he wanted assurance that the Commission was not establishing criteria that would allow a discharger to be unaware that he was violating the standards because laboratories within the state could not measure the standard. Mr. McCurry replied that the state laboratory and laboratories certified by the bureau can deal accurately with the two parts per billion. Chairman Close asked what difference would would changing from total recoverable to dissolved make to the people of Nevada. Mr. McCurry explained the net effect of EPA's changed policy is that it will be easier to meet compliance using dissolved, rather than total recoverable, standards and that the dissolved, rather than the total, is the part that does damage to the aquatic life. Mr. McCurry explained that a blank space in the table means that no standard

has been established for that type of beneficial use. Chairman Close asked if there was a standard for aquatic life for arsenic. Mr. McCurry replied that arsenic Y is the standard for aquatic life only expressed for trivalent form and that the main reason we use trivalent arsenic, or trivalent chromium is because that is the form that is the most toxic to aquatic life and there is established data for this form. Use of the one hour average and the 96 hour average, normally referred to as acute and chronic is strictly for aquatic life. Commissioner Bentley noted that as far as public water supply is concerned, arsenic is a major problem in Nevada. Commissioner Griswold asked if the new standards for aquatic life pose any new problems for Nevada. Mr. McCurry replied no.

US EPA letter was accepted into the record as Exhibit 5.

Chairman Close asked for public comment. No comments were received.

Commissioner Bentley made a motion that Petition 94010 be adopted as presented. Commissioner Griswold seconded the motion. The motion unanimously carried.

Chairman Close reviewed agenda item II-C:

Petition 94011 is an amendment to NAC 445.7135, air quality operating permit fees. The fee structure is proposed to be revised to establish the fees based on emissions and an annual fee for services and maintenance. This petition amends LCB file R-138-94 as adopted by the Environmental Commission on November 3, 1993.

Tom Fronapfel, Chief, Bureau of Air Quality stated that on November 3, 1993, the Environmental Commission adopted Title V regulations which were subsequently submitted to the U.S. EPA for their review and approval. Part of that submittal included a fee system that was initially established at $7 per ton of emissions for the first year of the program and at $20 per ton for subsequent years in the program with a 6,000 ton cap on those emissions. At the November 3 hearing, recognizing that the initial system was not equitable to all of the affected industry, Air Quality agreed to try to develop a more equitable system. Subsequent to the November 3, 1993 hearing we began working with various scenarios and potential fee structures and determined that the one that would be the most equitable resulted in a 50-50 split between an annual service and maintenance fee and an emission fee. We presented the new fee structure proposal in draft

form to the Nevada Mining Association, Sierra Pacific Power, Nevada Power, Southern California Edison, the Nevada Manufacturer's Association and to various individual companies who had specifically requested copies of the draft. Informal meetings were held with each of these entities to discuss the proposals and the proposal was discussed at our permits workshop in Reno on May 10, 1994. Formal comments have been received from Southern California Edison and the Los Angeles Department of Water and Power. We recognize that any fee structure will require periodic review and possible revision and, since we do not know at this time how much grant money will remain once the Title V program is approved by EPA, the petition before you assumed that no monies will be coming from the Federal Government for this program. It is critical to have the system adopted because U.S. EPA must approve the fee structure as part of the Title V submittal and the Division of Air Quality must have a fee system in place for the upcoming biennial legislative session so that we can demonstrate to the legislature that we have adequate funding resources available. We anticipate initiating our small business program beginning November 1, 1994 which will provide funding for that activity.

Mr. Fronapfel distributed a packet of information to the Commissioners and reviewed the graphic representation of the issues dealt with in determining the proposed fee structure; the executive summary outlines how the bureau arrived at the proposed fee system; the first pie chart indicates the emission comparisons by the four major groups identified within the fee structure, power utilities being the largest contributor to emissions in the state, mining activities second, aggregate and concrete plants are the third contributor and all other regulated sources throughout the state are the smallest contributors; the next pie chart showed, in terms of the power utility sector, the relative comparison between Nevada Power, Sierra Pacific Power, Southern California Edison and geothermal which is an insignificant portion of the power sector; the next chart shows, for fiscal year 1995, the estimated fee revenue and how it is distributed between each sector of the regulated community; the next chart shows the increase for fiscal year 1996, as proposed. We will be requesting additional staff the first year of the next biennium. The chart for fiscal year 1997 shows an increase in the fees because we will be requesting additional staff during that 2nd year of the biennium. Both the second and third year charts assume that there are no federal dollars for our funding program. We anticipate that there will be some funding but we have been unable to get an answer from EPA as to how much federal grant money we will be allotted. The next pie graph shows the relative fee contributions by major groups, power, mining aggregate and other, and again that is for each of the fiscal years that we are talking about. Mr. Fronapfel stated that the bureau will continue to revisit the equity issue of

these proposals it insure that we are receiving adequate funding, implementing the program as required, and to retain a consensus to make any necessary revisions to the fee structure in the future as deemed necessary.

Mr. Fronapfel reviewed the proposed regulation fee structure changes, explained how the emissions will be calculated and explained that the annual fees provide approximately 50% of the bureau's annual budget with the remaining 50% coming from the emission fees.

Based on comments received from several utility companies requesting new language to further clarify how emissions may be calculated, within subsection 3 of the petition. Mr. Fronapfel proposed language changes; following the word compliance, (subsection 3) we would insert a comma and insert the language "continuous emission monitor, the latest published issue of EPA publication #AP-42, or other emission factors or methods".

Mr. Fronapfel requested additional language changes as follows:
Subsection 4 (a) (1) should read "for facilities" rather than for sources.
Subsection 4 (a) (2) should read "for facilities" rather than for sources.
Subsection 4 (b) (1) should read "for facilities" rather than for sources.
Subsection 4 (b) (2) should read "for facilities" rather than for sources.
Subsection 4 (c) (1) should read "for facilities" rather than for sources.
Subsection 4 (c) (2) should read "for facilities" rather than for sources.

Mr. Fronapfel continued that additional changes in the text included re-numbering section 5 to section 6; re-numbering section 6 to section 7 and adding a new section, Section 9 which reads: "As used in subsection 4, "major group" means the major groups described in the "Standard Industrial Classification Manual", as adopted by reference in NAC 445.6605.
Mr. Fronapfel noted that this regulation, if adopted, would become effective at 12:01 a.m. on July 1, 1994.

Commissioner Molini how the fees for the different categories were established. Mr. Fronapfel replied it was based on a flat fee on an annual basis for those facilities that generate less than 1 ton of emissions per year, they pay just the flat fee because it is difficult for them to actually measure their emissions, and the breakdown within the other major groups is a combination of factors, amount of staff time for doing the permits for each of the categories as well as the total

number of sources and emissions state-wide in each of those groups.

Commissioner Fields how, in the first year of the program, the $350 fee charged a small mining operation which falls under the one ton or less per year, compare with what they are paying today. Mr. Fronapfel replied that the current permit fee is $900 per year so the new fee structure results in a cost reduction for the small miner.

Commissioner Fields noted that the pie-chart showed the low emissions from geothermal powered plants and asked how the geothermals were grouped. Mr. Fronapfel replied that they were grouped into the power category because they have little or no emissions, thus they pay the flat power generation unit fee of $2850 for the first year and the fees noted for subsequent subsequent years. They are getting a break because they have no emissions.
Commissioner Fields asked if the very rapid escalation of fees from the first to the second to the third year reflects the loss of federal funds. Tom Fronapfel replied that fee structure assumes the loss of federal funds, the addition of 7 new staff members the first year and 4 new staff members the second year required to implement the Title V program.. When we determine what federal funds will be available we will revisit the fee structure and reduce the fees as necessary to reflect that federal contribution.

Chairman Close asked Mr. Fronapfel to give an example of what the federal government is requiring us to do which causes us to hire 7 additional employees in 1995 and 4 additional employees in 1966. Mr. Fronapfel stated that the lengthy package reviewed in November was the direct result of the new federal requirements under the Clean Air Act for our permitting program. The new federal revisions in our operating permit program require substantial manpower to implement the federal mandates in terms of new source review, new source performance standards, and PSD facilities. Commissioner Ober asked if the projected fees will bring in enough revenue so that the cost of phasing in 11 new staff members is self-sustaining. Mr. Fronapfel replied that this program is required to be self-funded.
Chairman Molini asked if the Title V program says you must set up a fee structure and mandate that the fee system cover the cost of the program so you don't anticipate federal grants. Mr. Fronapfel replied that we must fully support the program and on the federal level, any federal grant contributions cannot be used for the Title V activities. The proposed fee structure will support all the activities of the bureau in both Title V and non Title V. We assumed, for calculation purposes, that the federal grant fund is zero.

Chairman Close opened the meeting to public comment on this petition and called upon Nadar Nansour.

Nader Mansour, Manager of Environmental Regulations for Southern California Edison Company, speaking on behalf of all the owners of the Mojave Generating Station which includes Southern California Edison, Salt River Project, Los Angeles Department of Water and Power and Nevada Power, expressed support of the proposed fees and support of the Bureau's intent to monitor the program, revising and making adjustments as necessary. Mr. Nansour expressed their support of the equitable fee system as proposed in Petition 94011.
Chairman Close requested that Mr. Nansour's written comments be made a part of the record, as Exhibit 14.

Chairman Close called upon Joe Squire for comment.

Joe Squire, Nevada Power Company, expressed appreciation for Mr. Fronapfel and his staff efforts in bringing forth equitable fees to the regulated entities. He stated his concerns with respect to equity. In 1990 Nevada Power applied for an Air Quality permit to construct the Harry Allen Station. The fee was $19,800 which NPC believes was equitable. NPC's interpretation of today's proposal would require a fee of only $250, thus the larger, major sources would be subsidized by both small and large entities in the program. NPC asked that this be addressed within the next year review time and noted that a balance needs to be struck between level of effort and emission fees. He continued that the current statutes do not allow the Bureau of Air Quality to carry over fees from one fiscal year to the next which creates a problem for Mr. Fronapfel since these fees are supposed to be used only for the permitting program. Mr. Squire also noted that in Section 1, 3b, if paragraph A does not apply to a source that was in operation during the preceding year emissions must be calculated using permitted allowable emissions - in other words "potential to emit"? Our potential to emit is almost 120,000 tons per year - our actual emissions right now are 12,000 tons per year, so you have a ten-fold increase in the fee structure by just that one statement, which is not equitable. Mr. Squire suggested either removing that language or to re-address that in a subsequent meeting.

Chairman Close asked Tom Fronapfel to respond to Mr. Squires comments. Tom Fronapfel explained that in the review of a new facility application, the facility provides information which allows us to establish a permit limitation. The facility cannot exceed the permitted allowable

emission. Consistent with the Clean Air Act Amendment provisions, until there is actually operating data, the initial first year fees could be substantially higher than subsequent fees after actual emissions data have been provided. Chairman Close asked if, in that situation, there would be a money refund to the plant. Mr. Fronapfel replied no.

Commissioner Molini asked Tom Fronapfel if it was an accurate statement that the Nevada Revised Statutes does not allow the bureau to carry over of excess money and if an excess would then revert to the general fund. Tom Fronapfel replied that for programs that have general fund money, that is a true statement, however, as of October of 1993, the bureau no longer has general fund money. Our budgets are approved and authorized by the legislature. We can collect a given amount of revenue and, in theory, we are to spend that same amount of revenue for the program. If, for example, we don't fill positions for part of a year we would have excess money that would be carried over into the following year but we have to re-justify why those monies were not expended. If we continue to build up additional monies we would have to come back to revisit the fee system and reduce the fees so we create a balance of what we are authorized to collect and spend.

Lew Dodgion, Administrator of the Division of Environmental Protection explained that 1993 legislative bill established a fund for the air fees, but because we do not have the fee schedule in place, the fund has not been set up. We start collecting on July 1, 1994 so in the next fiscal year the fees will go into the fund and be transferred from the fund into the bureau's account. If there is a surplus in fees they will stay in the fund dedicated for the program, they won't be reverted into the general fund and that no general fund appropriations go into this program. Commissioner Molini reiterated that it is then, a dedicated fund and there are no general fund appropriations that go into this program. Lew Dodgion replied that as of this biennium, there are none.

Commissioner Fields asked Mr. Fronapfel to comment on the issue of mid-application fees. Mr. Fronapfel replied that the reason for going to the $250 application fee is, from a budgetary standpoint, difficult to anticipate how many new applications will be coming in on an annual basis but if a large number came in at one time, we would not base our budget on that in subsequent years. We felt it best to implement a small application fee, but essentially base the program on a combination of emission fees and annual fees, making it easier to implement the

program through that budget process and that it allows us to analyze what fees we think will be coming in on a regular basis.

Chairman Close asked Joe Squires if he wanted to address the suggested amendments he had in his written presentation. Mr. Squires replied that Tom had addressed those concerns.
Chairman Close requested that Joe Squires written presentation be accepted into the record as Exhibit 15.

Chairman Close called upon John Barta.
Mr. John Barta, Environmental Manager for First Miss Gold at the Getchel Mine and representing the Nevada Mining Association stated The Nevada Mining Association supports these two fees based on the understanding for the need for them. When Congress enacted and the President signed the Clean Air Act amendments in 1990, there was a requirement in the law that programs, such as the one in the State of Nevada, be self-sufficient and self-funding. A preference was stated that the fees should be based on emissions because there should be a social cost on the basis of the amount of emissions produced. In an effort to make the program fair and to have sufficient funds, the bureau came up with a program that has two types of fees. Half the budget would be funded by maintenance fees which is related to the number of permits, the complexity of the permits, and the approximate amount of time the bureau spends for each of these four industry categories. It appeared to us that the bureau was providing approximately the same amount of time as the number of permits, that the complexity was normal, and that to fall into the line with the rest of the intentions of the Clean Air Act of 1990, fees were also imposed on the basis of emissions. This is a large change in the way the bureau collects it fees and we recognize that it will be revisited in the future. The Nevada Mining Association supports these fees as fair but among the industry categories, the mining industry does not have an opportunity to pass these fees on so we carry the burden of these fees directly out of our profit.

Chairman Close called upon Darren Mann:
Darren Mann, Air Quality Program Supervisor at Sierra Pacific Power Company offered the following testimony: When Congress first proposed the Clean Air Act of 1990, a key provision was for states to adopt the Title V Program. This program provided continuity in the permit process among the various states for major stationary sources. In developing the subsequent regulations EPA outlined the requirements for fee structure that was sufficient for the implementation of the program and to encourage sources to reduce their emissions. Sierra

Pacific Power Company supports the proposed changed to the Nevada Administrative Code as both fair and consistent with the intent of Congress. The proposed changes to the Title V fee structure represent a commitment by Mr. Fronapfel and his staff to work out an equitable solution to the regulated community. Clearly Nevada is a leader in the permit program and consequently is better prepared than most states to implement Title V. We do support the fee schedule as proposed by Mr. Fronapfel but strongly encourage him to revisit that structure each year. Mr. Mann noted that Sierra Pacific has paid for permits for its Churchill and Tracy Power Stations in 1993 and we would request that, if it does not impede Title V implementation, that those fees be pro-rated toward the Title V fees. Sierra Pacific Power believes that the flexible approach proposed by NDEP is the best method for calculating emission fees and such an approach will accommodate the various processes and fuels while providing verifiable emissions for measure already in place in the permits themselves. Tom Fronapfel has stated in his requested changes today, that he will include the continuous emission monitoring systems that are now required under the acid rain program. Sierra Pacific Power certainly support that. Finally, we commend NDEP for recognizing that there are common facilities in power generation and their administration by NDEP can be covered effectively without undue additional permit fees. I thank Mr. Fronapfel for actively soliciting the comments of the regulated community and I thank the Commission also.

Commissioner Fields asked Mr. Mann the amount of the fees paid in 1993 for the Churchill and Tracy Power Plants and the time period the fees covered. Mr. Mann replied approximately $18,000 was paid for a 5-year permit, but under the new program that fee would be $250 plus the emission portion, which would be the larger portion.

Chairman Close asked Mr. Fronapfel to respond to Mr. Mann's remarks. Tom Fronapfel replied that the bureau recognized that we were essentially eliminating our existing fee structure and going to something entirely new beginning July 1, 1994. A number of facilities had paid for 5-year permit fees and, after much discussion, we arrived at the conclusion that we could not, from a budget standpoint, pro-rate or credit the additional period over the remaining life of that current permit. Because this is the second year of the biennium we have a given amount of money to collect and we have to establish a system that will provide that amount of money. Mr. Fronapfel gave another facility example, Newmont Mining who paid $275,000 in 1993 for 5 year permits. They have essentially said that they recognize that this is a new system and are not objecting to reversion to an annual basis system beginning July 1, 1994. Chairman Close stated

that he felt this very unfair and asked Tom if, when you receive a fee of that nature, do you use it in the year you receive it or is it pro-rated. Tom Fronapfel replied that the money is used in the year it is received which is part of why our current system is difficult to anticipate. Fees are collected on the annual dates of the date the permit was issued. We will now proposing to collect all fees on July 1 which would be subsequently used for that fiscal year. following July 1 making it easier to budget.that in a sense it is and we recognize that but
Chairman Close asked if there was anyone who had paid a five year fee last month? Mr. Fronapfel replied no, the most recent fee received, about $180,000 was received from Newmont for permit modification fees, not for the 5-year subsequent cycle.

Commissioner Fields stated that it is agreed that the bureau will be re-visiting the fee structure over the years, modifying it from time to time and asked if the same problem, where somebody has just made a big payment then all of a sudden the rules of the game change, would surface. Tom replied that, if the fee structure is changed, it will remain close to what is being proposed today. Commissioner Fields stated that the fees the Commission will be adopting today are annual fees as opposed to 5-year fees. Mr. Fronapfel replied yes. Counsel Jean Mischel asked, if there a provision for modification of the program on the 5-year permit. Tom Fronapfel replied that the 5-year permit will be issued as a 5-year permit but the fees will be collected on an annual basis rather than once every 5 years when the permit comes up for renewal.
Chairman Close stated that he felt it was very unfair to have charged an entity for a 5-year term change the contract in mid-stream, and ask them to pay all over again and questioned if, by adopting these regulations, the Commission was doing the right thing. Tom Fronapfel replied that they attempted to find a way to fix that but from a budgetary standpoint it was impossible. Commissioner Ober felt that a major problem would be caused by collecting a 5-year permit and using all the money collected in the year it was collected.

Lew Dodgion stated it was suggested by a spokesman from one of the power companies, that the fee for a permit should be higher than $250 and reflect the actual cost of processing that permit and issuing it. We are not talking about revoking those permits, those permits are good for the duration for which they were issued. All of those permits now are going to have to be revised, under the Federal Title V Program, and a new type of permit issued. However, the permit that they paid the permit processing fee for will stay in place. They are getting to retain what they paid for. Now, because of the Clean Air Act Amendments and the requirements of the Federal Law, they have to pay emission fees and the annual maintenance fee in addition to their permit

fee.

Commissioner Griswold asked Counsel Jean Mischel if she is comfortable with the Commission taking this action. Counsel Mischel replied, from a legal standpoint, yes. Tom Fronapfel interjected that the system the Commission adopted in November does the same thing that we are proposing today but that petition was strictly an emission fee paid on an annual basis. We are proposing today to revise that further so that we don't have, using the cliche' "all our eggs in one basket". We are spreading the burden 50/50 between the services and maintenance fee and an emission fee.

Commissioner Fields stated that the proposal eliminates the 6,000 ton cap and asked Tom Fronapfel to give an example of how high the emissions annually are from a major coal-fired station. Tom Fronapfel replied there is 6,000 ton per pollutant cap. As an example, Southern California Edison, has 6,000 tons of SO^2, 6,000 tons of NOX and 6,000 tons of particulate for a minimum total of 18,000 tons times whatever emission fees you charge under the existing fee structure, $7.00 per ton this year. Next year the fee would be 18,000 minimum tons multiplied by $20.00 per ton.

Ray Bacon of the Nevada Manufacturers Association expressed support of the small business program as an administrative function but stated that it does not do anything about cleaning up the air which was the NMA's concern in November and it remains a concern today.

Commissioner Molini stated that, with the understanding that the Feds have done it to us, moved move for adoption of Petition 94011, LCB File # R-062-94, as presented and amended with the understanding that the Division is committed to careful annual review of these fees. Commissioner Bentley seconded the motion. The motion was unanimously carried. Chairman Close requested that Mr. Fronapfel's handout, the Executive Summary and Related Graphs Projected Budget and Fee Assessment be entered into the record. It was marked as Exhibit 19.

Chairman Close reviewed agenda item II-D:

Petition 94012 an amendment to NAC 445 and LCB File R-147-93, as adopted by the Environmental Commission on November 4, 1993. This petition modifies the enhanced vehicle

emission inspection and maintenance program. The proposed amendments delete the biennial provision of the adopted program for 1968-1985 vehicles and places them in an upgraded version of the currently operating vehicle emissions control program. The amendment also establish a schedule for testing the vehicle fleet affected by the program. 1986 and new vehicles will remain in the biennial program as adopted on November 4, 1993. A phase-in set of emission standards from 1995 to 1997 is established for carbon monoxide, hydrocarbons and nitrogen oxides.

Tom Fronapfel, Bureau Chief of the Bureau of Air Quality, Nevada Division of Environmental Protection explained that the program, as it now stands, was adopted by the Environmental Commission on November 4, 1993 which created a biennial program for 1968 and newer vehicles, subjecting them to an IM test only requirement at test only facilities. Subsequent to this hearing that package was submitted as the State Implementation Plan to the federal EPA for their review and approval. On February 22, 1994 the Division received word that it was declared an incomplete submittal, primarily because it was absent of the DMV regulations at the time of submittal. On February 22, 1994, the 18-month federal mandatory sanctions clock started running against the State of Nevada. Subsequent to the adoption of those regulations and submittal to EPA, the State of California and U.S. EPA began lengthy negotiations in terms of test and repair and test only facilities & businesses in California. California ultimately reached an agreement for implementation of that program. Because of the discussions EPA was having with the State of California, Governor Miller placed Nevada's program on hold pending the outcome of the discussions and the regulations adopted on November 4, 1993 were not filed with the Secretary of State until March 23, 1994. The program as adopted in November by the Environmental Commission is currently in place. After the program was filed with the Secretary of State we began developing various alternatives, we ran these alternatives through EPA's mobile model, and held a variety of discussions with EPA as to whether the programs would meet the minimum federal requirements for an enhanced inspection and maintenance program.

Mr. Fronapfel explained that the proposal before you today does meet the minimum EPA performance standards and the Division believes it allows existing businesses to participate in the program without unduly harming them and it allows us to take advantage of the equipment or alternative equipment that EPA has agreed to with the State of California. A final decision on this equipment will be made by February 15, 1995. Assuming that schedule and decision is met,

it will allow us to take advantage of less expensive equipment for testing which will result in a less expensive program and less cost to the consumers.

Mr. Fronapfel presented copies, and reviewed for the Commission a comparison chart developed for a briefing document for the Governor's office which outlines what the requirements were for the State of California compared to what the Commission adopted in November and with what is proposed for adoption today. The chart was entered into the record as Exibit 6.

Mr. Fronapfel explained the current proposal, a decentralized test only program, features:

A hybrid program on an annual basis for 1968 through 1985 vehicles on the Nevada 94 equipment that the Department of Motor Vehicles has established criteria for;

A biennial program for 1986 and newer vehicles on IM 240 or equivalent.
Phase-in cut-points for the first two years for calendar years 1995 and 1996, with the final standards going into effect January 1, 1997.
A minimum failure rate of 20% for those vehicles subject to the enhanced program;
A $450 waiver provision for the first year of the program for those vehicles that are not subject to the enhanced program the waiver rate would remain for the first year at $200.
For anyone requesting a waiver from the emission and vehicle requirements, it would have to go to test-only facilities if it failed;
The lessor of .5% or 20,000 vehicles for remote sensing enforcement provisions;
and the emission control device and evaporative system functions checks as originally proposed in November.

Commissioner Turnipseed stated that 1968 - 1985 vehicles get an annual inspection but what happens to the 20% failure rate and what is the purpose of the 20% failure rate? Tom Fronapfel explained that when they fail within their test cycle, an annual or biennial cycle, they all require repair if they fail unless they request a waiver, then they have to go to a test only facility for re-test until they have expended at least $450 in repairs. The 20% failure rate is the minimum U.S. EPA failure rate. Under the model program it assumes that no matter what type of program you put in, 20% of the vehicles tested will fail the test, for modeling purposes only. Part of the reason California was able to retain part of their test and repair business is that they went to a minimum 40% failure rate so they are mandating that at least 40% of the cars will fail; they accomplihsed that by reducing the carbon monoxide and other cut-points for exhaust.

Chairman Close asked Tom Fronapfel to review the regulations as presented.
Tom Fronapfel explained Petition 94012, LCB File No. R-63-94, looks at adopting a combination of an annual and a biennial program and reviewed changes requested in this proposal.

The first requested change would be in Section 2, page 1 . We propose to eliminate the word "biennial" so that it just establishes an enhanced inspection program.

The second change is in paragraph 2 of Section 2, the words "must provide for" will be replaced with the words "will establish".

The third change is in subsection 3. "The program for enhanced inspection required by this section must be in operation by January 1, 1995." We propose to eliminate the words "in operation by January 1, 1995".

As a result of our conversation with EPA, EPA is saying that as long as you can test 15% and 30% of the subject vehicles within those categories by the end of 1995 that will be acceptable during that first year. Thus, we propose the language "operating during the 1995 calendar year".
Mr. Fronapfel continued the review of the petition.
By December 31, 1995 the program must provide that:
(a) At least 30 percent of the vehicles which have a model year between 1968 and 1985, inclusive, must be inspected at test-only authorized inspection stations using the two-speed exhaust emission test procedure which is specified in Subpart S of 40 C.F.R. Part 51;
(b) At least 15 percent of the vehicles which have a model year of 1986 or newer must be inspected at test only authorized inspection stations using a loaded mode emissions test approved by the EPA;
Mr. Fronapfel explained that the bureau will continue discussions with the Department of Motor Vehicles and Public Safety to try to determine, based on the vehicle fleet in Clark County, the minimum number of vehicles that comprise 15% from 1968 to 1985 vehicles and 30% from 1986 and newer vehicles, and as an option say "everyone is subject to inspectino in this manner from September 1 on". Specifically, how we will determine that is yet to be determined.

Mr. Fronapfel continued to explain the changes:
(c) Vehicles which are not covered by paragraph (a) or (b) may be inspected at a test and repair station licensed by the department using the procedure specified in NAC 445.924.

Mr. Fronapfel explained that those vehicles would be the remaining vehicles not included within that 30% and 15%. So, for the first year they would retain the ability to go to test and repair facilities in 1995.

Mr. Fronapfel continued to explain the changes:

"4. Effective January 1, 1996:
(a) All vehicles which have a model year between 1968 and 1985, inclusive, must be inspected annually at test only authorized inspection stations using the two-speed exhaust emission procedure specified in Subpart S of 40 C.F.R. Part 51; and
(b) All vehicles which a model year of 1986 or newer must be inspected on a biennial basis at test only authorized inspection stations using a loaded mode emissions test approved by the EPA."
Mr. Fronapfel explained that the language "approved by the EPA and the loaded mode emissions test" is there so we do not constrain ourselves to requiring the IM 240 test. If EPA approves alternative testing methods we can, without changing these regulations, make use of those alternative methods.

The fourth change is in Section 1, subsection 3c: "Vehicles which are not covered by paragraph (a) or (b)B may be inspected and repaired at a test and repair station licensed by the department using the procedure specified in NAC 445.924". We propose to add the words "and repaired." Those would be the remaining vehicles not included in that 30% and 15%. For the first year they will retain the ability to go to test and repair facilities in 1995.

Mr. Fronapfel explained the above changes were the substantive changes in terms of the language within the regulations.

Mr. Fronapfel reviewed the changes in the cut-points for all vehicles to be tested in Clark County. Chairman Close asked what was the effect of changing from gpm to percentage as they were stated in November. Mr. Fronapfel replied that on the regulations adopted in November, the IM 240 test measured in Grams Per Mile (GPM), we backed out of that program to go on an annual basis for the 1968 through 1985 vehicles and the equipment measures in percentage and parts per million for those model years. Mr. Fronapfel explained that the standards reviewed reflect those standards in EPA's Guidance Document dated July, 1993, are consistent with the

modeling parameters that we have input, and are consistent with us being able to say that the program meets the minimum performance standard established by EPA.

Mr. Fronapfel reviewed the additional petition changes: Section 2, subsection 5: "vehicles which are model year 1996 or newer" are measurements of non-methane hydrocarbons; renumbering subsection 5 as subsection 6; deleting the definitions of carbon monoxide and hydrocarbon because they already exists in the code; and eliminating the definition of "tier one vehicles" since they are definition standards for vehicles model years 1996 or newer.

Mr. Fronapfel reviewed Section 3, subsection 2 which refers to the first year of the program where the vehicles not subject to the enhanced program can retain the ability to receive a waiver for $200 rather than $450.

Mr. Fronapfel reviewed Section 3, subsection 3, and explained that the language changes the expenditure amount (minimum expenditure) as it relates to the specific vehicle.

Mr. Fronapfel explained that changes in Sections 4, 5, 6, 7 and 8, which merely reference the filing date with the Secretary of State and stated that the proposed change in Section 9 is to remove the word "annual" in subsection 1; and the change in subsection 3 refers to the filing date with the Secretary of State.

Commissioner Turnipseed asked if motorcycles, dune buggies and four wheelers were included in the term "light-duty" vehicles. Tom Fronapfel replied that motorcycles are exempt as are all other off-road vehicles.

Commissioner Fields asked where the cut-points came from. Mr. Fronapfel replied that they are the EPA recommended cut-points, established in their guidance document dated July, 1993, which are designed for a minimum 20% failure rate.

Commissioner Fields asked if alternatively fueled vehicles using compressed natural gas, methanol require testing and Mr. Fronapfel replied that all on-road vehicles are subject to the testing requirements.

Chairman Close declared the meeting open to public input and called upon Daryl Capurro:

Daryl Capurro, Executive Director of the Nevada Franchised Auto Dealers Association and representing the franchised new car dealers in the State of Nevada, stated that some cynics among us had stated that this hearing was merely a formality to adopt a program without changes and without recognizing some concerns relative to the environmental protection agency's IM 240 program. Mr. Capurro recognized the difficult decision the Commission must make relative to the inspection and maintenance program, much of what is due to the Federal Environmental Protection Agency and their apparent love affair with the IM 240 system of testing. With respect to the regulations, on page 2, subsection 3c, the wording is that vehicles which are not covered by the 2 paragraphs regarding the percentage of vehicles that have to be going to test only facilities reads "vehicles which are not covered by those two paragraphs may be inspected at a test and repair station. However it does not say that they can be inspected and "repaired" at a test and repair station so we request that you make it plain, in black and white, that they would have the ability to both inspect and repair at those test and repair facilities.

Mr. Capurro continued that this proposal, despite some references to the California program, bears very little resemblance to the California program so our impression, based upon the press conference that was held by the Governor when he announced that he was suspending the program pending the outcome of those negotiations with California, was that our regulations would be no more stringent (his words) than the program eventually adopted in California. Clearly this regulation does not do that. At the very worst, in the California program, even if all of their pilot program enhancement testing procedures failed, at the absolute outside, 60% of the vehicles would have to inspected under an IM 240 or equivalent system at test only stations. 40% of the vehicles in that state, at the very lowest figure, would be able to be taken to a test and repair facility. Again, that is assuming that every measure that is enacted by California in their pilot program failed, and the state was forced to go to the bottom line. I don't think the State of California thinks it is possible, but their program allows for a very significant majority of the vehicles to be able to be tested and repaired at the same facility. California would employ remote sensing to identify vehicles for absolute testing; they would use fleets within the 15% that is contemplated in that first year and then there would be 2% at random of the public that would be required to go to a test only station. Any resemblance between Nevada's program and California's program is purely coincidental. IM 240 still has the same old problems that were outlined in the late 1993 hearing process. I was glad to hear Mr. Fronapfel refer back to that document that was referred to in that hearing as a technical advisory document rather than a regulation which it was referred to in that hearing and also that the standards which were adopted

at that time, which were the wrong standards, have been corrected in this proposed regulation. EPA has never adopted that technical advisory bulletin as a regulation. Presumably, they are not under the same rules and regulations that the rest of us in this country are. For a Nevada agency to impose penalties, sanctions, etc. you have to have an underlying law and a regulation that has gone through a hearing process like you are holding today in order to enforce it. Apparently that is not the manner in which the federal EPA handles their affairs.

Mr. Capurro continued that this proposal is a decentralized program in name only. The requirements for IM 240, with a price tag well over $250,000 per test lane for test only purposes after January 1, 1996, insures that only a handful of companies will be able to enter the market. The current 350 licensed smog stations in the Las Vegas area have been issued, under this program, a death sentence. The very nominal 1 year transition period provided for, that being some part of 1995, does not hide the fact that January 1, 1996 requirements, including test only for all vehicles will virtually eliminate the small businessman licensed test and repair shop in the Las Vegas Valley area. At best, those 350 stations, which are conveniently located for the citizenry, will be replaced by a handful of facilities throughout the Las Vegas Valley, residents will be subjected to long waiting lines and pay far more than they do under the current program for questionable results, and those 20% to 35% who fail this program will be ping-ponged back and forth to a repair station. During the hot summer months that scenario is a description for disaster. The already severe traffic congestion problem will be made that much worse and it seems ironic that this program, touted as one to clean up the air, would in fact, perhaps add to the problem of congestion and pollution, depending upon where those stations might be located. Las Vegas area Franchised New Vehicle Dealers sell approximately 40,000 used motor vehicles per year. Dealers are the only entities required by state law to provide a smog certificate at the time of sale. At the present time, all franchised dealers in this area are licensed emission testing stations and perform those tests and any necessary repairs on the premises, preparatory for sale to the general public. Some of those vehicle tested may be contracted out to other conveniently located licensed stations but the necessary repairs and re-testing is generally performed in our facility. Under the proposed new program all of these vehicles will have to be transported to a test only facility commencing on January 1, 1996. When I say all, generally speaking, it will be to an IM 240 test facility because franchised dealers deal with vehicles that are 1986 or newer in their used vehicle inventory. Under the proposed new program this will entail assigning dealership personnel to perform this non-productive task and vastly increase dealer's liability risk exposure because of that activity. The bottom line is that the general public will ultimately bear the cost in the pricing of used motor vehicles. Again, I bring you back to the reality that under

state law, we are the only business required to provide that certificate prior to resale. It makes no sense to me that the federal Environmental Protection Agency and the Nevada Division of Environmental Protection apparently believe we are capable of performing the necessary emission related repairs as licensed facilities but are incapable of fairly and competently performing the inspection test to identify failing vehicles. After all, the testing procedure itself will not clean up the air in the Las Vegas Valley. We employ and train highly skilled people to perform mechanical tasks, utilizing very sophisticated equipment to identify and correct problems with extremely complicated engine and drivetrain components. The franchised dealers in this state, particularly in the Las Vegas Valley believe we are more than capable of continuing to perform emission testing and repairs on motor vehicles that we offer for sale to the general public. For that reason, we are here to formally ask for an exemption in this proposed program for vehicle dealers to test and repair used motor vehicles we offer for sale. We understand this will require an upgrade in the testing equipment, BAR 90 or equivalent, and procedures and additional training requirements with increased enforcement by the State of Nevada. We prefer to have them looking over our shoulder every day, basically, than have this program implemented in this fashion. We believe the results will more than justify the exemption. The reduction in vehicle congestion by the removal of 40,000 used vehicles from overall numbers will also assist in the ultimate goal of cleaning up the air in this area. Bear in mind, these are vehicles that were not under the current program, being taken someplace else for this result, so these are basically vehicles that are going to be in addition to the normal flow of vehicles. It makes very little sense to me, that on the one hand, for certain vehicles we might allow, under the BAR 90 test procedure, an annual emission inspection, but on the other hand, because it is IM 240 or equivalent, that we can go for two years without an inspection. There have been many studies done, most recently by Nevada's Desert Research Institute, that shows that vehicles are the cleanest just prior to the inspection and just after the inspection and of course they degrade from that point forward. If indeed, the intent of the Federal EPA and the Nevada Division of Environmental Protection is to clean up the air, it makes very little sense to allow a vehicle to go nearly two years between inspections when the retrograding of vehicles, in studies that have been done, shows that it starts shortly after they have been inspected. On behalf of the Franchised New Car Dealers of this state, I urge you to consider and support our request for a dealer-fleet exemption from this very onerous proposed new program.

Commissioner Molini asked Mr. Capurro if he was indicating that with that exemption of willingness to use the specified procedures and process you want to do on-site repair as well as

testing. Mr. Capurro replied that the Franchised New Car Dealers would use the BAR 90 equipment under the terms and conditions that the DMV felt was necessary to assure that the test procedures were run correctly and stated that it is unfair that state law requires us to provide that certificate but does not allow us the means within which to do it. If there is a concern about cheating, the people that I represent have a heavy investment in their facility and I can assure you they are not in the business of cheating on emission testing procedures. They are capable of repairing the vehicle and repairing, not testing, cleans up the air.

Commissioner Fields asked Mr. Capurro if the California program allows a significant number of vehicles to go to test and repair stations what percentage of vehicles would that be. Mr. Capurro replied that even if the vehicles failed all of the pilot program provisions, 40% of the vehicles would be allowed to be test and repair. Commissioner Fields stated that he understood Mr. Fronapfel to say that perhaps the EPA trade-off to allow that was to increase the amount of failures to 40%, is that in your mind, Mr. Capurro, a fair trade-off? Mr. Capurro replied that he had no idea what their modeling showed so he was not prepared to comment on that. I was only pointing out to you that any reference to the fact that this is patterned after that is fully not the case.

Commissioner Turnipseed stated that he was not sure he understood Mr. Capurro's comments; on the one hand you say you have highly trained technicians and mechanics that can do the repair on the other hand you said the car would degrade quite rapidly after it was repaired.
What are you suggesting by that? Mr. Capurro replied that he was referring to studies that have shown that people normally bring their vehicles in for repair, especially since we have been in this annual program, just prior to having the inspection performed. In fact, they have the inspection performed right after a tune-up. However, all mechanical things do not stay at that same level for any significant period of time but studies show that vehicles are the cleanest, during that inspecition cycle, just prior to the test and just after the test. Thenn, because they are mechanical, they start to denigrate from that level of cleanliness down to whatever level that they will reach before basic maintenance is again performed. Commissioner Turnipseed asked Mr. Capurro if inspection should be performed annually instead of biennial. Mr. Capurro replied that it makes no sense to him that EPA says it is alright to have a biennial program if the purpose of this regulation is to clean up the air, because now you have doubled the period of time between inspections so my answer to that question is yes.

Chairman Close asked Mr. Capurro if I brought my car in to a new car dealer for a test, would you suggest that I take it somewhere else to have it repaired or should I be allowed to have that new car dealer both test and repair my car. Mr. Capurro replied that, I did not say new vehicle dealers only - I am saying "vehicle dealers" because all vehicle dealers, new and used, are required to provide that certificate. I represent the new vehicle dealers who have used vehicle operations. I am concerned about the 40,000 a year vehicles the people I represent sell. Yes, we do some off the street smog testing for the general public, many dealers do not, they simply do internal work. We would at least prefer to do our own used vehicles that we offer for resale and if it means that we cannot do off the street testing without having to send that vehicle to someplace else, then perhaps that might have to be. It makes no sense, that I, as a dealer would have to send it down to your IM 240 station for testing, bring it back to my own facility for repair, then send it back out to the IM 240 station for a re-test in the event it failed the first time. In order for me to take a trade-in, under this regulation, and because we are the only business required to provide that certificate, we are going to be forced to send that vehicle down to that test facility before we even take it in on trade and that is not being fair to the public. Given the provisions on waivers and all the other problems involved with this, that may be what has to be done. We are saying to you, let us test and repair them and avoid some of that inconvenience to the general public.

Chairman Close asked if his suggestion is that not only new car dealers would be allowed to test and repair but also used car dealers would be allowed to test and repair. Mr. Capurro replied, only if they have the necessary facilities. I don't know how you could discriminate against businesses in the same line of work. Under state law the demarcation is dealers selling used vehicle must provide the certification so that takes any vehicle dealer into account. Many used vehicle dealers do not have the facilities and would not be able to meet the requirements on the new equipment, but they would have to be included. Chairman Close asked if the new car dealers and the used car dealers would acquire the IM 240's? Mr. Capurro replied, no. I made the point in my testimony and in answering Mr. Molini's question, we would use the BAR 90 or Nevada 94 certified equipment. Chairman Close asked if we required IM 240's from everyone else are you suggesting that you be allowed to have a BAR 90 and everyone else has to have the IM 240? Mr. Capurro replied that 1985 and earlier model vehicles, under this regulation, are BAR 90 and that he is asking for an exception to be able to test and repair vehicles that we re-sell.. Chairman Close asked if for vehicles newer than 1985, are you requesting that car dealers

be allowed to use the BAR 90 on those newer vehicles when everybody else is required to use the IM 240. Mr. Capurro replied, yes sir, that is correct.

Commissioner Ober asked Counsel if it would be permissible to grant a exemption like that. Counsel Jean Mischel replied that the exemption that is being requested would have to have been factored into the modeling, in other words, whatever you do, you have to reach the 20% failure rate under the proposed program and I am assume that 40,000 vehicles a year would skew that failure rate. Unless you completely revise the whole program around this exemption, I don't think the Commission has the authority to do that with the existing language. In other words, you would fail the Clean Air Act standards. From a technical standpoint Tom could address that as well as any other problems with treating this group of vehicle dealers as test and repair facilities different than other test and repair facility. That would create an equal protection problem.

Daryl Capurro replied that they are already being treated differently by the fact that they are required to provide the certificate, and no other business is required to do that.

Chairman Close asked if this change involved the 40,000 used vehicles sold in the Las Vegas Valley by new car dealers was also expanded this to used car dealers, how many additional cars are we talking about per year under that program? Mr. Capurro replied that he was not certain, the 40,000 figure comes from an economic survey commissioned by us that gave us that information. Based upon the information we gathered, I would estimate probably in the neighborhood of 20,000 - 25,000 additional vehicles.

Commissioner Turnipseed asked how many dealers sell these 40,000 vehicles. Mr. Capurro replied 35 dealerships in the Las Vegas Valley, approximately slightly in excess of 1,000 cars per year per dealer average. Commissioner Turnipseed asked, if you bought the IM 240 equipment, equivalent to one lane, costing $250,000 that would mean you would test 3 cars a day, over a 5 year period that is a pretty small price to pay per vehicle. Daryl Capurro stated that the dealers do not see it as a viable investment during that period of time.

Counsel Mischel stated that the second issue is whether or not they can combine test and repair and obviously they are more interested in repairing because that is the more costly end of it. Commissioner Molini stated that the Commission may not be able to comply with federal

stipulation which may trigger other things but why wouldn't we have the authority to grant the exemption. Counsel Mischel replied that you have to look at your implementing statute and what was contemplated by the legislature in delegating the regulations under this Federal Clean Air Act standard, and at any constitutional provisions that you would have to comply with.
Commissioner Molini asked if that action would not be in keeping with the statutory authority, I understand where it might not be in keeping with the EPA regulations or mandates. Counsel Mischel replied only to the extent the statutes incorporate the Clean Air Act.
Commissioner Fields asked Mr. Capurro if he was aware if any of the neighboring states have done something like he suggested for car dealerships? Mr. Capurro replied that Colorado, by their law, essentially names franchised dealers as a contractor so that they can do their own testing. They have to meet the Colorado requirements and I am aware that there are other states that are not buckling under to EPA's IM 240 requirement. Pennsylvania, Georgia, and Louisiana have questioned the need for this type of draconian system which even the General Accounting Office has some reliability problems with. That information was provided to you at the November hearing. Many states that actually adopted the program because of the EPA hammer are now having second thoughts about it, and I am sure that they, including Texas, would eliminate the program they have now if they were given the opportunity to do so. These states are not happy to be force-fed this program.

Chairman Close declared a lunch break at 12:05 and asked that everyone return at 1:15 pm for additional testimony.

The meeting resumed at 1:15 pm.

Chairman Close called upon Jack Greco.
Jack Greco did not appear.

Chairman Close called upon Lou Gardella.
Lou Gardella, President of Jiffy Smog and the President of Nevada Auto Emission Testers, stated that he had addressed the Commission in November and asked to make three specific comments:

1. Jiffy Smog strongly supports the regulation before you with one revision: in Section 2, removing the word provided and inserting the word establish. The word "establish" more clearly expresses Nevada's commitment to a decentralized program which is what we are

seeking to accomplish.

2. Concern that the current implementation plan requires a very tight time frame to get the facilities built and up and running. The Department of Motor Vehicles and the Division of Environmental Protection are aware of this and have agreed to watch these dates to insure that Nevada contractors can successfully implement this program within these time limits. They understand that they have the authority under this regulation to take the steps necessary to insure the viability of the program. Time is getting short and we need to get started.
3. In order to make this transition to the new test and to the new higher through-put lanes, I request that in Section 2, paragraph 3, you state the specific target date of January 1, 1995 for commencing the Bar 90 portion of the program. This will allow those of us making these changes ample time to work out any problem we have before the more demanding dynamometer style test begins later in 1995.

Chairman Close requested that the letter from Lou Gardella dated May 26, 1994 be made part of the record. The letter was marked as Exhibit #13.

Chairman Close noted that in Mr. Gardella's letter, the target date requested is January 1, 1994 whereas the regulation states it can be started anytime in 1995 and asked Mr. Gardella why he was requesting the earlier date. Lou Gardella replied that as he understands the program, there is no definite starting time for the BAR 90 program. Wewould like the opportunity, if not on January 1, at least sometime before September to get the BAR 90 program implemented before the enhanced portion starts. There is no reason to delay the implementation of the BAR 90 program because the machines are available. There may be some problems with the Department of Motor Vehicles as far as selection process but we see no need to wait until September or October of 1995 to begin the BAR 90 portion.

Commissioner Fields stated that the way the regulation is drafted, you folks could start on January 1, 1994 without that being the regulation. Lou Gardella replied that they were trying to get a start date. The people that are going to remain in the business and some of the test and repair people or the people who are going to test only have the option to stay in this business and they have to purchase $15,000 BAR 90 machines. As of this moment, they have no idea when this is going to happen. It could happen in October of 1995 or it could be January 1, 1995. These businesses would some kind of definite date as to when the BAR 90 program will begin. That

equipment is not going to change, that is what will be used to test the 1985 and older vehicles. We need a definite starting date, not to coincide with the start of the enhanced portion.

Chairman Close called upon James Sohns.

James Sohns stated that Mr. Greco, Chairman of the Board, Nevada Gasoline Retailers and Garage Owner's Association had asked him to his statement to the Commissioners.

Mr. Greco expressed thanks to Mr. Capurro for his earlier testimony and completely agreed with Mr. Capurro. Mr. Greco expressed sympathy with the Commission, as we know you yourselves have a lot of questions on this issue. His statement continued:
Passage of these regulations when it is still a very debatable issue around the United States could be a grave mistake. We suggest, as the Governor first said, to emulate a business and consumer friendly program no less stringent than California. Mr. Fields wonders if California's 40% failure rate is friendlier than Nevada's 20% failure rate. The answer is that these figures are from a computer model and virtually all the cars which will pass Nevada's 20% model are also performing well below California's stringent cut-off points. In fact, only 10% of the cars produce over 50% of the auto emissions. California will be directly addressing these cars with a rea remote sensing system.

Commissioner Turnipseed stated that he did not understand the remote sensing system device or its function and asked Mr. Sohns if he knew. Mr. Sohns replied that he thought it was placing remote sensors out to find the dirty cars and that Mr. Naylor could explain what the remote sensors actually are.

Michael Naylor, Director of the Air Pollution Control for the Clark County Health District described a remote sensor as follows: "A remote sensor is a device which puts an infrared beam across the roadway, basically the same technology used for smogging cars, but instead of putting the infrared beam in the exhaust stream you are putting an infrared beam across the road. It goes through the vehicle exhaust of a passing car, the radiation that is emitted and the meter at the street can actually determine instantaneous levels of carbon monoxide in the vehicle itself. It operaties while the vehicle is driving on a roadway or ramp and 60 vehicles a minute can be tested because it takes about 1 second to do the test. I think in California that can be used to help identify some high emitters that have not been correctly smogged. It is a way to reinforce the

smog test program but it is not practical as a way of inspecting vehicles. It does give a lot of back-up information. Commissioner Turnipseed asked if the car that is above the level is subject to a citation or a fix-it ticket. Mr. Naylor replied yes, if the remote sensor shows a vehicle that is supposed to be in compliance is instead a high emitter that could be a cause for having another inspection of that vehicle, sooner than its regular cycle, or you could even have an enforcement system where the highway patrol will compel the vehicle to be pulled over for a test. There are enforcement possibilities and perhaps California is looking at that. If you use it other than for information gathering and to assess how well the smog program is working, I think that would involve some major changes in an enforcement program. Commissioner Turnipseed asked if it worked best in a single lane of traffic and Mr. Naylor replied yes, however it is possible to use it on an interstate highway, if the vehicles are spread out but if more than one vehicle is in that line of emission the test is not valid.

Chairman Close called upon James Sohns.

James Sohns, President of the Nevada Car Owners Association stated for the record that he also works at the Department of Motor Vehicles and stressed that his input is strictly from the Nevada Car Owners Association. Regarding remote sensing, a study Clark County did in January shows that 1980-1984 vehicles are the dirtiest cars. A recent study, presented January 17, 1994 by Desert Research, reiterated this but went a step farther. The study, done in California and Utah stated that 1980 to 1987 cars were known as "flippers" and cannot be controlled. They are the worst polluters because one day, because of the computer, they will burn clean, the next day they will be dirty. You could take it to an inspection station today and pass with flying colors; tomorrow it would be out polluting and it keeps flopping. That study said that we need to examine the whole IM program and where the EPA is coming from. A recent University of Minnesota study backs up the Desert Research study. Also, at a meeting at Cashman Field on March 9, 1994, State Assemblyman Jim Gibbons related that our federal funds cannot be withheld because of the way the law is written. Recently, when talking to Mr. Naylor, it was brought out that it is East Charleston area that is causing all these problems, Desert Research has released gases throughout the valley and everything seems to go back to that little pocket, the dirty parking lot on East Charleston. We are trying to clean up the city that has one dirty parking lot. Also, at another meeting we were told that if we don't come into attainment in the Las Vegas Valley there will be more mass transit of forced car-pooling, like they are doing in California now. I don't think the citizens aregoing to put up with that. Are tourists going to be stopped at the border and told to "get on this bus, you are going to be bussed in the valley

because we cannot be in attainment". - This all might sound facetious but we may end up having to park our cars at home to allow the tourists to come in, drive around, and help themselves to polluting our air. I know tourism is our economy but I think we need to rethink this whole thing and we need to fix the dirty cars. I don't know how many of you are aware of a fact that was brought up in a FEMA meeting by Mr. Mark Hyman who wrote "The Accelerated Retirement Program" that is part of the Clean Air Act of 1990. If a car does not pass, it is written in the Clean Air Act and they say they won't do it, but they can take that car and crush it. We need to rethink this whole issue.

Chairman Close asked that Mr. Sohns document be made a part of the record. Mr. Sohns comments were marked as Exhibit 16.

Chairman Close called upon Mr. Jeff Harris, Manager for the Advanced Planning Division within the Department of Comprehensive Planning for Clark County. Mr. Harris distributed copies of the Carbon Monoxide, Air Quality Implementation Plan, dated October, 1992 to the Commission and requested that this plan be made a part of the record.

Mr. Harris noted that the Board of County Commissioners is the designated lead air quality planning agency for the non-attainment area which is defined as the Las Vegas Valley. The board asked the Department of Comprehensive Planning to prepare all of the air quality plans for the non-attainment area for the various criteria pollutants, carbon monoxide being one and the one being discussed here today. The air quality plans which are prepared for the County Commission's approval are then passed to the state for their consideration and approval prior to being submitted to the U.S. Environmental Protection Agency. So in essence, although the Board of County Commissioners prepares the plan, it is not really a county plan, but part of the State Implementation Plan. A major part of that planning process is the preparation of an attainment demonstration showing just how we can come about, coming into attainment of national health standards for various pollutants. In the case of carbon monoxide we have a December 1995 attainment date which is mandated by the Clean Air Act. Mr. Harris referenced the group to page 6-6. Within this plan we have prepared an attainment demonstration based and predicated on a number of control strategies coming into play by the end of 1995. Essentially those control measures can be grouped into three major areas; the oxygenated fuels program, which is by far the best control measure in the Las Vegas Valley; the enhanced inspection maintenance program, which is the second best control measure; and then we group everything else together. Looking

at Table 6-3 we are looking at about 13,000 tons annually removed from the air with an enhanced I&M Program and we are looking at 19,000 tons annually removed through oxygenated fuels and then looking at all the others combined, it only reads a couple of thousand and then we get into single, double and triple digits. So the effectiveness of the program is not such that everything is equal. Oxygenated fuels and the enhanced inspection are by far weighted very heavily towards our attainment demonstration and those measures that we can undertake to clean up the air in the valley. There is an attainment demonstration, it is part of this plan, we did show that by 1995, given a set of planning assumptions, that we could attain the national health standard. This was conducted through a modeling effort, following a very rigid EPA planning protocol and quality control program. The U.S. Environmental Protection Agency has since asked us to go back and re-visit that attainment demonstration, depending on what comes out as the enhanced inspection and maintenance program. So whatever is decided upon, we will then be asked to go back and recalculate attainment based on that program and I presume with everything else being constant, but we are not quite sure yet. All we know, is that the request has been made and we will have to do that.

By law we are required to use assumptions, and planning variables which are nothing more than groups of assumptions, as to what the valley will look like in 1995, we are required to use those from the Metropolitan Planning Organization, which in this case, is the Regional Transportation Commission. We can't use our own, we have to use theirs. EPA has asked us to include the updated assumptions that the Regional Transportation Commission is currently working on and those should be available to us in about 3 months. So, at the end of 3 months we will begin our attainment demonstration all over again. What we are finding now, is that the RTC, the sets of assumptions that we use, were low in terms of population projection, low in terms of vehicle miles traveled, so what we expect to see is higher population projection, higher vehicle miles traveled which equates into more pollution. On the positive side, we underestimated the number of people using mass transportation and we underestimated some of the makeup of the vehicle myths in terms of newer cars. We are not quite sure of the outcome, whether it will be even or weighted either towards the pollution side or towards the control level side but we do know that without a very tough enhanced inspection maintenance program we will not be able to calculate attainment. We did go back and reviewed what this commission adopted in November as the enhanced program and we modeled that. We then modeled what you are proposing to change today and what we found out by comparing the two programs, is that you are moving in the right direction. It is a positive. This program is tougher than the one you approved in November in terms of modeling, obviously we like that. What we are concerned about is whether what you

are proposing is actually tough enough or enough for us to calculate attainment when we go back in and revisit that demonstration. I would like to suggest that in the event that we cannot calculate attainment, and this is a planning exercise and we know that modeling is sometimes unpredictable, however, it is a requirement of the Clean Air Act, it is mandated as a state implementation plan activity, and so I want to go on record to say that while we support what you are doing today, in terms of tightening up the program, we want to go on record saying that we are not quite sure that the program is tight enough to calculate attainment.
Please look back to page 6-6, table 6-3, you will see that the I&M Enhanced Program has a value of 12,945 tons, give or take a ton. As we see this plan, which we submitted and transmitted through the state and it rests now with EPA, not only did you have the goal of meeting minimum performance standards set by the EPA, but also you had the task of meeting the goal set in your own plans, which is this number. We are not sure this program meets that number.

Chairman Close asked that the Carbon Monoxide Implementation Plan be marked as Exhibit 18 and made a part of the record.

Chairman Close asked for questions.
Commissioner Turnipseed noted that when Mr. Harris appeared before the Commission in November they were setting up more monitoring stations to see how well they correlated with the one on East Charleston and asked for an update on that data. Mr. Harris replied that Mike Naylor could better address that question.

Chairman Close asked Mr. Harris on 6.6, part of the recommended control measures was traffic signal enhancements, is that thing in effect yet? Mr. Harris replied that it is in constant change, we are improving it daily. Yes, it is in effect and yes, it can be made a lot better. Mr. Close asked if it only worked on certain thoroughfares or is it effective throughout the entire city.
Mr. Harris replied that initially, between 110 and 140 intersections were on the system. The system dates back to the mid-eighties; we have obviously outgrown that system and we are in the process of up-dating and essentially doubling and tripling the capacity for the synchronization of the program. Those that were placed on the system early on are not effective because 2 or 3 traffic lights have now been added in between them and the new one are not currently on the system, but they will be.

Chairman Close called upon Mike Naylor, with the Health District.

Mr. Naylor stated that in November, 1993 through January 1994, the Health District operated a number of supplemental carbon monoxide monitors in the area of East Charleston and near 8th Street. The Board of Health hired the Desert Research Institute to do a study of meteorological conditions and flume travel. Part of that study was the release of tracer gases at one point then sampled at a down-wind point to see if it shows up there. We had temporary monitors north, south, east and west of our main monitor, within a quarter to one-half mile, and in one case 100 yards away. The monitors close to the main monitor had virtually all the same readings. We had a monitor on the south side of Charleston compared to our main monitor on the north side and the one on the south side was consistently reading higher than our East Charleston monitor. We had two monitors that were 100 yards apart and they had carbon copy measurements of each other. We determined that the problem is relatively uniform within at least a 1 mile radius.
For the DRI study, in addition to releasing tracer gases, they set up several wind monitoring stations throughout the valley and they also drove a portable van equipped with a carbon monoxide analyzer. The portable van showed that our problem area seems to be about a mile radius north and south of our East Charleston station. The wind information showed that the East Charleston area is a pocket of low wind speed, whatever the winds are elsewhere in the valley they are several miles an hour less in this East Charleston area. If McCarran is showing 10 mph from the National Weather Service, our East Charleston site is running 5 mph. We found that the wind speed seemed to drop right in the East Charleston area and that led to a stagnation area. Several points were selected for release of the tracer gas. This included the spaghetti bowl area, Las Vegas Convention Center, Maryland Parkway and Eastern and each place was used twice. On a given night, only one place was used, but over about 10 days each site was used twice and it turned out that the tracer release at each site was measured at the East Charleston location indicating that the plume of air pollution that arrived there comes from the west, the northeast, or southwest. Even if the plume starts from areas to the west it becomes more concentrated as it comes closer to the monitor and it is becoming more concentrated on East Charleston between Maryland and Eastern and the only more that plume can become more concentrated is to be adding fresh emissions to the plume. Emissions may be started from Interstate 15 or the Las Vegas Boulevard, as they got closer to the East Charleston site the plume became dirtier because it was enriched as it got closer to the East Charleston station.
We think that what is happening within a mile of the station is a key target for control. Jeff has mentioned some control that we will need more than the proposed regulations to reach attainment and there might be request to revisit what you are being asked to adopt today. There may be some opportunities with local control measures, that if we focus on traffic flow and high

emitters in that East Charleston area, for example, use remote sensors would be ideally suited for the area near a monitoring station so a vehicle with high emissions operating within a mile of our monitor site is having a big impact on that monitor whereas a vehicle with high emissions in Summerlin is having virtually no effect on that monitor. That locality would be a good place to work on identifying who the high emitters are and doing something to get them to be cleaner. That could be through traffic improvement or additional smog test requirements for vehicles in that area that have high emissions. The process of looking at controls for the East Charleston area will take at least another winter season to understand.

Mike Naylor offered opinions, as the director of a regulatory agency. We regulate small and large businesses through our Board of Health and we don't regulate motor vehicle emissions, that is your job. But both of us are regulating small business persons and as best I can see, this proposal is the best mix of living with an EPA mandate and being as friendly as possible to small businesses and as friendly as possible to us citizens who have to have our cars tested, so whatever rule is adopted, we all live with it when we get our car tested. The small businesses will be doing the testing and repair. These small businesses will have to decide if they are going to be in the test business or in the repair business because there will be demarkation as of 1996, that they have to do one or the other. I think the overall phased in concept is good, so it all does not start at one time. Only a fraction of the vehicles would be handled in 1995. There are going to be some inconveniences with the changes in that testing and repair will be segregated so we won't have the convenience of getting the repair at the same place. We are facing the same inconvenience so we all need the same rules. I do not think used car dealerships should be treated any differently than you and I. If they want to be doing the repairs, they should not be doing the testing and vice-versa. In support of small business interest, I think a hard date where the basic testing with BAR 90 for the older cars goes into place. I would suggest you could indicate through regulatory action what that date should be, have a certain date to start that because the other date for IM 240 equivalent is fluid and won't be known until all the California results are done.

Commissioner Turnipseed asked if we make a date certain for the BAR 90, that applies to the 1968-1985 cars, so all those that fall in that category would come under that program by a date certain and then the later cars would be on the IM 240 whenever it is ready. Is that your proposal Mr. Naylor. Mr. Naylor replied yes.
Commissioner Fields asked if wouldn't we only still be dealing with 30% of the cars in that

1968-1985 category? Mr. Naylor replied yes.
Commissioner Ober stated to Mr. Naylor that he is quoted in the Mr. Van Dell's handout, Mr. Naylor and wondered if that was a direct quote. Mr. Naylor replied that is was a direct quote, that no matter what the commission adopts today, his feeling is that attainment won't be reached by December 1995. If for no other reason, we have had some bad air in 1994. As I read it, we have to have 2 years of clean air demonstrated in order to attain attainment by December of 1995 and I anticipate that there will need to be a request for some kind of extension of 1 or 2 years to reach attainment.

Chairman Close called upon Ed Ferris, Ed Ferris Auto. Mr. Ferris asked the Commissioner's to stop and think, that with decentralized testing, if you have to take your car, or send your wife down with the car, and it fails, and invariably it might, then they can't fix it there so we would have to take it to another shop that does not have the same equipment, absolutely nothing the same, that shop fixes it to the best of his ability, you go back to the same place to get it tested again and it fails again, and maybe you have stood in line for 2 or 3 hours or maybe for 1/2 a day waiting to get and this goes on and on and on. Stop to think what that is going to do the air quality in the Las Vegas Valley; people standing in line with their motor's idling, the air conditioner is on cause it is to hot in the car, and that certainly will not help the pollution. First of all, we have approximately 4,000 new registrations in this city every month and that is a lot of cars, probably 4,000 people that move in here and these cars all pollute, but if you look at the records, we have steadily gone down to where we have less and less pollution every year. So we are doing our darndest and I for one think we should stay with the BAR 90 where the individual that tests the car can also repair it so you don't have to go to various places to get it repaired.

Chairman Close called upon Jim Van Dell, representing himself and the Nevada Emission Test Industry Coalition.

Mr. Van Dell stated that it was with some regret that he even has to be here this time, it is very difficult to address what I have seen and heard in this meeting today, knowing what your burden of decision is and probably with some resident compassion and understanding for the ultimate decision that you may make. But I would like to remind you, that if the good Governor does not get re-elected you probably won't be re-appointed to this position. So you do have a way out, this may be your last good act of conscious on the part of the State of Nevada, the citizens of Nevada and the rights which your legal counsel, which I heard earlier, bring up the elements of

constitution. I was actually gratified to hear constitution even mentioned here but it was in a negative context as far as the individual citizen was concerned rather than in a positive context. That is unfortunate but customary. One thing that comes to mind with the program that is before you is that a number of years ago, we had a terrible problem at the Department of Motor Vehicles with renewals and registrations. We had lines all the way out to the parking lot. So what did we do, we improved the system, we put in satellite registration points and we allowed registration by mail. VOILA! The lines are not near as bad at DMV now. That is good, that means that government worked for once, that is commendable. Now here lies, in your hands, a situation where you are not going to take the individual person, have him stand in line on a colored piece of tape in an air conditioned building for several hours, you are going to have him sit out in the hot sun with his car. Either of you ladies, picture yourselves having to get your car emission tested, you know how many of these places there are going to be versus how many there are now. The here's versus the over-there's! And I am glad I wrote that when I did and how I wrote it because it wasn't really humorous, it was a release and that saved me something that I really did not want to do up here. So, the here's and the over-there's, picture yourselves ladies, when your registration comes up for renewal in July or August. Now possibly you have somebody that will go do that for you, but if you might happen to be a single mother, or single lady, you might have to do it yourself. And that will mean that it will be you out there for 2 or 3 hours with your car, most likely you will want to sit in the car with the air conditioning running and hope that the engine stays together until you get actually through the test. Then you must hope also, that when you do get to the test, that you engine hasn't been overheated enough so that will not be able to pass the test. This is a very strong consideration that you have to make here. Today you don't have that problem. You drive up to any one of approximately 350 stations and generally get your smog test and be on your way, if your car passes without any problem, in a matter of 10 or 15 minutes. Not a bad system, works pretty darn good, almost as good as WalMart. One of the problems I find resident in what we have been hearing and continually have to hear here is about modeling. What the heck is modeling? I used to do some modeling when I was a kid; those little boxes that came with cars and airplanes and boats. That was modeling. I put them together and I made them look like something that was real, but they weren't, other than being a model, a miniature size replica of something that was actually real. And all these references to modeling seem from EPA's Carol Browner, Mary Nichols, on down, every reference to modeling assumes that modeling is accurate and is relative to something. But how come, when you get it out in the real world, in a real life, real time situation, it isn't anything, it doesn't fit anything except somebody's concept of what they might like to be the

result. Modeling doesn't seem to work if evidently we don't have the efficacy of our computer systems we haven't brought intelligence into the computer systems to where they can accurately model real life situations. I would hope that all of you have been reading the facts and information that I spend much of my, I spend $300 a month on long distance telephone, much of it goes to your office, so I hope that you have benefitted yourselves by reading the information. You should be residentially knowledgeable about the University of Minnesota studies which, the studies were based on a 7 year span - I believe 5 years prior to the implementation of a centralized emission testing program in Minneapolis, Minnesota and then continuing on through checking the efficacy of the emission testing program. The conclusion of this real life study was that there was a 1.3% improvement in air quality in the checked areas of Minneapolis.
Of course the study had a 1.4 margin of error. The conclusion that they came to was that over a 7 year period the emission testing program, the I/M program, centralized, all the bells and whistles and smoke and mirrors had no real effect on the air quality in Minneapolis yet it had cost millions of dollars, caused thousands of hours of inconvenience to the public, burned up who know how many tax dollars, man-hours, university hours all for a margin of error element of improvement in air quality. What is wrong with that picture folks? I have been personally talking, and finally I comment Mr. Naylor for actually acknowledging recently that the dirty parking lot is just that. It is a dirty parking lot. Probably if they closed down East Charleston going west from 5 points, we would not have the problem. Evidently the cars driving up that hill blow their exhaust back down the hill and there is something out there on Charleston saying "come here, MacDonald's, MacDonald's" - it must be the clown or something. I hate to facetious about this but the ludicrous aspect of what you have before you to consider to do to the Clark County citizen's industry and to yourselves. If any of you are residents of Clark County, or intend to be,or know anybody down here that you might have to answer to after this program would be implemented and be in place and the realization and reality of the dastardly deed that you might have done to either yourself or your family or friends or maybe your constituents in another element of political office. I can't condemn the legislature for having passed SB 347, although in the capacity of Vice-president of the Nevada Car Owners Association, we were quite proactive in trying to affect a change in SB 347 in the legislature so as not to have to deal with the situation now. Fortunately, through the manner of which events have occurred in California and elsewhere, by the way, there are 14 states out of the 22 that are pro-actively fighting the I/M 240, the I/M program as mandated by EPA, and I know for a fact that you have been hit with plenty of information on what is going on in Pennsylvania. Pennsylvania has Enviro-Test buying property and laying foundations for their damn smog test palaces, right now. At the same

time that they are buying property and laying foundations we have the citizens of 3 communities in Pennsylvania saying we don't want you here, we don't want this program and they have gotten their legislatures interested in this, putting the thing on hold and evaluating what it will cost, how many $40 million dollar segments Enviro-Test might be able to lay on them, in order to back out of the contract that the State of Pennsylvania has signed and the legislature now feels it was duped into accepting. Our legislature was somewhat also duped into accepting what EPA wanted. Anything that EPA wants, I guess that is what we are going to have to do. Well who in the heck is EPA? They work for a president that can't even tell the truth, has a level of integrity of negative zero. Mary Nichols used to work for the environmentalists as a key player and she is the assistant head of the EPA. We see where her agenda is, it is very obvious. She would like to have everything happen in some puritanical utopian manner that people are not involved in, but unfortunately, real live people here, we drive real live cars that use real live gas and even have a flat tire now and then. Through EPA mandates you can't even buy a Fix-a-Flat that even works in a tire because they took the stuff out of it that did plug the tire. It is so frustrating. We see this EPA policy on decentralized on test only stations that was put out by EPA, you can tell the caliber of individual who wrote this, this one didn't come out of a think tank. Examples of non-permissible activities in their smog palace: Sale of any automotive products such as packaged or bulk oil; self-serve or full serve gasoline, windshield washer fluid, fuzzy dice or fuel additives. I did not dream up the fuzzy dice that I referred to, it is right there in the EPA paper that describes the decentralized program that you are considering today and I sure pray that you don't decide to adopt it because when EPA cannot do anything better than come up with something that says "fuzzy dice" as a forbidden activity in their smog palace - the efficacy of the federal agency is seriously at question in every scientific area and arena in this country right now. It is heavily being badgered and questioned by 14 states that are under the same type of mandate that we are here. Governor Leavitt in Utah is calling for a conference of states to assert the state's 10th amendment rights. Maybe your legal counsel could quote the 10th amendment for us. Just a hint, it has to do with the powers that are given to the federal government are only those which the states wanted the federal government to have plus the basic duties of the federal government as far as voter national defense. The basis of the 10th amendment is that the federal government does not have any standing or jurisdiction to come down here and cram things down our throats. For too long we have allowed that to happen. The complacency of the american people is well renowned. But today when there hasn't been anything in the last 10 years that government has come out with in the way of a law that benefitted us. It seems that every law that got passed took something away or cost us more money and had no subsequent return or value to us. And we see

that more and more and this particular regulation that is before you is a vibrant, flagrant example of exactly that. You are going to go out there, take 300+ businesses, and put them out of business, and you are going to give all of their business to a handful of people. Conscious, honor, integrity? Basic sense of fair play, goodwill? Look in the mirror folks. I do, and sometimes I am real mad at myself for what I didn't say. Unfortunately today I am hyped enough on this that I may be able to say some of the things that I couldn't have said this morning and I thank you for that and the audience out here which helped accommodate that.

In Governor Leavitt's words in the memorandum that is in my handout, bottom paragraph, first sentence, "what is needed is a rational, realistic, curable and sensible approach to this problem". That is not referring to the I/M situation but it is referring to basic elements of what is needed, rational, realistic, careful and sensible - it is what you would do to your daughter or your son or your kids or your family and not have to feel guilty about it after you did it. My God, if my dad did this to me I would sure have a hell of a lot to say to him. I have put the University of Minnesota open letter to Richard D. Wilson, the Director of U.S. EPA Office of Mobile Sources which is signed by Huell Scherrer and David B. Kittleson; you have also a sample of a draft letter to Congressman, Governor's, Airport members, Environmental Commissioner's, etc. etc., I'm sorry if I am boring you Ms. Counsel, and then you have a resolution to send to them to address the issue and have them send it back to you and let you know whether they agree or disagree with you. There are probably some congressman who are now very, very sorry that they did not take the time and effort to read the Clean Air Act amendment of 1977, 1988 and 1990, which most of them did not. Their lobbyist told them that if they voted against it they would be labeled as an anti-environmentalist and they would never be able to get re-elected, which of that probably had some element of truth in it. But now that we see what was done in 1977 and forward especially since 1990 and the impact that it is having on our existence, our quality of life, our ability to maintain even a privately owned, independent small business, unfortunately today is at risk, 300 of them. I find it kind of hypocritical and ironic and really not humorous when I see Governor Miller on T.V. in this commercial saying how much he is for small business. Excuse me! What is wrong with this picture? And of course, he is not here today, but I would like to have him here and ask him "how are you going to answer to these 300 small businesses when the ultimate decision of these 9 honorable, upstanding individuals who are appointed by you Governor are going to put these 300 small businesses out of business, take their business and give it to a handful of people. Now, if we were talking about banking and finance, I could understand that. That regiment of absolute, unquestionable greed is supposed to be there, in the banking system. It has been there for many years, - forever.

Commissioner Bentley asked Chairman Close if Mr. Van Dell would limit his remarks to the regulations that we are dealing with today. He is talking about regulations that have already been passed and going on about licensure and I agree with him in many respects but he is talking to the wrong group of people here and I think he had better go to Washington and do some talking rather than trying to force us to do something that we cannot do. I will appreciate it if his remarks would relate to the regulations that we have before us and not to something else that we have no control over. Jim Van Dell replied, with all due respect Doctor, you are in control of the situation today and exactly the situation that I have been addressing. If you would like to get right back to the regulation, yes, I have a number of words relative to the actual regulation; Number one: The quotation that was put into my handout of Michael Naylor I took from the Thursday, April 14, 1994 Las Vegas Sun. I am sorry that you don't have a copy of it but that is where he indicated that the program as it is designed and as it would be now passed by you, if that were to happen today, it will not achieve the element of improvement in air quality in Clark County that is presumed to be necessary.

Chairman Close stated that Mr. Naylor had stated the reason for this was because last year was a non-attainment year. That does not mean that this coming year would not be one but this last year was not in attainment. Jim Van Dell replied that we are still being addressed by what happened in 1988 by what we are having to do here in 1994.

Chairman Close asked Jim Van Dell if he had definite language dealing with the proposal that he wanted to present to the commission and asked him to address the matter directly. Jim Van Dell replied that we don't really need to test the cars beyond a test of the emissions of the automobile. We have had, for 20 years, an emission testing program, we have grown four or five time the number of automobiles on the Clark County roads and in the face of this massive growth we have actually improved our air quality average overall in the last 20 years. That is not a program that has failed. We have currently, if you take into consideration that the automobile that is in need of maintenance, repair or correction in order to bring it into its best possible operating condition and cleanest operating condition, requires somebody with the knowledge of how to make that run the best and the cleanest again. Right now we have the facilities to fix these cars and what we really need is the dedication of a program that does want those cars fixed, not those cars that come in and get just a little tweak of the carburetor and it won't idle going down the street after that but it will pass the test. That is not what is going to fix our air quality problem. What will is dedication, education, and education is not that important, but the mind-

set that we want to fix dirty cars to make cleaner or to put less pollutants into the air and fixing car will result in that. We can test them until doomsday and I have never seen a test fix anything.

Chairman Close stated that, again Mr. Van Dell, you are talking to us rhetorically. It is obvious testing a car does not fix it, it has to be fixed before there is any improvement. Jim Van Dell stated that this program does not in any way address fixing the car, it actually hampers any element of possibility in the very near future of getting cars fixed because you've got one guy testing it, who doesn't even know the guy that is going to be fixing it, the efficacy of the equipment that is going to be implemented, even if it is an equivalent rather than the real thing as the EPA wants. The equipment does not diagnose the problem. Chairman Close asked Mr. Van Dell to please address the regulation. Chairman Close stated that the Commission understands Mr. Van Dell's point, that he had made it very well, but we have a lot of things to address on the agenda. If you have a specific language you want to recommend to us, we are willing to listen to it but you have made your point very well and very articulately but I think it is time that you have to conclude your remarks.

Jim Van Dell stated that Donald R. Stedman, University of Denver, Department of Chemistry, and you have received his letter, I would hope that as part of your packet - Chairman Close stated that all of the documents Jim Van Dell provided to the Commission part of the official record. Exhibits #1, #2, #3, # 9, #10, and #11 were made a part of the record.
Jim Van Dell explained that Donald R. Stedman is the guru of remote sensing which you had questions about earlier. He is in fact the man who practically designed it, it has been sold to another company now but in his letter (I am sorry I don't have it with me and it is not a part of my exhibits, but you have gotten it before) he said that it is more important to repair the automobile than it is to test it simple roadside sensing equipment will do the job if there is somebody on the back side of the situation to fix the car and you can reduce air pollution by that means the $365,000 equipment is not necessary, doesn't apply, doesn't work, is highly disputed in its efficacy in doing anything with a 30% error rate without even a car hooked to it.
I plead with you folks to do what your conscience, rather than your possible directives, might lead you to do because this once, after this is, if it is, put in place there is no return for the industry that you are going to destroy by doing this. There is no return, it is not something that just bounces back when they find out that it doesn't work in 3 years. That is what you have to look at today and I plead with you to look at it very seriously, in the deepest part of your being

because what are they going to take away from us next. What will the people who sit on this panel take away from us next.

Chairman Close asked for further public comment.
No further public comment was offered.

Chairman Close asked Tom Fronapfel to give an update on what has happened in California relative to their opposition to the EPA's testing mandates.

Tom Fronapfel replied that California reached agreement with the U.S. EPA to implement a program at the state level and there are a variety of parameters that don't fit necessarily with anything that we were doing. As a point of clarification, we were given the direction, not necessarily to pattern our program anything at all after California's but rather look to see what that agreement entailed and try to take advantage of anything that we could out of that agreement that would benefit Nevada and the program that we were trying to propose.
California is implementing the agreement that they made with EPA, they are reserving a portion of their industry as test and repair industry, they automatically, because of that, took a 50% reduction in their emissions credit and subsequently had to make up that 50% reduction by a variety of means. The bulk of that makeup was increasing the failure rate from 20% to 40%, reducing the carbon monoxide cutpoint from 15 grams per mile (gpm) to 10 gpm per mile. They are spending a minimum of $10 per car on enforcement, statewide, on their program for enhanced inspection; they are spending several million dollars within the Sacramento area, studying a variety of pieces of equipment that may or may not end up being equivalent to IM 240; they are spending a very large sum of money in remote sensing to determine the efficiency of their remote sensing equipment so the only item that we could take advantage was the opportunity, pending the results of the study of alternative pieces of equipment, see if something less expensive would be approved by EPA by February, 1995, and if so, we could take advantage of putting that equipment in place. If not, we are still must make use of the IM 240 if EPA does not approve equivalent to that.

Chairman Close asked if the bottom line is that every state is going to comply, in some respects, with EPA requirements in one way or the other. Tom Fronapfel replied that Pennsylvania has put their program on hold within the legislative arena but the bulk of the states are implementing the program as required. Colorado is going through a centralized contractor operated system and

they feel, even with the extensive equipment, that program over the 7-year cycle that they have set with that contractor, will generate $350 million dollars to the economy to the State of Colorado, they did that study as part of their program also. Recognizing that there are some businesses that cannot afford to put that equipment in place, Colorado had a different situation, they were under mandates not to raise fees, taxes, etc. so they had no choice but to go to a centralized contract system.

Commissioner Ober stated that this Commission is not the legislature and, as I am confused, I would like to know what our real options are.

Chairman Close asked Tom if there were other options beside what was proposed in the regulation before the Commission.

Commissioner Molini asked, relative to the point that Mr. Capurro made, if we kept test and repair together for both new vehicle dealers and used care dealers to test and repair requiring that they use whatever equipment is required, would that violate the mandate of the Clean Air Act or could you negotiate that with EPA? Tom Fronapfel replied that it does not violate the mandate of the Clean Air Act however we immediately take a 50% emission credit loss and we have to find some way to make that up. We will either have to reduce the CO cutpoint so that we fail more cars, we would have to spend more money on enforcement to make sure the test and repair business are not cheating to ensure that the combination of test and repair is in fact cleaning up the air and is adequate. That would not violate the mandates but we would have a very hard time making up that 50% reduction in order to meet the performance standard.
The regulation that we have before you meets the performance standards and takes advantage of what happened in California, possibly allowing cheaper equipment. It is a benefit for the consumers and we believe it is a benefit to the businesses as well.

Commissioner Ober asked if we could stay with the BAR 90 equipment. Tom Fronapfel stated that the BAR 90 would be retained on an annual basis for the older cars but we cannot use that equipment for the newer cars and meet the performance standards.

Chairman Close noted that he would like to have his car tested and repaired at the same facility, I hate to drive all around town, test/fail, test/fail, and finally pass but that would require significant modifications from what is proposed. Mr. Fronapfel replied that California made up better than

90% of that 50% loss up through a combination of the enforcement program, $10 per car and reducing that CO cutpoint to 10 grams per mile. Chairman Close asked if any other states, besides California have gone to a program where you could test and repair at the same location or is California unique in that program. Mr. Fronapfel replied that California was unique in that. Colorado's is a test only system and it is a hybrid similar to our on some of the cars on an annual basis on others on a biennial basis. One of the ways Colorado made up, the dealer issue, they essentially gave the dealers two options to get in the program. There are about 60,000 used cars and Colorado's State Implementation Plan submittal dealers may take their vehicles through contractor test only inspection lanes and to be subject to the normal biennial requirement and quality assurance as the general pubic, or the dealers may contract with a licensed motor vehicle dealer test facility subject to loaded transient testing which is IM 240 which is what Colorado is installing. The dealer test facility must be an independent test only station or mobile unit licensed specifically to service car dealers. As part of that, they had to take that 60,000 vehicle fleet out of the total vehicle population and they got no credit for that. In order to make up that loss for that specific portion of that, they included testing of all heavy duty vehicles which we are not proposing.

Commissioner Bentley stated that he understood that in November, 1993 the commission passed the regulation indicating decentralization. We are now going over something that we already discussed and is already passed. Tom Fronapfel replied that we have the decentralized test only, biennial IM 240 system currently in place. We are proposing to modify that to make it a hybrid program and phasing in the program, etc. to try and allow the free market system to better dictate how many ultimate lanes there will be in the network.

Chairman Close asked if there was a concern that the IM 240 may not be available when this goes into effect. Mr. Fronapfel replied no, if that were the case it would be because every other state in the country is trying to purchase the same equipment. There may be some delay times because of the demand for it. The equipment is available and the prices are going down. Chairman Close asked if the equipment was not readily available, would the bureau come back to the commission to delay the effective date. Mr. Fronapfel was not sure that the bureau would necessarily have to come back to the commission, we would have to give EPA the recognition that the equipment is not available but as soon as we get it in we will get the program going, given that would be a nationwide problem they would probably go along with that. Chairman Close asked how many companies make the IM 240 equipment. Mr. Fronapfel replied that about

3 companies make the equipment itself and two companies make the sampling apparatus to go with it.

Commissioner Fields stated that he was still looking for options and asked if the Governor's office is actively following what is going on in other states through the Nevada Division of Environmental Protection and might there be something where states joined together in opposition to what EPA has done.

Lew Dodgion, Administrator of the Division of Environmental Protection stated that the Division is attempting to track what is going on in other states, we are not necessarily reach in insurrection, but we want to be able to take advantage of anything that comes up. We have tried to design this change to the program to give us the most flexibility to be able to do that and that is by being able to delay the implementation date as we are proposing here, putting it off as long as we can so that we are able to take advantage of anything that may come out of the California studies or anything that goes on in the other states. At that time we would come back to you, make a change if there are some changes that are allowed.

Commissioner Fields stated that in view of all the public testimony that we have had on this matter both today and back in November that whatever we do today, because this commission is created within the Department of Conservation & Natural Resources, that we at least adopt some resolution urging the Department to continue to closely monitor what is going on in this arena throughout the nation and be very responsive to the possibility to ease the burden of these regulations, that is if we pass them today.

Chairman Close accepted Mr. Fields remarks as a motion to request continued monitoring nation-wide and to keep us advised that if something does happen that is significant that would come back before us. The motion was seconded by Commissioner Bentley. The motion carried as a resolution.

Commissioner Turnipseed asked about the amendment proposed by Mr. Capurro, on page 2, subsection 2, I there was a question to inspect and repair in subsection c. I propose a amendment to add "vehicles which are not covered by paragraph a or b may be inspected and add the words "and repaired" at a test and repair station licensed by the Department using the procedures specified in NAC, etc. Mr. Fronapfel concurred with that additional language.

Counsel Mischel asked Tom that "must provide that" on page # 1, would be changed to "will establish".

Mr. Dodgion stated that he had been asked to point out to the Commissioners that there have been attempts to bring states together to discuss the IM 240 situation. One meeting took place in March in Georgia, another unsuccessful attempt to bring states together took place in Louisiana. Nothing concrete came out of the meeting in Georgia in March.

Commissioner Molini made the motion that with the amendments proposed, the one on page 1 that reads "will establish" and the amendment on page 2, subsection 3c, where we add the words "after inspection and repair"; given the situation that we are confronted with and the resolution that we just adopted I move for adoption of these regulations as presented, LCB File No. R-063-94. Commissioner Bentley seconded the motion. The motion was unanimously carried.

Mr. Fronapfel requested a brief presentation from Ray Sparks from the Department of Motor Vehicles.

Ray Sparks, Chief of the Registration Division of the Department of Motor Vehicles and Public Safety, on behalf of the director, I formerly go on record with the Department of Motor Vehicles and Public Safety approval of the adoption of these regulations.

Chairman Close asked if all the exhibits presented had been marked and entered into the record. David Cowperthwaite replied that exhibits 1 through 18 have been marked and entered.

Item III. Settlement Agreements on Air Quality Violations

Chairman Close moved on to agenda Item III A: Iron Mountain Acquisition Company.

Tom Fronapfel reviewed the violation which occurred on real property located at Valley View and River Ridge Estates, Edmonds Drive/Pheasant Drive in Carson City, Nevada. The company failed to comply with restriction #9 of their permit to construct, requiring final soil stabilization as documented by record of communication dated November 30, 1993 and by subsequent review of the source file. NOAV #1074 was issued February 22, 1994 for violation of Nevada

Administrative Code 445.696. An enforcement conference was held on March 10 with Mr. Richard Scott, President of Iron Mountain Acquisition Company. Mr. Tom Porta, Supervisor of the compliance branch, Bureau of Air Quality, directed Mr. Scott to implement a dust control plan with 2 separate dates of compliance. Iron Mountain Acquisition Company agreed to separate corrective actions regarding the property. Corrective actions have been successfully completed and Iron Mountain is now deemed to be in compliance with all applicable air quality regulations. We are not suggesting that the fine be imposed.

Commissioner Ober moved to ratify the settlement between the Bureau and Iron Mountain Acquisition. Commissioner Turnipseed seconded the motion. The motion unanimously carried.

Item III B: The Moltan Company: Notice of Alleged Violation #1078

Tom Fronapfel noted that the Moltan Company was scheduled today for ratification of the agreement that was stipulated with them. Their legal counsel was not able to attend today and they have asked the Environmental Commission for concurrence that they present their case at the scheduled August 11, 1994 hearing. Counsel Mischel noted that there was a letter from the Moltan Company as part of the packet and stated that the only question is if there was any prejudice by the Division by continuing this to August 11. Tom Fronapfel stated that the Division had agreed that was acceptable. Commissioner Fields asked if that would not be an action addressed by a 3 member panel. Tom Fronapfel stated that there was a 3 member panel scheduled to hear the violation on May 11, 1994 in Reno but this 3 member panel hearing was canceled because the Moltan Company settled voluntarily but as part of the ratification of that settlement the Moltan Company wanted to have their legal counsel present and their counsel was not able to be present today. The matter was continued until the August 11, 1994 hearing.

Item IV. Discussion Items

A: Senate Bill 127 - Strategy Update

David Cowperthwaite, Executive Secretary, stated that Allen Biaggi had prepared a memo stating that he had met with some of the local authorities in both Northern and Southern Nevada regarding the issue of underground storage tanks and the nature of jurisdiction data collection

and is getting nearer to preparing a report. That strategy was adopted last September and he is proceeding with that strategy at this point.

B: Status of Division of Environmental Protection's Programs and Policies

Lew Dodgion reported that the Division is working on Strategic Planning and budget processes.

C: Future Meetings of the Environmental Commission

David Cowperthwaite reported that the next scheduled hearing of the Commission is scheduled for August 11, 1994 which will be a clean-up of any permanent remaining petitions that are to be gotten to me by June 27, my deadline to be able to move them forward to LCB by July 1, 1994. I expect several to come in but nothing major.

The BMP Manuals, the Best Management Practices required by the Soil Conservation is required by law. That manual has been up-dated and is going through a process of decision making by the State Conservation Commission and in September or October it will be forwarded to the Environmental Commission for your review. I have the manuals in hand but I am waiting for the decision cycle to begin before I send them to you.

We had talked about a Commission field trip to the Elko mining areas. At this point we are looking at June 20 and 21, a Monday and Tuesday to move forward with that experience. The people in Las Vegas will fly aboard a State Forestry Plane to Elko on Monday evening and will be met by the Commissioners from Northern Nevada on Tuesday. A driving tour will take place Tuesday morning followed by a fly-over of the area on Tuesday afternoon.
Mr. Cowperthwaite will query the members individually to find out who really wants to go on this field trip and if there is enough interest we will proceed with the plans.

D: General Commission or Public Comment

No further comments were forthcoming. The meeting adjourned at 3:00 p.m.

Commissioner Close adjourned the meeting at 3:00 pm.

As submitted by David Cowperthwaite, Executive Secretary.

SEC REGULATORY HEARING
May 26, 1994
Las Vegas, Nevada

EXHIBIT LOG

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	Facsimile (6 pages) dated 5/2/94 from Jim Van Dell, Nevada Emission Test Industry Coalition.	Copy of U.S. Senate Joint Resolution No. 44, dated 4/14/94; Copy of article from U.S. Oil Week dated 4/18/94; Article from Washington Post dated 4/16/94; Article from Pittsburgh Tribune-Review dated 4/27/94.	94012	Yes
2	Facsimile (11 pages) dated 5/2/94 from Jim Van Dell, Nevada Emission Test Industry Coalition.	Copy of Memorandum from Jim Daskal dated 4/29/94; Copy of No. 92-1598, September Term, 1993; US Court of Appeals; Copy of Letter to Jim Daskal from Sean Armstrong, Trust Company of the West dated 3/23/94; Copy of Pittsburgh Tribune- Review article dated 5/1/94; Copy of AMERICANS, OUR RIGHT OF FREE TRAVEL IS AT STAKE/Jim V. article; Copy of Mobile Source Report dated 4/8/94.	94012	Yes
3	Facsimile (2 pages) dated 5/4/94 from Don Stedman.	Copy of draft memorandum dated 5/2/94 to Dr. Elizabeth Deakin I/M Review Committee from Donald H. Stedman regarding I/M testing.	94012	Yes
4	Document	Rationale for Proposed Change to the Nevada Pollution Control Regulation (Water Quality Standards for Lake Mead - NAC 445.1353). Petition 94009 (LCB R-060-94)	94009	Yes
5	Document	Rationale for Proposed Changes to the Nevada Pollution Control Regulations for Toxic Materials in Surface Water - (NAC 445.1339) Petition 94010 (LCB R-59-94)	94010	Yes
6	Table	I/M Program Comparisions (California/Nevada)	94012	Yes
7	Document	Executive Summary, Bureau of Air Quality Projected Budget & Fee Assessments Fiscal Years 1995 - 1997	94012	Yes
8	Table	Explanation Table of Regulatory Changes to Petition 94010 (LCB R-059-94) Changes affect Aquatic Life only.	94012	Yes
9	Facsimile (10 pages) dated 5/17/94 from Jim Van Dell, Nevada Emission Test Industry Coalition.	Collection of letters/newspaper articles/memos/ regarding emissions.	94012	Yes
10	Facsimile (7 pages) dated 5/20/94 from Bob Manhard	Copy of "An Open Letter to Mr. Richard D. Wilson, Director Office of Mobile Sources, U.S. EPA."	94012	Yes

11	Facsimile (11 pages) dated 5/25/94 from Jim Van Dell, Nevada Emission Test Industry Coalition	"Will Our Cars Pass the Smog Test in 1995?"; Copy of Fuel Line article by Gail Barnes; Copy of Memorandum from Governor Mike Leavitt, State of Utah; Copy of Fax Transmission from Huel Scherrer, University of Minnesota; Copy of letter from Keith Klamer, Ranken Technical College; Copy of Air Quality Week, Monday, May 23, 1994 article; Copy of letter from Quality Tune Up Shops.	94012	Yes

#	Item	Item Description	Reference Petition #	Accepted Yes/No
12	USEPA, Region IX, Letter	Letter from Cheryl McGovern, Nevada Water Quality Standards Watershed Protection Section, to Adele Basham, Water Quality Standards Branch, Bureau of Water Quality Planning, DEP. regarding rationales for the proposed changes to the water quality standards for un-ionized ammonia in Lake Mead and for toxic materials (NAC 445.1353 and 445.1339).	94009 and 94010	Yes
13	Jiffy Smog - 5/26/94 letter	Requested change in petition language.	94012	Yes
14	Southern California Edison 5/26/94 Statement	Support air fees.	94011	Yes
15	Nevada Power - Joe Squire Statement	Support air fees.	94011	Yes
16	Nevada NCOA, James Sohns, President	Statement	94012	Yes
17	Jim Van Dell	For info on Smogscam Dilemna pending now for Clark County	94012	Yes
18	Clark County Planning	Carbon Monoxide Air Quality Implementation Plan, dated October 1992	94012	Yes
19	Nevada Bureau of Air Quality	Executive Summary and Related Graphs, Nevada Bureau of Air Quality Projected Budget and Fee Assessment	94011	Yes
19				
20				
21				
22				