

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF May 27, 1993

HELD AT: Reno , NEVADA

TYPE OF HEARING:

YES	REGULATORY
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

AMENDED AGENDA

NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing commencing at **9:00 a.m., on Thursday May 27, 1993**, at the Reno City Council Chambers located at 490 South Center Street, Reno, Nevada. **This amended agenda changes the time and date of the hearing scheduled for May 20, 1993 at 9:30 a.m. at the above address.**

This agenda has been posted at the Reno City Council Chambers 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 20, May 6 and May 17, 1993 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 April 15, 1993 meeting. * ACTION
- II. Regulatory Petitions - * ACTION
 - A. Petition 93006 by Nevada Division of Environmental Protection to temporarily amend NAC 459.9718 to exempt public utilities from the requirements of the Consultant Certification program in instances where they are responding to incidents at the request of a public entity or in providing utility service to their customers.
 - B. Petition 93007 by the Nevada Division of Environmental Protection to temporarily amend NAC 445.240 to change the reporting requirements concerning the release of hazardous waste, pollutant, contaminant or petroleum. The changes relate to individuals other than owners/operators to report releases, update reporting phone numbers, clarify proper entities to report spills, and modify criteria for reporting soil contaminated with petroleum compounds.
 - C. Petition 93009 by the Nevada Division of Environmental Protection to temporarily amend NAC 445.6605 of the air quality regulations to adopt by reference Title 40 CFR Part 60, New Source Performance Standards and Part 61, National Emission Standards. The amendment adds standards for small industrial-commercial-institutional steam generating units, municipal waste combustors, VOC emissions from polymer manufacturing, VOC emissions from synthetic organic chemical manufacturing, standards for calciners and dryers in the mineral industry, and benzene emissions from transfer and waste operations. The cost of related federal publications are made current by this amendment.
 - D. Petition 93008 by the Nevada Division of Environmental Protection to temporarily amend NAC 444 to adopt the federal landfill criteria and language, establishing a landfill permitting program for solid waste and other technical amendments. This petition implements the changes in the solid waste statutes as approved by Senate Bill 97 of the 1993 legislative session.

NEVADA STATE ENVIRONMENTAL COMMISSION AMENDED NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:00 a.m. on Thursday May 27, 1993**, at the Reno City Council Chambers, located at 490 South Center Street, Reno, Nevada. **This hearing was originally scheduled for Thursday May 20, 1993 at 9:30 a.m.**

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 93006 by Nevada Division of Environmental Protection to temporarily amend NAC 459.9718 to exempt public utilities from the requirements of the Consultant Certification program in instances where they are responding to incidents at the request of a public entity or in providing utility service to their customers.
2. Petition 93007 by the Nevada Division of Environmental Protection to temporarily amend NAC 445.240 to change the reporting requirements concerning the release of hazardous waste, pollutant, contaminant or petroleum. The changes relate to individuals other than owners/operators to report releases, update reporting phone numbers, clarify proper entities to report spills, and modify criteria for reporting soil contaminated with petroleum compounds.
3. Petition 93008 by the Nevada Division of Environmental Protection to temporarily amend NAC 444 to adopt the federal landfill criteria and language, establishing a landfill permitting program for solid waste and other technical amendments. This petition implements the changes in the solid waste statutes as approved by Senate Bill 97 of the 1993 legislative session.
4. Petition 93009 by the Nevada Division of Environmental Protection to temporarily amend NAC 445.6605 of the air quality regulations to adopt by reference Title 40 CFR Part 60, New Source Performance Standards and Part 61, National Emission Standards. The amendment adds standards for small industrial-commercial-institutional steam generating units, municipal waste combustors, VOC emissions from polymer manufacturing, VOC emissions from synthetic organic chemical manufacturing, standards for calciners and dryers in the mineral industry, and benzene emissions from transfer and waste operations. The cost of related federal publications are made current by this amendment.

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5. Petition 93010 by the Environmental Commission to temporarily amend NAC 445.988 the Environmental Commission's rules of practice to reflect the statutory authority of the commission to conduct hearings and other technical corrections. The amendment includes by reference NRS 223B, 278, 444A, 459, 486A, and 519A. In addition the regulation exempts the Commission from conducting hearings in those areas of the statutes or administrative code where the Division of Environmental Protection has a been granted authority to conduct hearings.

The hearing scheduled for Thursday May 27, 1993 may be continued to May 28, 1993 or to a later date to be determined by the Commission.

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 Office of the Secretary of State, Capitol Complex, 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 Recording Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 no later than 5:00 p.m., Friday May 21, 1993.

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 27, 1993
Reno, Nevada
Adopted Minutes

PRESENT:

Chairman Melvin Close
Fred Gifford
Tom Ballow
Fred Wright
Roy Trenoweth
Russell Fields
Mike Turnipseed
Marla Griswold

Jean Mischel - Deputy Attorney General
David Cowperthwaite - Executive Secretary
Kelli Hammack - Recording Secretary

Meeting convened at 9:00 a.m. at the Reno City Council Chambers.

Chairman Close read the public noticing as defined in the agenda.

Chairman Close opened the meeting with a request for a motion to approve the minutes of the April 15, 1993 meeting as revised. Commissioner Wright made a motion to approve the revised minutes, with Commissioner Turnipseed seconding the motion. The motion passed unanimously.

Item II.A (Petition 93006 - Temporary Amendments to exempt public utilities from the consultant certification requirements)

Mr. Allen Biaggi, Chief of the Bureau of Chemical Hazards Management of NDEP spoke to the Commissioners about the intent of amended petition 93006. Mr. Biaggi explained that purpose of the petition was to exempt public utilities from the requirements of the consultant certification program in instances where they are responding to incidents at the request of a public entity or in providing utility service to their customers. He further stated that Sierra Pacific Power Co. had requested the amendment. Many times public utilities have their service personnel report on instances where incidents have occurred. Often times the public agencies request the utilities to provide assistance with regard to handling incidents or collection of further information regarding the incidents. Mr. Biaggi stated he believes that the utilities have been providing an important public service. Approximately 300 interested parties were notified of the proposed amendments. Mr. Biaggi reported that he had received

only two pieces of correspondence in opposition. A Mr. Katcens had submitted a letter opposing the petition, feeling the amendment would dilute the effectiveness of the consultant certification program. Mr. Biaggi responded the purpose of the amendment is to allow the utilities to act at the request of the state or other public agencies.

Commissioner Gifford observed that section 6 opens up a broader area, comparing a agency request for assistance compared to an individual request. Mr. Biaggi replied that section 6 is a redundancy in the regulations. For example Sierra Pacific Power Co. already has environmental staff who are currently exempt. This amendment clarifies that position. Commissioner Gifford asked whether there was a conflict in services provided by Sierra Pacific compared to existing companies certified as consultants. Mr. Biaggi replied that this was not a problem, since the utilities already have technically competent staff, however if they needed additional expertise then the consultant they would contract with would have to be certified under the auspice of the consultant program.

Commissioner Fields moved for adoption of the petition 93006, and the motion was seconded. Deputy Attorney General Jean Mischel stated that the Commissioners should be aware that there are two petitions currently before them, and that Mr. Biaggi was requesting that the amended petition be adopted. Mr. Biaggi was asked to discuss this circumstance. Mr. Biaggi stated that the initial petition had a jurat and that the regulated community was not easy about such a situation, therefore the petition was amended. Commissioner Fields stated that his motion dealt only with sections 5 & 6. The Chairman called for the vote and petition 93006 was adopted as amended.

Item II.B (Petition 93007 - Temporary amendment to change the reporting requirement for hazardous waste releases)

Mr. Biaggi spoke to the Commissioners about petition 93007. This petition changes the reporting requirements concerning the release of hazardous waste, pollutant, contaminant or petroleum stated Mr. Biaggi. Input from approximately 300 environmental consultants was solicited with some public comment. Mr. Biaggi went line by line through the proposed amendment. Chairman Close asked what 10 cubic feet would fill compared to 3 cubic yards. Mr. Biaggi responded that the threshold would be increased by a

factor of about 9 from 10 cubic feet to 3 cubic yards. Mr. Biaggi reported on the concerns of the regulated community and he cited Mr. John Worlund, a CEM with Converse Consultants, suggested "or his designated agent" language. Other comments from Richard Brose, also a CEM, needing keeping the reporting confidential. Mr. Gatton also had comments that the owner/operator must be the responsible party and not the designated agent. Mr. Biaggi stated that large corporations or out of state/country owners create a problem and that the proposed language allows the CEM to provide timely information.

Commissioner Gifford, asked where does agent begin and leave off. Chairman Close stated that the agent must be a designated person by the company. Deputy Attorney General Jean Mischel stated that there are a variety of ways a person can be a agent, however the owner/operator is ultimately liable. "Designated" makes the regulation much clearer. Commissioner Gifford asked about the increase from 10 cubic feet to 3 cubic yards. He wanted a comparison in terms of liquids. Mr. Biaggi discussed the rationale for the increase in the threshold. Nevada Power and Sierra Pacific both suggested the increase based upon their experiences. The reportable liquid amount is 25 gallons and is a federal requirement. The 3 cubic yards is much more equitable. Commissioner Fields moved for adoption of petition 93007, as amended, with section 1 to add "his designated agent"; Commissioner Griswold seconded and the motion was adopted.

Item II.C (Petition 93009 - Temporary amendment to adopt additional NSPS air quality standards)

Mr. Lowell Shifley, Chief of the Bureau of Air Quality for the Division of Environmental Protection discussed petition 93009. These regulations, he stated, adopt by reference title 40 CFR Part 60 New Source Performance Standards and Part 61, National Emission standards. Mr. Shifley explained that EPA enforces the regulations and that the state implements the regulations. Chairman Close asked how often the publications prices were changed. Mr. Shifley, stated that the price is correct for each year of the Code of Federal Regulation publication. Commissioner Gifford asked about the cost of regulation at the state library. Mr. Shifley stated that the cost per page is applicable and are available at the state library. Commissioner Wright asked about how many industries in Nevada were affected by the regulations. Mr. Shifley stated this

was difficult to address, however because of the migration of industries from California to Nevada that the regulations would play a more active role in Nevada air quality permitting program.

No public comment was received. Commissioner Wright moved to adopt petition 93009 and the motion was seconded by Commissioner Griswold. The motion was carried and the regulation adopted.

Item II.D (Petition 93010 - Temporary amendment to change the Commissions Rules of Practice)

Executive Secretary David Cowperthwaite discussed the purpose of petition 93010. The petition plugs the holes in the regulations in terms of statutory authority added by the Legislature. The petition updates the rules of practice by adding NRS 278, 459, 444A, 519A, 486A. In addition the regulation updates the address of the Commission and exempts the Commission from hearing appeals for the toxic ticket program. Commissioner Gifford moved to adopt petition 93010. The motion was seconded and the petition adopted.

Item III. Settlements

Mr. Shifley stated that because a appeal panel was scheduled that the Bureau was withdrawing the settlements for Cind-R-Lite Block Co. and American Borate Co.

Item IV. Discussion Items

- A. Diesel Emissions Survey; Mr. Lowell Shifley spoke to the Commission about the snap idle testing program. Approximately 143 vehicles have been tested in Elko, Reno, Carson City and Las Vegas. The testing included NDOT, school and utility fleets. The average opacity for the diesel vehicles is 28.5 percent. Staff has kept current with the California program. By September 1993 new regulations should be proposed, however DMV & PS has not been providing the necessary staffing for the program. Commissioner Griswold asked how many vehicles have failed the test. Mr. Shifley replied that it is fairly small using the California standard. Commissioner Wright asked about the 28.5 percent number. Mr. Shifley replied that the California average was 40 percent. The average vehicle would pass the California standard. Commissioner Wright

asked about the problem with DMV&PS. Mr. Shifley replied that the work program needed to allow for hiring the necessary employees has not been approved by the Legislative Interim Finance. Cooperation has been good with DMV&PS.

- B. Status of US Ecology Lawsuit; Deputy Attorney General Brian Chally spoke about the US Ecology lawsuits. The first lawsuit was the case against the Commission. In this instance Judge Breen had declared the graduated fee to be invalid, the decision has been appealed to the Nevada Supreme Court. The federal courts are awaiting the outcome of the state courts. The state has filed a lawsuit against US Ecology to close the dump for violations of the lease. They have counter claimed, stating the closure was unconstitutional. They have filed pleading and the state has filed to dismiss those claims. US Ecology is wanting to meet with the Governor on June 2 to discuss settlement of the cases. Chairman Close asked about the indemnification question. The question is whether the state will indemnify the Commissioners regarding the pending lawsuits. Mr. Chally stated that the Commissioners will be indemnified by the state if a judgement is entered against them. There is no doubt it was a discretion function of the commission.
- C. Status of Appeals & Settlements - none reported
- E. Status of Division's Programs - Mr. Dodgion had nothing to report.
- D. Pending Legislation - Mr. Cowperthwaite spoke about legislation. SB 463 is a bill to modify the makeup of the Commission. Some bills will have a regulatory impact, for example petition 93008 is an outcome of such legislation, ie. SB 97. Chairman Close solicited the thoughts of the members regarding SB 463, their collective feeling was that the bill should be opposed. Commissioner Wright spoke about the problems with the bill. Mr. Dodgion, Administrator of the Division of Environmental Protection spoke of the problems inherent in the Clean Air Act and how this would affect the membership. Mr. Chally discussed the bills affecting the takings related bills before the 1993 legislature.

Item II.D (Petition 93008 - Solid Waste Landfill Permitting Program.)

Mr. David Emme, the Supervisor of the Solid Waste Branch in the Bureau of Waste Management of the Nevada Division of Environmental Protection opened his remarks on petition 93008. Mr. Emme discussed the general context of the petition. This petition allows the state to be delegated the federal landfill program. Also handed out was a set of amendments to the original petition 93008 prepared by the NDEP Bureau of Waste Management. The regulations are to take effect in October, 1993. Senate Bill 97 was passed early in the 1993 legislative session, and the bill specified language relating to landfill management authority. The state, Clark County and Washoe County were directly named as solid waste management authorities. Previously the federal regulations were adopted by reference, today the regulations are going to be clearly articulated. Cross references will be deleted, and the regulations will provide for more active regulatory oversight, explained Mr. Emme.

A number of comments have been received and they have been responded to, stated Mr. Emme. The suggestions are included in a following attachment.

Section 1 through 15 are new definitions derived from the federal landfill regulations. The list of suggested amendments includes few new definitions inadvertently left out. For example 1.1, active life, 1.2 active portion, including a definition for aquifer, section 5 municipal landfill unit, and waste unit management boundary is to be included. Section 16, is a catch all section, stating compliance with other laws of state. Section 16.5 are permitting mechanisms. Mr. Emme stated as he goes through each section he will discuss comments that have been received. Section 17 focuses on applications. The state is defining 180 days as sufficient for review. Chairman Close asked why so much time is necessary; Mr. Emme stated it gives the division time to review and process an application. Chairman Close stated 6 months is a long time to approve. David stated that you have to have a permit to construct, however a permit could be processed quicker than the 6 months, but the 6 month period will give the agency adequate leeway to process the permit.

Section 17, focuses on existing sites submitting a notice of intent by July 9, either they are going to close or operate beyond the October 9, 1993 deadline. The information collected will allow the development of a priority list to manage the

pending workload. The sites that are continuing operation will be notified of when their applications are due. Comments stressed that the consequences for failure to file is defined. David stated that this issue is connected to other sections. Chairman Close asked what happens if someone fails to file the notice of intent. Mr. Emme responded that it is a question of enforcement, that there will be some discretion. Chairman Close asked why that date of July 9. Mr. Emme the date is arbitrary, designed to give the agency time to respond. Mr. Emme responded that more flexible language could be inserted. Chairman Close stated that the agency should have the flexibility to not be boxed in by the date of July 9, and that a waiver be allowed.

Commissioner Wright asked whether the agency had developed a inventory of sites, and Mr. Emme responded that an inventory had been established and that there were 90 sites statewide. Only those requesting they continue to operate will be scheduled for permitting. Approximately 45 sites are likely to be closed, after the October 9 deadline. These are small rural dumps. Commissioner Gifford, recommended wording of waivers, the suggested wording is very straight forward. Either you are open or closed. Commissioner Gifford believed the suggested wording would allow the appropriate amount of flexibility. Mr. Emme replied that he is not expecting a problem and that it is a yes or no question, those rural sites are aware of what sites are going to close and those that will remain open. Commissioner Griswold asked "how many sites are on public land", and Mr. Emme replied "approximately 40 site". The counties are working with the BLM in patenting existing landfill sites. Mr. Emme stated that the deadline would be liberally interpreted, and Chairman Close stated that language is needed to allow the flexibility. Commissioner Turnipseed suggested that the language be changed to say "on or about". Mr. Emme felt that "must" should be kept. It was also suggested to say "unless waived by the solid waste management authority". Commissioner Gifford expressed the need for more definitive language. Mr. Emme suggested that failure to submit the intent allows the site to be defined as a open dump. Chairman Close stated that this issue must be clear, and be linked to the reference to an open dump. The Chairman stated the waiver language would allow the necessary flexibility.

Mr. Mike Smith of Kennedy/Jenks Chilton stated that he represented the Ormsby landfill and the Lockwood landfill. His question was whether the 90 landfills have owners who claim the sites. Mr. Emme replied yes, these sites have been previously authorized to operate. Mr. Emme continued with the notice of intent issue, stating it was to allow for interim status for existing sites.

Mr. Emme discussed section 18 through 25 which defines the process for issuing permits. Section 18 is proposed to be amended, to increase the review time from 30 to 45 days. Comments were received from the health districts and EPA suggesting the change. Other phrases in Section 18, revising the wording to reference to other later sections. Section 19 was reviewed, its focus was on technical review with the outcome to beginning of the decision process, including a public review period. Commissioner Gifford asked the importance of the public hearing, in light of the permissiveness of the term "may" have a public hearing. Mr. Emme replied that he was concerned about the potential workload upon the division and that was why it was permissive. Commissioner Turnipseed asked how public notice would occur. Mr. Emme replied that the regulatory language of the mining regulations was used. Commissioner Turnipseed asked whether the notice should be spelled out. Mr. Emme replied that it should be, and Chairman Close expressed concern about the need to specify where and when notice should be given. Chairman Close asked why issues have be raised in section 20.1; Commissioner Turnipseed responded that the agency and applicant needs to know what issues are being protested. Chairman Close asked about the general public's raising of issues, how can the comment be limited. Commissioner Wright stated that the section focuses on the person who has requested the hearing.

Mr Emme discussed the purpose of Section 22 and 23. In section 24, the renewal and scope of process was discussed. Mr. Emme stated that industry has requested this section be deleted and no ceilings placed on operations. The state proposed a five year permit period. This period is consistent with other states and permitting programs within Nevada. Mr. Emme proposed amendments, focusing on item 2, that only new information is required with permit renewal applications. Objections over type and amount, the intent is on effective solid waste planning by local government. The state does not have authority to limit volume or type. The design and operations is based on the above factors. This is a standard approach to permitting. Transfer

the permit is dealt with and industry has requested no limits, stated Mr. Emme. Permits are transferable, but it must go through a modification, and it will not pose a burden or limit. Commissioner Turnipseed asked if additional requirements would come into play during renewal. Mr. Emme stated that the bottom line concern is financial assurance.

Chairman Close discussed section 47 and expressed concern about financial assurance for the new owner. Mr. Emme replied that was the purpose of the section to require financial assurance, and that this was a point of decision in transferring the permit. Chairman Close asked whether other conditions must be met, and Mr. Emme replied it depended on whether there would be changes in the operation of the site. Commissioner Gifford stated that further clarity is needed. Chairman Close stated he believed that financial assurance was crucial. Commissioner Turnipseed suggested changes in language in section 24. Chairman Close questioned the five year permit period, especially the burden upon the business due to the short time frame. Mr. Emme responded that the issue was consistent with other state programs, except for reclamation permits. Chairman Close asked whether the regulations provide for expanding the financial assurance requirements, and Mr. Emme replied the means is to review the regulations annually.

Mr. Frank Cassas represented solid waste companies in Las Vegas and Reno. He explained the role of the company and how they operate as a franchise. This is for a twenty year period. He objected to the five year provision, in light of the long amortizing period required for the facility. The permit is always subject to current standards and subsequent review, having to be in compliance. Mr. Cassas explained that they were willing to live with the environmental portion of the regulations, however they object to the business practices of the companies. Waste volume has nothing to do in subtitle D, and restrictions are not needed. If a business is sold, prior approval is not necessary, and it is a burden on the current permit holder, since they are in compliance. The suggested language, Mr. Cassas stated, was not adequate in section 24. This section does not deal with subtitle D mandated issues and they desire for it to be deleted. Deputy Attorney General Jean Mischel explained some of the needs for the state to ensure that a responsible party is holding a operating permit.

Mr. Carl Cahill, Director the Environmental Division of the

Washoe County District Health Dept., stated that they would be the solid waste management authority. They have a annual permit to operate the facility now required. A application is not required, it becomes a focus of review and adapt to innovative needs. The intent is to meet the minimum standards and ensuring that the public is protected. The volume is not critical except for long range community planning. Chairman Close asked the length of the permit period, and Mr. Cahill replied it is somewhat indefinite.

Mr. Emme spoke again about the term of the permit being 5 years. The five year period is a check point, EPA requires a permitting program in order to gain approval. Volume relates to local planning, which is required by other commission regulations. Lack of a annual tonnage limit could result in later problems, especially if the facility expanded operations and the site was filled on a much more rapid basis. This would leave the communities in a awkward situation to plan for further facilities in a timely manner. Commissioner Ballow asked whether the local would now be required to have 5 year permits, and Mr. Emme replied that the regulations do not preclude the locals from having more stringent permit and processes. Commissioner Wright asked what is the criteria to determine the life of the facility, and Mr. Emme replied that it is the capacity that defines the life of the facility. Commissioner Wright asked whether there can't be a periodic review. Mr. Emme stated that a provision has to be built into the regulations. Commissioner Gifford expressed the need for a responsible new owner, and especially the fiscal responsibilities. Chairman Close expressed that this is an important issue to be dealt with, and new language is needed to express the intent of financial assurance being a critical component of transferring a permit. Mr. Emme discussed the method by which the agency could monitor and review a permit, and how this is approached. The agency, he stated, has the flexibility to review a permit when necessary.

Chairman Close continued the discussion on section 24 of petition 93008. The Chairman asked staff whether the state can impose on the permittee modifications defined in state or federal laws. Mr. Emme replied the permit is issued in accordance with the regulations when the permit is issued, and that a mechanism would be needed to update a permit based on changes in state or federal regulations. The Deputy Attorney General Jean Mischel pointed out that it was not clearly set in the regulations currently before the Commission. Mr. Emme replied that was part

of the rationale in having a five year permit. Chairman Close stated that it was the belief of Mr. Cassas that the permittee would have to follow any rules that were currently in effect. Mr. Dodgion, Administrator of the Division of Environmental Protection, stated that the air and water permits have reopening clauses based on changes in laws or regulations, however the permit must be reopened and modified. The authority to reopen a permit must be defined within the area where the permit is tendered.

Commissioner Gifford asked about the status of the modification clauses. Chairman Close, stated that this was a good point and further discussion is needed. The Chairman further stated that Mr. Emme had appeared to have prepared regulatory language. Mr. Emme reported that he indeed had additional language drafted. Mr. Emme stated the following language: "only after notification of such transfers have been submitted to the solid waste authority and it has been demonstrated to the satisfaction of the solid waste authority that the new owner or operation meets the financial assurance provisions of section 47 through 50 inclusive", the remaining language would be deleted.

Commissioner Turnipseed asked whether site needs to be deleted. Mr. Emme replied that the focus is on sites and not the operator. The term disposal site has a clear definition in the regulations. The Deputy Attorney General Jean Mischel suggested a time period for notification. Chairman Close stated that a transfer does not occur before approval of the solid waste authority. Mr. Emme spoke of the need to make a amendment to item 5, "that it may be revoked" or "suspended". Commissioner Gifford asked the status of item 5 in section 24. Mr. Emme stated that revoked or suspended is the operative terms.

Chairman Close opened discussion on Section 25 and Mr. Emme stated that the section provides for modification of permit. Commissioner Gifford commented that the permit is subject to public notice. Commissioner Gifford was concerned about the lack of clarity as to the intent of the regulation in section 25. Mr. Emme replied that the section 25 is designed to be flexible, since all the elements of a major modifications had not been defined. He further stated that the solid waste authority would have the discretion in defining what is a major versus minor modification. Commissioner Gifford stated his point of view was the quality of public determination. Mr. Emme stated if the

modification was perceived as being major then a public review process would be initiated. Commissioner Wright asked for clarification about Mr. Cassas letter. The concept about the mechanics of doing things. The Commissioner spoke of the role held by local governments, regarding zoning, and federal permit conditions. Who or what is being permitted. Mr. Dodgion stated that this is single permit system, as compared to a dual permit system where there is a permit to construct then a permit to operate. The air program is an example of the dual permit process. The problem is that operator may receive a permit to construct then they get hung up on the permit to operate. Commissioner Wright asked about the financial assurance linkage. Mr. Dodgion replied that the purpose of the financial assurance is to deal with closure of the facility and not the day to day operations. This is ensure the facility is closed properly. Commissioner Wright stated that the regulations infer beyond the environmental necessities. Mr. Dodgion replied that the day to day requirements deal with the environment.

Chairman Close asked Mr. Emme what the impact would be if the significant increase language was to be deleted, and allowing more discretion in determining the level of public notice. Mr. Emme agreed with the Chairman Close. Mr. Cassas spoke to the Commission, stating that deleting the work "significant" makes the section more objectionable. Mr. Cassas stated that the issues raised in section 25 are defined in Subtitle D. The urban facilities are now becoming regional facilities. If the facility is in compliance, and if the volume jumps, the impact on the environment is negligible. The bottom line is that the impact on the environment is the same, only the facility is closed sooner. The objection is over type and volume. These are business practices of the landfill operator. Any minor changes will subject the permit to review. He asked that the language of amount and type in section 24 and 25 be deleted. He stated they understood the public concern about financial assurance.

Commissioner Gifford stated if the proposed modification is deemed to have a impact on the environment or public health and leave to such language as the means to deal with modifications. Mr. Emme stated that the need was to reinforce local planning, large landfills may not have the problem, however small facilities could be adversely affected. Mr. Dodgion stated that facilities are designed to handle specific types of wastes and volumes. Major changes may swamp the local government ability to manage the problem, thereby affecting public health or the

environment. Commissioner Gifford stated it was incumbent of the operator to not demonstrate a negative impact. Mr. Dodgion replied, that deals with the original permit and not a modification. The question is who is making the decision about whether a major change is taking place. Chairman Close asked Mr. Dodgion whether all permit modifications have to be approved. Mr. Dodgion replied yes. The debate is whether type and amount language should be deleted. Such changes, stated Mr. Dodgion are important and need to be retained. Chairman Close asked if a proposed modification was insignificant would the modification have to be approved. Mr. Dodgion, replied that such action could occur within the confines of the existing permit.

Mr. Cassas, stated that it is now a political condition, their fear is granting the solid waste authority such discretion regarding the daily volume. Commissioner Gifford asked, why doesn't the permittee request a high volume on the daily basis. Mr. Cassas replied, why is such a concern a part of the permitting process, when they view it as a business practice, especially since it doesn't affect the environment. The total capacity is not in question, and the physical capacity should be permitted. Volume controls on a short term basis, and it interferes with the business practices. Chairman Close asked Mr. Emme whether the language dealt with total volume or daily volume. Mr. Emme replied that it deals with both values. The intent is for a checkpoint in the filling of the facility. Commissioner Turnipseed suggested that the renewal should be based upon a percentage usage of a site. Mr. Emme replied that there is a major difference in how a urban versus rural site is managed. Chairman Close asked what the difference would be if the site is filled in 20 compared to 40 years. Mr. Emme replied that the concern is in fostering five year planning periods for local governments. Commissioner Griswold asked about the current level of out of state waste importation. Mr. Emme replied currently there was little but in the future there could be significant amounts. Mr. Emme cited the Mound House area and how the local landfill site has been affected by the growth of manufacturing facilities in the Dayton area. Commissioner Wright asked about the issue of Class I versus II site. Mr. Emme stated that if the 20 ton limit is exceeded the landfill would be in violation and the permit would have to be redone.

Mr. Mike Smith of Kennedy/Jenks stated he was confused about the issue of total volume. As a designer, the physical resources have to be protected, and the design is permitted and approved.

The constraint of local planning needs to be addressed through notification and not a modification of the permit. The estimated life is based on the daily volume flow, this number is constantly changing. It becomes difficult for the operators to deal with.

Commissioner Fields asked about the issue of the type of waste to be disposed. Mr. Smith stated that this is addressed during the initial permit process and if it changed the operator needs to address the impact on the environment. Mr. Cassas clarified that type refers to the definition, i.e. municipal solid waste.

Section 26 was discussed. Mr. Emme stated that 26 through 50 focus on class I site requirements. This section deals with failure to comply results in dump being classified as open dump, therefore illegal. The QA/QC requirements are to be simplified under the proposed amendments.

Section 28 & 29 deal with closure plans. Mr. Emme suggested further amendments. The sections, Mr. Emme explained, on closure plans come directly from the federal regulations. Section 29 was reviewed. Section 30 was reviewed. These are design standards essentially adopted last July, 1992. Mr. Smith stated that the reference to liners was in millimeters and this was incorrect. Mr. Emme stated that the wording should be mills. Commissioner Gifford asked about the post closure period. Mr. Emme replied that it was federal language. Commissioner Gifford stated that 30 years was a minimal period. Mr. Emme felt the test required in the section was very protective. The intent of EPA is that groundwater monitoring must be done. Mr. Emme explained the groundwater monitoring requirements as they relate to sources of drinking water. Commissioner Gifford asked about the qualifications and independence of the groundwater scientist. Mr. Emme stated that the federal regulations were clear about how this issue was to be treated.

Mr. Mike Smith asked a question about what defines the uppermost aquifer. Commissioner Turnipseed stated that its the first encounter with water. Mr. Emme stated that there was a definition in the proposed regulations. Mr. Smith asked what is a significant quantity of water. Mr. Emme replied that in the amendments provided to the Commissioners, they are adopting the definition as derived from federal regulatory language. Mr. Emme has incorporated the term "usable", which makes the solid waste regulations consistent with other state regulations.

Commissioner Gifford asked what is the criteria to determine that aquifers are connected. Mr. Emme stated that there is currently no specific criteria, that common sense has to be used. Mr. Smith asked about the proposed schedule of subtitle D. Mr. Emme replied that schedules are not seamlessly put together. Mr. Smith asked whether the applicant is gambling by hoping to meet the regulatory criteria. Mr. Emme stated that the criteria that drives the requirements is elicited in the federal regulations. Commissioner Ballow pointed out that the federal regulations will supersede the state regulations.

Commissioner Fields asked about the issue of wells being upgradient in Section 32. Mr. Emme replied that a monitoring well could be upgradient and other sampling points could be used to determine baseline water quality. Mr. Smith asked why the most stringent of the options is required. Mr. Emme stated the more stringent state standard is consistent with the state anti degradation water pollution control law. The state has chosen not to allow pollution of ground water down gradient of the site. Mr. Smith said that all liners leak, and that the 150 meter buffer deals with the reality of leakage. The point of compliance should be further out. Mr. Emme stated the water pollution is the driving means to deal with this problem. Commissioner Turnipseed stated that remediation would be required if the area got contaminated, and that action would be required immediately. Mr. Smith stated that the operator still has to protect the environment. Mr. Emme stated that the operator would be out of compliance with state water laws if the MCL's are exceeded. This would trigger a corrective action process, that may or may not require a cleanup of the aquifer. Mr. Smith recommended that the option to place the detection wells be based on best management practices in conjunction with the 150 meter buffer boundary. Mr. Emme stated that the owner/operator could apply for a variance, and that this would be a possible mechanism to deal with the issue. Mr. Dodgion stated that in the July, 1992 hearings on solid waste regulation this standard on ground water protection was discussed. Mr. Smith stated the mining regulation allows for liner leakage. Mr. Dodgion replied that the leakage is between the liners and upon detection of contamination the company must take corrective action.

Section 33 was discussed by Mr. Emme and he pointed out minor corrections. This is a federal requirement. Commissioner Gifford asked about the .01 level error and whether this was too rigorous of a test. Mr. Emme stated that it is a EPA statistical

method, derived from years of development in hazardous waste regulations. Commissioner Gifford asked about the need for consistency in the 14 day sampling, in 9.b (it was added language).

Section 34 was discussed by Mr. Emme. This is a federal requirement. Mr. Smith asked where the appendix I & II of subtitle D alluded to in this section was. Mr. Emme stated the commissioners had been provided and they need to be included. They can be incorporated by reference stated Deputy Attorney General Jean Mischel as a new and last section in the regulations. Commissioner Gifford asked about the sequence of events following the detection of a problem in groundwater and whether there is a provision to allow for a second sampling. Mr. Emme replied that the statistical sampling allows the management authority to determine significance and that there is an opportunity by the operator to do further sampling.

Section 35 was discussed by Mr. Emme, and he proposed some amendments to correct language, to say the management agency is to be notified of the results of the testing. Commissioner Gifford asked the rationale for item 6, and why an assessment has to be continued. The issue was the MCL's. Mr. Emme agreed with Commissioner Gifford on the need to revise the language. The language was directly out of the federal regulations. Commissioner Turnipseed pointed that the sampling shows that a problems exists and further assessment would be needed. Mr. Emme stated that the states can modify the list of compounds to be reported upon.

Section 36 was discussed by Mr. Emme. Mr. Smith asked who proposes the alternatives, is it NDEP. Mr. Emme stated the operator has to develop the alternatives and corrective measures. Mr. Smith stated that if the problem has been identified does the operator or NDEP pay. Mr. Emme cited the phrase potential corrective measures. The issue is having meaningful public input into alternatives. There will be at least two alternatives, do nothing or clean it up. The responsibility sits with the owner operator. Commissioner Turnipseed asked about the public comment process. Mr. Emme replied that the regulatory agency will run that process. Mr. Smith stated he objected that the provision was more restrictive than subtitle D. Mr. Smith the language similar to subtitle D. Mr. Emme stated that the language could be revised in item 4.

Section 37 was discussed by Mr. Emme. The language deviates in item 5 from the federal regulations. This allows for joint decision making between the administrator and the local solid waste management authority. It focuses on protecting the waters of the state, especially where contamination has been detected and no action is to be taken.

Chairman Close suggested that the members review all the amendments and make some decisions. Commissioner Gifford referred to Section 37 and asked about the issue of jurisdiction. Mr. Emme stated that the joint decision would allow for some state influence on the decision of local solid waste management authority.

Chairman Close focused the meeting on the wrap up and deliberations on the beginning sections of petition 93008 and the proposed amendments to the petition.

Commissioner Turnipseed suggested language for a public notice. This notice will carry throughout the regulation. Section 14.5 is to be the definition for public notice. All language up to section 17 was concurred upon by the commissioners. Section 17 was reviewed. Chairman Close articulated that the 180 days was important. Added languages was "unless waived" by the solid waste authority. Mr. Emme briefly reviewed the language "failure to submit the notice results in the site being considered and open dump". This is connected to section 26.

Section 18 was changed from 30 days to 45 days. New language, for a "particular application" in the section. No changes to section 19, however changes occurred in section 20. Section 20.1 was technically modified. No changes on 21, 22, or 23.

Section 24 was discussed. Commissioner Fields stated that consideration should be given to the testimony from Mr. Cassas regarding the limitation on the permit life and long term financing. Commissioner Fields continued that Mr. Emme stated the division could, by order, change the permit based on changes in the federal law. Commissioner Fields suggested changing the 5 year permit period. Chairman Close, referred to suggested language of the Deputy Attorney General Jean Mischel. Ms. Mischel suggested inserting language in section 24, that would reference current changes "applicable", and be a condition of the

permit. Commissioner Wright suggested that new language be drafted that deals the middle ground between the division and the regulated industry. Chairman Close stated his intent to provide guidance to the Division. Chairman Close asked whether the Division has the authority to review the permit. Mr. Emme replied, that yes, the agency could review the permit in terms of compliance with permit conditions. The discussion focused on weaving in the local needs for planning oversight of the landfill. The issue is a longer term lease, offset by allowing the permit to be updated based on new laws or regulations. Mr. Emme agreed that this approach would work. Commissioner Turnipseed suggested the agency having the discretion in the duration of the permit based on the agencies level of confidence in the operator. Commissioner Fields talked about how does the operator go to financial institution to receive a loan based on questionable permit periods. Chairman Close stated that if the permittee is able to meet the conditions of their permit, then they should be able to conduct their business until the site is filled or he can no longer meet the conditions of the permit. Chairman Close stated that the state should be able to update the permit, however the permittee should be allowed to operate as long as necessary. Mr. Emme stated the permit should have an endpoint such as the design life, so that there is a linkage to engineering based approvals. The Commissioners concurred with the approach. There is now no longer a need for a renewal mechanism for the permits, stated Mr. Emme. Commissioner Wright suggested staff re-draft the sections. Mr. Dodgion concurred and stated the Division would sit down with industry and hammer out the language.

Section 25 was discussed. Chairman Close talked about the state's desire to unilaterally change the permit. Mr. Dodgion stated in section 24 the permit period now goes from 5 years to the design life, and the issue now is how to reopen the permit. He proposed the reopen language be linked to section 24. The state doesn't want to unilaterally reopen a permit, unless laws have changed. Chairman Close discussed the term "significant", and whether this is a reasonable word. Mr. Dodgion explained that section 25 is tied directly to section 24 in terms of type and volume of solid waste. He suggested that the division work out the language with industry. The question is whether the site can handle the increased volume in waste. Sections 24 and 25 are to be redrafted.

Section 26 was ok; section 27 was to have 27.2 deleted, and

27.1 was to be amended. Section 28 is to be amended, section 29.5 is deleted, section 30 was changed where millimeters was changed to mills, section 31.2 reference were updated; section 32 no changes agreed upon on the 150 meters; section 33 has a minor change in reference; other changes in language as based on the proposed amendments were discussed up to section 37.

Commissioner Turnipseed moved to adopt sections 1 through 37, except for section 24 and 25, as amended. Commissioner Wright seconded the motion. Ms. Mischel reminded the Commissioners that they were adopting temporary regulations and that the full petition has to be adopted by June 15, 1993. Mr. Dodgion explained that the application to U.S. EPA could not await the development of final regulatory language. The action was a provisional adoption of the regulations. The motion passed.

The next meeting was discussed. Commissioner Griswold asked about the small dump in regards to the statutory exemption. The meeting was adjourned.

As prepared by the Executive Secretary, David Cowperthwaite