

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF June 8, 1993 (continuation of May 27, 1993 hearing)**

**HELD AT: Reno , NEVADA**

**TYPE OF HEARING:**

<b>YES</b>	<b>REGULATORY</b>
	<b>APPEAL</b>
	<b>FIELD TRIP</b>
	<b>ENFORCEMENT</b>
	<b>VARIANCE</b>

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

<b>YES</b>	<b>AGENDA</b>
	<b>PUBLIC NOTICE</b>
<b>YES</b>	<b>MINUTES OF THE HEARING</b>
	<b>LISTING OF EXHIBITS</b>

## AGENDA

### NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing commencing at **9:00 a.m., on Tuesday June 8, 1993**, at the Washoe County Library located at 301 South Center Street, Reno, Nevada. **Those wishing to attend the hearing prior to 10:00 a.m. should use the entrance located on the westside of the building.** This is a **continuance** to the Environmental Commissions hearing held on May 27, 1993 in Reno, Nevada.

This agenda has been posted at the Division of Environmental Protection Office in Las Vegas, Nevada, the Washoe County Library in Reno, Nevada, the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this set hearing was published on April 20, May 6 and May 17, and May 19, 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 May 27, 1993 meeting. \* ACTION
- II. Regulatory Petitions - \* ACTION
  - A. 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.
- III. Discussion Items
  - A. Pending Legislation Affecting the Commission \* ACTION
  - B. Future Meetings of the Commission
  - C. General Public Comment

This meeting maybe continued to June 9, 1993 beginning at 9:00 a.m. The meeting will be held in Carson City, Nevada at the DCNR Conference Room A (Room 217) at 123 W. Nye Ln.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 no later than 5:00 pm, Thursday June 3, 1993.

**STATE ENVIRONMENTAL COMMISSION**  
**Meeting of June 8, 1993**  
**Reno, Nevada**  
**Adopted Minutes**

**PRESENT:**

Chairman Melvin Close  
Harold Ober  
Fred Wright  
Roy Trenoweth  
Russell Fields  
Mike Turnipseed  
Marla Griswold

Brian Chally - Deputy Attorney General  
David Cowperthwaite - Executive Secretary  
Sheri Gregory - Recording Secretary

Meeting convened at 10:00 a.m. at the Washoe County Library,  
Center Street Auditorium.

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

**Item I. (Minutes of May 27, 1993)**

Approval of the minutes was waived until the next meeting.

**Item II.A.       Petition 93008 - Solid Waste regulations -  
Continuation of the Petition Review**

Mr. David Emme, the Supervisor of the Solid Waste branch of the Bureau of Waste Management of the Division of Environmental Protection continued review of petition 93008. Mr. Emme submitted an additional set of amendments to clarify the business of the May 27, 1993 hearing regarding petition 93008. Chairman Close opened with discussion of section 8. Mr. Emme stated that the EPA has requested changes to delete language relating to ground water. This is the phrase "which could produce usable water". In response the bureau is requesting the deletion of the phrase. Chairman Close asked what non-usable water meant. Mr. Emme replied with an example of where water could not be pumped because of the physical characteristics of the aquifer. The

original definition was based on mining regulations, but a further review of the ground water regulations showed the state to have language that is in conformity with federal requirements. Mr. Carl Cahill, director of environmental health division for the Washoe County District Health Department, gave an example of a landfill not having a clay liner, but with having little movement in ground water. This will affect the regulatory agencies ability in dealing with such a minor problem. Mr. Emme replied that the regulations require monitoring the upper most aquifers. Chairman Close asked about impact of removing the flexibility. Mr. Emme replied that flexibility would not be lost, and the intent is to focus on the aquifer. Mr. Emme read U.S. EPA's comments regarding the substantive language of "usable water" and their concern of inadvertently establishing a loophole in the regulations.

Chairman Close asked about the intent of the language concerning "past management practices" in section 5 and the hypothetical of a operator who has performed poorly. Mr. Emme replied that the intent, in federal language, is if new ground is to be opened, then a liner would be needed. This is, for example, to stop the operator from spreading garbage over an undisturbed area and then claiming it is a active landfill unit. Waste placement has to be consistent with past operating practices.

Section 14.5, a new definition of public notice, was explained by Mr. Emme. The suggested language focuses on the municipal government and the requirement for publishing a notice in the newspaper of general circulation, with a 30 day soliciting period. Mr. Cahill suggested changing "municipal government" to "governing body" to be consistent with statutory language. The commissioners concurred with the proposed change.

Section 17, the schedule to submit notice of intent to close, was discussed by Mr. Emme. The July 9th date is proposed to be shifted to July 30, 1993. Additional changes have been suggested "unless waived by July 30 by the solid waste management authority", this to prevent waiving requirements after the fact. Chairman Close stated the goal is have the landfill operators

comply, yet provide the regulatory agency with a modicum of discretion. Mr. Emme replied that he believes this will not be a problem and there will be substantial contact with the regulated community. Mr. Frank Cassas, a member of the law firm Hill Cassas & deLipkau stated that the change before them was at the request of the industry. The industry concern is that all landfill operators should be treated equally. The non conformers will be of the greatest concern. This provision would not allow a loophole to occur and if there is a failure to comply with the provision then they should be flagged as an open dump. The commissioners concurred with the proposed change.

Section 24 was discussed by Mr. Emme. This is new language, since section 24 & 25 were not adopted at the May 27, 1993 hearing. Chairman Close asked about the June 7 deadline in section 24. Mr. Emme explained that instead of a 5 year permit, the focus is now on the design life of the facility. This relates to the capacity of the facility. In addition, the solid waste management authority can now reopen the permit, and the amount and type must be consistent with the operational plans of the owner/operator. Item 6, limits the transfer of permits and is linked to financial assurance. The commissioners concurred with proposed change.

Section 25 was discussed by Mr. Emme. This section was cleaned up and provides for the modification of a facility, subject to public notice. Other conditions of modification were enumerated. The commissioners concurred with the proposed changes.

Section 38 was reviewed and discussed by Mr. Emme. The changes relate to self implementing language, where "owner/operator" is deleted and "solid waste management authority" is inserted. This is federal language. This section provides for dealing with problems in the clean up of a site. Chairman Close asked about the role of the "ground water scientist". Mr. Emme replied that this has been previously defined and adopted by the Commission, page 9, paragraph 5.

Section 38.5 was reviewed and discussed by Mr. Emme. This

is a new section, making other sections effective and consistent with the federal regulations.

Section 39 was reviewed and discussed by Mr. Emme. Minor technical changes, "and" to an "or", and deletion of item 1.f were proposed. The commissioners concurred with the proposed changes. Commissioner Fields asked about the change in the "and" to "or". Mr. Emme replied that it is used to delineate between state references to hazardous waste and federal references regarding hazardous waste.

Section 40 was reviewed and discussed by Mr. Emme. The section deals with methane detections and requirements for collection and venting. This is a federal requirement. Minor technical changes were proposed. The commissioners concurred with the proposed change.

Section 41 was reviewed and discussed by Mr. Emme. The section deals with air quality issues.

Section 42 was reviewed and discussed by Mr. Emme. Minor changes to 1.c were proposed, deletion of the term "owner/operator". Chairman Close asked about the 25 year storm event, and why there is also reference to a 24 hour 25 year storm. Mr. Emme replied that it is based upon the statistical frequency of such a possible storm event. Commissioner Turnipseed stated the NOAA reports on frequency of storms are based on various rainfall levels over time. The commissioners concurred with the proposed changes.

Section 43 was reviewed by Mr. Emme. This section describes record keeping requirements. Mr. Emme proposed changes to the regulation, deleting the phrase "in administrative offices", since this language was vague. Chairman Close asked how long the records have to be maintained. Mr. Emme replied that it is not specified in the federal regulations. Chairman Close asked what would be a reasonable retention period, since it appears that records would have to be kept indefinitely. Mr. Emme stated that the post-closure care period is 30 years. Chairman Close stated there should be a way to dispose of the records. Mr. Emme stated

that language could be developed to deal with that problem. **Mr. Emme suggested that further changes could be formulated when the permanent regulations return to the commission for adoption. This issue needs to be run past EPA.** Mr. Emme continued review of the section.

Section 44 was discussed by Mr. Emme. This section deals with vector control.

Section 45 was discussed by Mr. Emme. This section describes closure requirements. Changes were proposed in this section, to establish a minimum top slope of 3 percent, and that the slope must control erosion. In item 6, he further recommended that the word "imminent" be deleted. Commissioner Turnipseed asked about the stringency on permeability of the site. Mr. Emme stated the options; trucking in material or covering with a plastic membrane, etc. This is a federal standard. Commissioner Fields asked about the federal standard of requiring 6 inches of soil. Mr. Emme stated that there is flexibility in defining an alternative cover, as long as it can be demonstrated that the site can deal with erosion by wind and water.

Section 46 was discussed by Mr. Emme. This section deals with post closure care requirements. The landfill must be maintained for a period of 30 years.

Section 47 was discussed by Mr. Emme. This is financial assurance requirements. A third party cost estimate is needed, and the closure cost must be annually adjusted for inflation. Minor technical changes were proposed. Commissioner Wright asked whether all municipal landfills are affected. Mr. Emme stated that at a landfill there may be more than one landfill unit. Commissioner Fields questioned whether the adjustment to inflation was an adequate driver. He recommended the use of the CPI. Chairman Close asked about the cost estimate. Mr. Emme stated the estimate must be made by October 9. Chairman Close asked whether the estimate is to be adjusted after the initial determination. Mr. Emme replied that it is adjusted by the sub items in the section.

Section 48 was discussed by Mr. Emme. This section deals with post closure financial assurances. This section is identical to section 47. Minor technical changes were proposed by adding solid waste management authority. Chairman Close asked why the most expensive cost had to be used as compared to the most effective cost. Commissioner Turnipseed stated the bonding for the most expensive cost would end in the covering of least expensive costs. Chairman Close stated that over bonding would occur. Commissioner Fields felt that the regulations are going after the maximum liability, although the proposed language is poorly written. Mr. Emme stated this was a federal requirement. Commissioner Fields asked about the cost estimate and who approves this estimate. Mr. Emme replied, no, only a notification is defined, since these are self implementing regulations. The commission changed the language to say "the owner or operator may with the consent of the solid waste management authority", and Mr. Emme stated this approach needs to be linked throughout the section and section 47.

Section 49 was discussed by Mr. Emme. This section provides for financial assurance of corrective actions. Technical changes were recommended, the addition of "solid waste management authority" and corrections to cross references. Commissioner Turnipseed stated that the focus of the solid waste regulations is to protect ground water resources. He asked how the operator can estimate the price of cleanup of ground water problems. Mr. Emme, agreed that there is difficulty in determining the long term cost, however, the capital and operating cost will have to be estimated. Experiences will be used, this is after the problem and remedy will be proposed.

Section 50 was discussed by Mr. Emme. This section describes allowable mechanisms for financial assurance. Chairman Close asked that if the term was 30 years, and whether the last payment is due on the last day the site is closed. Mr. Emme replied that yes, this scenario was valid. Chairman Close then asked what would happen if the operator stopped operations halfway through the scheduled period, who was going to be liable for closure costs. Mr. Emme replied that some funds are available and only half the area would be required to be closed.



Chairman Close continued, questioning what would happen if the operator completely filled the dump in half the time, yet only half the funds had been paid into the closure trust fund. Mr. Emme replied that the solid waste authority would have to make an interpretation of the life of the facility. The life is based on the capacity of the landfill, so the payments should be geared towards the capacity of the landfill. Chairman Close pointed out that the existing language is based on the term of the landfill. Mr. Emme stated that the term is intertwined and calculated based on the capacity of the landfill. Commissioner Fields stated that the bond amount needs to be reviewed annually, then contributions to the trust fund could be adjusted. Commissioner Turnipseed stated that at the previous meeting language was adopted stating that the operator doesn't have to report annually on the fill rate of the facility. Both commissioners agreed this issue was linked to the bonding requirements and the annual contribution to the trust fund.

Chairman Close suggested that this section should be addressed again after lunch. Commissioner Turnipseed asked who was the guardian of the trust fund. Mr. Emme stated that in the language of the section, it was possible a bank would be the trust officer. Commissioner Turnipseed stated that the trust fund would be accruing interest, and that would be to the benefit of the operator. Chairman Close asked about the interest to the fund and for the potential for the interest to augment the necessary payments to the fund. Mr. Emme stated that the issue of the interest is not spelled out in the regulations. Commissioner Wright asked whether there would be fiduciary relationship between the trustee and the operator. Chairman Close asked whether the accrued interest within the fund itself and whether these additional funds would be applied against the cost of closure. Chairman Close asked who would be responsible for approving the terms of the trust. Commissioner Ober responded that 110 percent of each payment could be applied to the fund, however the state would not be able to control what happens to the interest. Chairman Close stated the key to this section is to have enough funds to undertake the closure. Commissioner Fields recommended that bonding requirements in the mining reclamation area could assist dealing with this issue. Chairman

Close asked about the formula for corrective action. Mr. Emme was uncertain of the intent of the federal language, other than the need to adequately capitalize the trust fund.

Mr. Emme discussed the deadlines imposed by section 50. Minor technical deletions were proposed. The language on surety bonds is derived directly from federal regulations. Chairman Close asked about the meaning of the "stand by" trust fund. Mr. Emme stated it was not clear to him as to the meaning of "stand by" trust fund. Commissioner Wright stated that the financial aspects were first published in 1991. The commissioner asked about whether the financial assurance provisions of the federal regulations have been tested, and will the regulations work in Nevada. EPA, stated Mr. Emme, has not completely identified all the mechanisms, and the state/solid waste management authority has some discretion in being creative about financial assurance. Commissioner Ober asked who will be responsible for approving unique financial assurance arrangements. Mr. Emme replied that outside help would be needed. Minor technical changes were proposed in item 12 for control by the regulatory agency over the release of the funds. Commissioner Ober, asked, who else is specified. Mr. Emme stated the release could be made to a third party to close, or as stated by Commissioner Turnipseed the operator could also pick a third party who specializes in closure of landfills.

Section 51 was discussed. This section cross references requirements for Class II sites to Class I sites. Commissioner Fields asked what was the definition of Class of site. Mr. Emme explained a Class II site, is a small community site, with less than 20 tons per day and no ground water contamination. Mr. Emme proposed minor technical changes, cross references were to be included.

Section 52 was discussed by Mr. Emme. This section also cross references Class II sites. Minor cross references section numbering changes were proposed. The phrase effective October 9, 1993 was proposed.

Section 53 was discussed by Mr. Emme. This is new language

for an existing section of the regulations. Section 54 was discussed by Mr. Emme. This section cross references other sections. Section 55 was discussed, with more cross references.

Section 55.5 was discussed. Changes were proposed for this section. Class II sites are to be required to install ground water monitoring systems by October, 1996. The solid waste management authority will determine the scope and parameters of the ground water monitoring.

Section 56 was discussed. It is proposed to delete this section. This is a redundant section. Commissioner Wright asked if the sections need to be renumbered.

Section 57 was discussed. The section deals with post closure operations for class III sites. These are industrial waste sites. The section cross references other sections.

Section 58 was discussed. There is suggested changes in the definition, regarding small community exemptions. The additional phrase was to be added. Commissioner Fields asked if a Class II site has ground water contamination, whether this would trigger the site being reclassified as a Class I. Mr. Emme replied, yes, and they would have to comply with Class I requirements. Class III sites are to be modified to include the term "solid waste".

Section 59 was discussed by Mr. Emme. Minor changes were proposed. Section 60 was discussed, no changes proposed. Section 61 was discussed, with minor technical grammar corrections. Section 62 was discussed, this a definition for a lift. Section 63 was discussed, with a minor change, adding "conditionally exempt". Section 64 was discussed, with no changes proposed. Section 65 was discussed, with no changes proposed. Section 66 was discussed, with no changes proposed. Chairman Close asked why federal agency is deleted. Mr. Emme replied he was uncertain why. This language was not in the federal definition, **federal agency was to be retained**. Section 67 was discussed, with no changes proposed. Section 68 was discussed, with no additional amendments proposed. Section 69 was discussed, this definition was established in senate bill 97.

Section 70 was discussed by Mr. Emme, with no changes proposed. Section 71 was discussed, with substantial changes in language. References to liquid wastes are eliminated since this is dealt with in other sections. Item 2 is to be deleted. **In section 72, it is recommended that NAC 444.560 not be changed and the proposed amendment was withdrawn. This issue of liquid wastes needs to be revisited and substances need to be evaluated and included in the regulations.** Section 73 was discussed, with no proposed changes. Section 74 was discussed by Mr. Emme, with minor technical changes proposed.

Section 75 was discussed. A change is proposed to item #5, to add "medical waste must not be deposited in containers with other solid waste. Medical waste must be transported separately from other solid waste to an approved solid waste disposal site and handled by a method approved by the solid waste management authority". This will require container and separate handling of medical waste. The problem is that the container does not provide protection to landfill workers. Commissioner Fields asked about the containers and how temporary storage is managed. Mr. Emme stated this deals with storage of medical waste prior to collection. Commissioner Wright observed this waste is dealt with by the generator before collection. Mr. Emme stated the language could be edited. Mr. Tom Isola, a Vice President of Silver State Disposal stated that the existing language requires the waste to be put in a bag, then a box, then it is transported by a disposal company. The medical waste is consolidated with all wastes in the collection truck. All the expense at the generator end (doctor, hospital) to contain the waste is lost, and the garbage worker is then exposed to medical wastes. Mr. Emme stated the intent is to focus on storage prior to collection. Existing regulations exist to deal with medical wastes.

Section 76 was discussed by Mr. Emme. Reference is added to new sections being adopted. It discussed salvage yards. Section 77 was discussed, a minor correction was needed, correction of reference, and added language to item # 10.

Section 78 was discussed, with minor amendments to item # 2,

"migrating" was to be deleted and supplanted with "degrading". In paragraph 5 it was suggested that "a Class I site location must conform with land use planning to the area in which it is to be located", this is site criteria. Other minor changes were proposed; addition of word "federal" clean water act. Nevada has seismic impact zones, and the concern is how it will affect liners, although existing sites are not affected by the regulations. The note was to deleted language on page 57. Commissioner Fields asked about the potential for a solid waste site at closed mine sites. Mr. Emme replied that yes, there was potential, and he cited Los Angeles attempts to use this approach.

Section 79 was discussed by Mr. Emme. This is criteria for a design report. Commissioner Turnipseed asked about who signs off, Mr. Emme replied a design itself needs an engineers stamp.

Section 80 was discussed by Mr. Emme. This is the contents of a water monitoring plan. There are minor technical amendments, with changes to "solid waste management authority", and the word "reasonable". Federal regulations focus on no potential migration to the ground water. This section is to be consistent with federal regulations. Section 81 was discussed by Mr. Emme. Commission Wright asked about the word "person", and the word "person" was deleted and "personnel" added.

Section 82 was discussed by Mr. Emme. Section 83 was discussed by Mr. Emme. Chairman Close asked whether the litter control was reasonable, Mr. Emme stated it could be amended to delete item #2. Commissioner Turnipseed asked what was considered large waste, Mr. Emme replied it was car bodies, appliances etc. Section 84 was discussed by Mr. Emme. A phrase was proposed to be reworded. Section 85 was discussed and an amendment was suggested to make the regulation effective October 9, 1993. This would make it consistent with federal regulations.

Section 86 was discussed. Minor changes were proposed to control access to Class I sites. Section 87 was discussed. This is Class II site requirements. Cross references were corrected. Section 88 was discussed. Minor corrections to cross references

were proposed. Section 89 was discussed. Minor corrections to cross references were proposed. Section 90 was discussed. It deals with report of design, and cross references, and the last sentence is proposed to be deleted. Section 91 was discussed, it deals with cross references. Section 92 was discussed, it deals with operations and maintenance and it deals with cross references. Section 93 was discussed, it is proposed to be amended to be cross referenced. Section 94 was discussed. Section 95 was discussed and minor changes are proposed, the deleting of 40 CFR and supplanted with regulatory language. Section 96 was discussed and it also takes the same actions as section 95. Section 97 was discussed, and the same action as Section 95 and 96 is taken. Section 98 was discussed, EPA is concerned about the variance and appeals. The response is to append a sentence "no variance shall be granted that is inconsistent with federal landfill criteria of 40 CFR Part 258". Section 99 was discussed, list repeals of no longer needed sections. The issue of a appendix was to be included as a part of the regulatory package to be adopted.

Commissioner Turnipseed expressed concern about the small operators and the long period of time. The issue is a pit cover that is not impermeable. Mr. Emme stated that as an area of the landfill is filled to its design elevation then a final cover is installed. The fill would then be protected from infiltration by the rain.

Commissioner Turnipseed had further suggested changes regarding the issue of personnel at the site. Mr. Emme discussed the needs by type. Commissioner Wright suggested that the number and duties of positions and a list of equipment be listed. This is in section 81.1

Section 50 was again discussed. Chairman Close solicited additional language. The issue is financial assurance. The mechanisms are derived from the hazardous waste regulations. The state has 10 years experience in such matters. It was suggested that the Department of Insurance be contacted to provide some input. Mr. Emme stated the existing language could be adopted, or more general language requiring financial assurance and giving the solid waste management authority the flexibility to

implement. Chairman Close stated the regulations allow the state/authority to be flexible. Mr. Emme stated the focus was how to deal with the interest, and the bottom line concern is making sure there is adequate money available in the trust funds. Commissioner Turnipseed suggested that someone from the Dept. of Commerce come and talk to the Commission about financial assurance. Chairman Close expressed concern about what happens to the funds, and that the state needs to have some control and approval of arrangements. Mr. Emme suggested it be adopted and possibly be revisited since the provision goes into effect in April of 1994. Mr. Emme stated that it must be demonstrated to EPA that the state has adequate financial assurance provisions.

Chairman Close talked about adoption of the regulations. Commissioner Wright moved and it was seconded by Commissioner Griswold that petition 93008 be adopted as amended and provisionally adopted on May 27, 1993 and June 8, 1993, including sections 24 and 25, with the provision that staff would be able to make the necessary non-substantive technical corrections. The motion was so moved and the petition adopted as amended.

#### **Item III. A (Pending Legislation)**

Mr. Dodgion discussed a bill on environmental legislation, requiring a two year EIS review process. No fiscal note was attached. Mr. Cowperthwaite discussed the changes in the regulatory process in 233B, regarding deadlines being extended.

#### **Item III.B (Settlements and Future Hearings)**

Mr. Cowperthwaite discussed the June 4, 1993 appeal hearings and the status of the settlements.

The meeting was adjourned by Chairman Close at 3:10 p.m.

As prepared by David R. Cowperthwaite, Executive Secretary.