NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF June 20, 1995

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 conduct a hearing commencing **9:00 a.m., on Tuesday, June 20, 1995** at the Grant Sawyer State Office Building, Fourth Floor Conference Room 4412-1, 555 East Washington Ave, Las Vegas, Nevada.

This agenda has been posted at the Grant Sawyer State Office Building 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 hearing was published on May 16, May 18, May 26, May 28, June 10, June 12, 1995 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 4, 1995 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. **Petition 95011** temporarily amends the Nevada Administrative Code (NAC) 445B.875 to 445B.897 "Practice Before the Commission" to add a new provision to clarify procedures and establish the conditions for rehearing or reconsideration of Commission appeal hearings.

B. **Petition 95012** temporarily amends 445B.400 to 445B.735 to eliminate the requirements and references for the vehicle emission "enhanced inspection" program previously adopted by the Commission. The I/M program is scheduled to be implemented in the Las Vegas Valley. NAC 445B.730, 445B.732 and 445B.733 are proposed to be repealed and 445B.592 is proposed to be amended to exempt new motor vehicles from the requirements of an emissions inspection until the third registration.

C. **Petition 95013** temporarily amends Nevada Administrative Code 444.570 to 444.7499 "Disposal of Solid Waste". The proposed regulation grants a two year extension of the general effective date for new landfill standards for Class II solid waste landfills from October 9, 1995 to October 9, 1997. Amended is NAC 444.711, 444.716, 444.7045 and 444.717.

III. City of Mesquite request for an Alternative Fuels Fleet Waiver * ACTION

IV. Statement of Support for Clark County's proposed regulation on Lower Reid Vapor Pressure Program as before the State Board of Agriculture * ACTION

V. Settlement Agreements on Air Quality Violations * ACTION

A. Kennecott Rawhide Mining Co.: Notice of Alleged Violation # 1160
B. Sierra Stone Co./All-Lite Aggregate: Notice of Alleged Violation # 1156

VI. Testimony from Division of Environmental Protection regarding the status of the States air quality State Implementation Plan (SIP) amendment submittal that concerns creation of the Air Quality Compliance Advisory Panel and a report on the general status of the Small Business Assistance Program.

VII. Discussion Items

A. Diesel Emission Program Update
B. Legislative Update
C. Status of Division of Environmental Protection's Programs and Policies
D. Past and Future Meetings of the Environmental Commission
E. 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 no later than **5:00 p.m. June 15, 1995.**

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:00 a.m. on Tuesday, June 20, 1995**, at the **Grant Sawyer State Office Building, Fourth Floor Conference Room 4412-1, 555 East Washington Avenue, Las Vegas, Nevada**.

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

1. **Petition 95011** temporarily amends the Nevada Administrative Code (NAC) 445B.875 to 445B.897 "Practice Before the Commission" to add a new provision to clarify procedures and establish the conditions for rehearing or reconsideration of Commission appeal hearings.

2. **Petition 95012** temporarily amends 445B.400 to 445B.735 to eliminate the requirements and references for the vehicle emission "enhanced inspection" program previously adopted by the Commission. The I/M program is scheduled to be implemented in the Las Vegas Valley. NAC 445B.730, 445B.732 and 445B.733 are prosped to be repealed and 445B.592 is proposed to be amended to exempt new motor vehicles from the requirements of an emissions inspection until the third registration.

3. **Petition 95013** temporarily amends Nevada Administrative Code 444.570 to 444.7499 "Disposal of Solid Waste". The proposed regulation grants a two year extension of the general effective date for new landfill standards for Class II solid waste landfills from October 9, 1995 to October 9, 1997. Amended is NAC 444.711, 444.716, 444.7045 and 444.717.

4. The Environmental Commission will hear testimony from Division of Environmental Protection regarding the status of the States air quality State Implementation Plan (SIP) amendment submittal that concerns creation of the Air Quality Compliance Advisory Panel.

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, Carson City; the Division of Environmental Protection, 333 West Nye Lane - Room 128, Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in 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 June 14, 1995.

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

STATE ENVIRONMENTAL COMMISSION
Meeting of June 20, 1995
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:	**MEMBERS ABSENT:**
Melvin Close, Chairman	Fred Gifford
William Molini	
Harold Ober	
Russell Fields	
Mike Turnipseed	
Robert Jones	
Marla Griswold	
Joseph Tangredi	
Roy Trenoweth	
Jack Armstrong, Acting Member - Division of Agriculture	

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

Chairman Close convened the meeting at 9:15 a.m. in Conference Room 4412-1 located in the Grant Sawyer State Office Building, 555 East Washington, Las Vegas, Nevada.
Chairman Close read the public noticing as defined in the agenda for June 20, 1995.
Chairman Close moved to Agenda Item I: Approval of minutes from the April 4, 1995 meeting.
Commissioner Armstrong made a motion that the minutes be adopted as presented.
Commissioner Ober seconded the motion. The motion carried.
Chairman Close moved to Agenda Item: II-A. Petition 95011 temporarily amends the Nevada Administrative Code (NAC) 445B.875 to 445B.897 "Practice Before the Commission" to add a new provision to clarify procedures and establish the conditions for rehearing or reconsideration of Commission appeal hearings.
David Cowperthwaite, Executive Secretary of the Environmental Commission, explained the objective of Petition 95011 is to be able to resolve any future hearing problems in defining the regulatory basis for rehearing and the parameters for driving rehearings, problems that arose as a result of the Helms Pit hearing. Mr. Cowperthwaite reviewed the petition language.
Section 1. Chapter 445B of NAC is hereby amended by adding a new section thereto to read as follows:
Petition for Reconsideration or Rehearing.

1. A petition for reconsideration or rehearing of a Commissions appeal decision must specifically:
    a. Identify each portion of the challenged order which the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts; and

b. Cite those portions of the record, the law or the rules of the agency which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence, or
c. Allege that an order is in error because of an incomplete or inaccurate record;
d. Specifically set forth the nature and purpose of any evidence that is incomplete or inaccurate; and
e. Show that such evidence is not merely cumulative and could not have been introduced at the hearing.

2. A petition for reconsideration or rehearing of an order must be filed with the Commission and served upon all parties of record within fifteen (15) days after the effective date of the order.
3. An answer to a petition for reconsideration or rehearing may be filed with the Commission by any party of record in the proceeding within five (5) days after the filing of the petition. The answer must be confined to the issues contained in the petition. The answer must be served upon all parties of record. Proof of service must be attached to the answer.
4. The Commission will grant or deny a petition for reconsideration or rehearing by a hearing of the original panel within ten (10) days after the date of its filing. Denial may be on the record without a separate written order.
5. Unless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing does not excuse compliance with, or suspend the effectiveness of the challenged order.
6. If the Commission grants a petition for reconsideration, it will re-examine the record and the order with regard to the issues on which reconsideration was granted and issue an amended final order or reaffirm its original order within twenty (20) days of the hearing on the petition.
7. If the Commission grants a petition for rehearing, it will, within twenty (20) days of the hearing on the petition, conduct a hearing to allow the parties to present additional evidence and, after such hearing, will issue an amended final order or reaffirm its original order.
8. The granting by the Commission of a petition for rehearing or reconsideration serves to stay the appeal period until such time as an amended final order is served or the Commission affirms its original order on the record or in a separate written order.
9. An amended final order of the Commission issued upon reconsideration or rehearing will incorporate those portions of the original order which were not changed or modified by the modified final order. An amended final order is the final decision of the Commission.

Commissioner Molini noted, Section 1 - Item e, language reads "show that evidence is not merely cumulative and could not be introduced at the hearing" and asked, in the context of Section 7 where it does allow for additional evidence, what does "and could not have been introduced at the hearing" mean? Deputy Attorney General Mischel explained the wording means the evidence was not available during the course of the original hearing. It is typical, in District Court rehearing standards, to limit any new evidence to evidence that was not then available and then it is not cumulative. Commissioner Molini is that the intent throughout Petition 95011, it has to be new evidence, evidence that was not available or known at the time

of the original hearing? Ms. Mischel replied yes.
Ms. Mischel suggested re-wording Petition 95011 from "could not have been introduced at the hearing" to "was not know to the petitioner at the time" and on page 2, paragraph 7, replace the phrase "additional evidence" with the phrase "new evidence".
Chairman Close noted that Section 1, item b, reads "may not contain additional evidentiary matter" but right beneath that it talks about how the evidence is going to come in.
That language seems contradictory? Ms. Mischel explained, in the Helms Pit case a problem arose when the appellants attached an affidavit and some additional evidence that was not yet ruled on. We are talking about the petition itself, not the hearing on the petition and it became a problem because on the record on review at the District Court level that affidavit is in the record but it was never made part of the evidence. The intent of Petition 95011 is to keep that matter from being put before the Commissioner's before they decide whether or not to grant the petition for rehearing. It is always a two-step process. The first step is whether there is adequate cause to rehear it or reconsider what they have already heard. The second step is to schedule it either immediately for hearing or within 20 days and then take the evidence. There has to be a an offer of proof at some level, but we don't want the evidence attached to the petition.
Ms. Mischel expressed concern for the language on page 2, paragraph 4 and suggest changing the wording from "the original panel" to the phrase "the original panel, if available". NRS 233B does allow new Commissioners to participate in contested cases if they have reviewed the transcript but the Commission should be caught in that trap.
Chairman Close noted that number 3, "requiring an answer to a petition within 5 days" puts ourselves under a lot of pressure to perform within 5 days, is that 5 calendar days or 5 working days? Ms. Mischel explained the answer is not required, it is discretionary or optional and that is why the word "may" is used rather than "must". We are working under the framework of NRS 233B, a statute which allows 15 days to file a petition but it does not toll the 30 day statutory appeal period. We had to fit the petition, the answer, and the Boards decision within 25 days because NRS 233B requires us to make a decision on a petition, whether to grant or deny, at least 5 days before the end of the appeal period. Statutorily, we are working only with a 25 day period. Because we are working under NRS 233B, with a 30-day calendar day limit, we should specify that we are talking about calendar days. That is the main reason they say it may be filed. Our office often gets calls asking whether a response has to be filed and the answer really is "no", they can come before the Commission and respond to the petition at the time that the petition is reviewed. Commissioner Turnipseed asked who would file the answer? Ms. Mischel replied, presumably it would be the Division of Environmental Protection (DEP), unless it is DEP filing the Petition for Reconsideration. Commissioner Turnipseed asked, so DEP files the answer, then the Commission has to grant or deny the petition within 10 days after the 5 day period? Ms. Mischel replied after the date that the petition is filed, the 10 days run concurrently with the 5. They will have the answer for 5 days before they reconsider. It is a difficult time-frame that we are working with. I think the intent of the legislature, when they set both the 30 day appeal limit and the 15 day reconsideration limit, was so that you are not stringing these appeals out.
Chairman Close asked if # 4 should read "within 10 days after the filing of the petition"?
Ms. Mischel replied that could be the answer.
Commissioner Molini asked, under NRS 233B, is a public hearing required for the panel to make

a determination to grant or deny the petition? Ms. Mischel replied yes, when we originally discussed reconsideration in the regulatory framework I asked the Commission panel if they wanted to allow the chairman of that panel to make the decision either to grant or deny the petition. If the chairman granted it, the original panel could then reconvene. The panel preferred that the entire panel should review the petition which, under NRS 233B, requires a public hearing.

Chairman Close asked for additional questions from the Commission.

Chairman Close asked for public comment.

No additional questions or public comment was received.

Commissioner Griswold asked Chairman Close to review the changes.

Chairman Close reviewed the changes:

Number 4: "rehearing by a hearing of the original panel, insert "if available" within 10 days after the filing of the petition".

Number 7: The word "additional" in the second line would be stricken and the word "new" would be inserted.

Commissioner Ober noted a language change in Number 1, e.

Number 1,e: "Show that such evidence is not merely cumulative and was not available at the hearing."

Ms. Mischel noted a change in Paragraph 3:

Paragraph 3: Insert the word "calendar" between five (5) and days. And the word "calendar" should be inserted in paragraphs 2 - 3 - 4 - 6 and 7.

Ms. Mischel asked Mr. Cowperthwaite if he used calendar days or working days when calculating the 20 days hearing date on the petition. Mr. Cowperthwaite replied "calendar days". Chairman Close stated all of our procedural rules should read calendar days, to be consistent, unless that is the way it is in the NAC automatically. Ms. Mischel stated that NRS 233B defines the time period and the 30 day appeal period is calendar days. Commissioner Turnipseed recalled that about a year ago, when it was time to respond to some kind of an application, the Division of Water Resources changed it to working days. Ms. Mischel reiterated, in this case NRS 233B dictates calendar days. Chairman Close asked the department heads in the audience if their specific regulations defining calendar or working days, or did they just take a general NAC definition of days. Commissioner Turnipseed noted that language in NAC Chapter 278, pertaining to the approval of a tentative map or subdivision, talks about working days. Commissioner Molini stated the language is variable, the Division of Wildlife has adopted regulations that define working days also but if the operable statute, NAC 233B, defines it as calendar days I don't think we have leeway but to use calendar days. Commissioner Jones brought up a pertinent question regarding holding a hearing on a petition within this tight time-frame, dictated by 233B. Is there time to consider the petition for proper notice? Ms. Mischel replied yes, but barely. Once we receive the petition we will do the notice and not wait for an answer.

Chairman Close asked if there were any other changes.

Chairman Close called for additional comments from the Commission and from the public. No comments were received. Chairman Close called for a motion.

Commissioner Turnipseed made a motion that Petition 95011 be adopted as amended. Commissioner Fields seconded the motion. The motion was unanimously approved.

Cha**irman Close moved to agenda item II-B: Petition 95012**
Petition 95012 temporarily amends 445B.400 to 445B.735 to eliminate the requirements and references for the vehicle emission "enhanced inspection" program previously adopted by the Commission. The I/M program is scheduled to be implemented in the Las Vegas Valley. NAC 445B.730, 445B.732 and 445B.733 are proposed to be repealed and 445B.592 is proposed to be amended to exempt new motor vehicles from the requirements of an emissions inspection until the third registration.
Tom Porta, Division of Environmental Protection, Bureau of Air Quality, explained that a new era has been reached with vehicle inspection and maintenance programs and summarized a history of what has previously transpired:
1990:
The Clean Air Act was amended requiring high carbon monoxide areas, such as Las Vegas, to implement an enhanced vehicle inspection (I/M) program.
November, 1992:
EPA published their enhanced program regulations which determined that the enhanced vehicle emission tests would use a test called I/M 240, a test involving placing a vehicle on a dynamometer, running it through a series of simulated driving conditions and measuring the emissions. The EPA enhanced program greatly limited the options available to the states to adopt their own enhanced program and if a state failed to submit a program for vehicle inspections without I/M 240, that state faced sanctions and/or the program being run by EPA or an EPA contractor.
March, 1994:
The State Environmental Commission adopted Nevada's enhanced program which did include I/M 240 for the Las Vegas area. It was scheduled to begin September 1, 1995. Colorado, Maine and Texas opted to go with the I/M 240 program earlier, adopted regulations, and initiated their program resulting in many citizen complaints about the program, the long lines, the time it took to perform the test and the basic inconvenience. Other states began questioning the effectiveness of I/M 240 and, because of the numerous complaints received by Colorado, Maine and Texas, they began to suspend their programs despite facing the threat of possible sanctions.
Late 1994:
The Nevada Interim Finance Committee disapproved funding for the program even though regulations had been adopted by the State Environmental Commission. The biggest argument was the $450 waiver fee placed on the average citizen if his vehicle failed the test.
Because of all the controversy, EPA was forced to reconsider its position with the enhanced program and the I/M 240 test. As result, EPA published new rules which allow us more flexibility and allow us to adopt what is considered a low enhanced program that does not include the costly I/M 240 test.
Mr. Porta reviewed an overhead that showed the basic program differences.

PRESENT PROGRAM UNDER I/M 240	NEW PROPOSED PROGRAM
Applicability: All vehicles 1968 or newer must submit to a vehicle emission test with 1968 to 1985 vehicles having an annual test.	Applicability: 1968 & newer vehicles will be tested annually with a 2-speed idle test.
Test type: 1968-1985 vehicles will require the BAR 80 two speed idle test. Newer vehicles, 1986 & up, would require the I/M 240 dynamometer test.	Test type: EPA allows a two speed idle test called the Nevada 94, an upgrade of the BAR 80 machine which allows networking between machines.
Station types: Test only, decentralized.	Station types: Allow both test and repair.
Waiver fee: $450	Waiver fee: $200 (we are leaving the existing waiver on the books right now)
Mechanic certification & training: Allows for consumer protection. If you fail the test the mechanic will have to demonstrate some competency level in repairing vehicle.	Mechanic Certification & training: Allows for consumer protection. If you fail the test the mechanic will have to demonstrate some competency level in repairing vehicle.
Remote sensing: Still in developmental stage: Vehicle passes through a sensor on road. Emissions are reported. Object is to get high polluter vehicles identified & corrected.	Remote sensing: Still in developmental stage, vehicle passes through a sensor on road. Emissions are reported. Object is to get high polluter vehicles identified & corrected.

Mr. Porta reported the Division held 1 workshop in Reno and 1 workshop in Las Vegas, with very positive response to the new program. There was concern on enforcement of the program. One shop owner stated that he felt he was doing a fair job but he did not think the guy down the street was doing a fair job. We will be looking at enforcement in the future.
Mr. Porta explained the training program is being contracted through the Community College of Southern Nevada and a program to enable mechanics and testing people to acquire certification will be forthcoming.
Mr. Porta reviewed Petition 95012:
Sections to be deleted are:
NAC 445B.730: The establishment of the enhanced program in the Las Vegas area with the

I/M 240 test.

NAC 445B.732: The standards of emissions that were associated with the enhanced program.

NAC 445B.733: The waiver that was required under the enhanced program.

NAC 445B.592 Allows new vehicles not be tested until the third registration period. The first registration period is when the new vehicle is purchased; the next year is your second registration so when you go back that next year, a smog test would be required.

Chairman Close asked for questions.

Commissioner Turnipseed recalled the I/M 240 hearing in 1993 when testimony indicated most of the monitoring stations in the valley were passing CO but one station on East Charleston continuously failed. Clark County Health District planned to put up a companion monitoring station to see if that was an anomaly or a true reading. Has that area improved?

Tom Porta replied that Michael Naylor, Clark County Health District, has been discussing that issue in meetings with EPA. They are reviewing the traffic congestion problems around that area, trying to mitigate that. One of the conditions of adopting this low enhanced program is that Clark County still has to show attainment for CO.

Commissioner Molini asked if the Commission had to adopt regulations, or are they already in place, implementing some of the other facets of this lower enhanced program. Mr. Porta replied that Washoe County has this very program and the Nevada 94 machines are in place. Washoe County does not have the mechanic training and certification. By deleting these rules we essentially make the north and south requirements the same for vehicle inspection and maintenance. By deleting the enhanced portion we simply go into the already existing regulations for Northern Nevada, using Nevada 94 machines. These regulations are intermingled with Department of Motor Vehicle (DMV) regulations and DMV will be handling the equipment specifications and training aspects. The portions that we have before you today are specific to the Commission and we need to amend them so DMV can move forward with their rule-making.

Chairman Close recalled Mr. Porta mentioned a new chip that had to go into the existing testing device and asked what difference the new chip would make and the cost to modify the old machines. Mr. Porta replied, it is not a chip but software that allows the machines to do the test quicker and has networking capability allowing DMV to query all other testing analyzers in the city to see if a vehicle hasn't just gone shop-hopping, attempting to pass inspection. DMV reports the increased cost is in the neighborhood of $20,000.

Mr. Porta continued, when Washoe County switched over from the BAR 80 to Nevada 94, DMV saw about a 10% decrease in the number of stations that were doing the test because of the increased cost. After 6 or 8 months, new shops opened so the 10% that was lost was regained. We are anticipating a 6 month phase-in program, and according to DMV, we expect to see about a 10% reduction in the number of testing stations. It should be pointed out that with I/M 240, currently 350 stations are conducting the BAR 80 test. If we had gone forth with implementing I/M 240, we were looking at reducing those down to 25 stations capable of purchasing the equipment, the testing lanes and performing the test. Chairman Close recalled there was a problem because the I/M 240 equipment was not available and asked if the new software is presently available Mr. Porta replied he believed it was available and by having the 6-month phase-in period the shops should be able to easily obtain the necessary software and the new

machines required to do the job. Chairman Close asked if a certain software is required or is there more than one company that makes the software. Mr. Porta replied it is called "Nevada 94" and certain equipment specifications must be met. With the knowledge of the required specifications, various manufacturers can supply this equipment. Jim Parsons, Department of Motor Vehicles explained, currently there are two equipment manufacturers certified to sell equipment in Northern Nevada, that is Bear and Sun. To my knowledge, there are only three manufacturers in the United States and those three companies will be represented in the Las Vegas area.

Commissioner Griswold asked Tom Porta how funding for the mechanic training and certification program would be handled. Mr. Porta explained there is an I/M Committee for Vehicle Inspections funded by registration fees for smogging of vehicles. We are looking at a grant type program to test 40 mechanics, North and South, with the existing funds available. After the funds are expended, each mechanic will probably have to pay for the course but we are looking at mechanisms to subsidize the training with scholarships so it won't put a burden on the average mechanic to pay for these courses.

Commissioner Tangredi asked if there is a program in Nevada where a citizen can call to report a vehicle that is polluting? Jim Parsons explained the Highway Patrol has two Air Quality Officers patrolling the Las Vegas area to issue citations for smoking vehicles. A hot-line is operational in the Las Vegas area also. A caller gets a voice mail that gives them instructions on what information is needed. When information comes into our office, we obtain an address and we send out a letter asking the polluter to bring the vehicle to us to make sure it is not polluting. Commissioner Tangredi requested the telephone number. Jim Parsons supplied the number, 642-SMOG, and if the call is being made from a cellular phone SMOG * (star).

Chairman Close called on Bill Taraschi, ARCO'S Director of State & Local Government Relations in Los Angeles. Chairman Close asked that Mr. Taraschi's letter dated June 16, 1995, faxed to members of the Commission on that date, be made a part of the record.

The letter reads:

Dear Mr. Close:

ARCO Products Company, a division of Atlantic Richfield Corporation, supports all efforts by the state of Nevada to submit a State Implementation Plan (SIP) demonstrating attainment of the federal ambient air standard for carbon monoxide (CO). We recommend all measures use the best available science and be cost-effective.

An important component of the CO SIP is the vehicle inspection and maintenance (I/M) program. ARCO consistently advocates enhanced I/M to be one of the most cost-effective control measures available to reduce vehicular CO emissions. We operate over 100 Smog Pros I/M facilities in California and remain closely involved in the ongoing negotiations between the state of California and the federal Environmental Protection Agency (EPA) to agree to an enhanced vehicle I/M program for California. We are concerned that the Nevada State Environmental Commission is considering the proposed temporary regulation (Petition 95012) to delete the requirements for an enhanced I/M program in Nevada.

Regardless of whether an enhanced I/M program is test-only (EPA I/M 240 version), test-and-repair or a hybrid such as California's program, enhanced I/M is widely acknowledged by state, federal and industry representatives as achieving significantly greater emission reductions than a basic I/M program. California's recent hybrid demonstration project has shown that alternate

testing equipment such as ASM and RG 240 are as cost-effective as EPA's I/M 240 program, but an order of magnitude less expensive than I/M 240. Enhanced I/M programs are capable of near doubling the CO emissions eliminated versus basic I/M programs. In Nevada, the Clark County Health District and the Department of Comprehensive Planning have calculated a cost-effectiveness difference of only $10/ton more utilizing an enhanced versus a basic I/M program. No other control measure contemplated by Nevada, when coupled with the cost of the basic I/M program, can rival either the cost-effectiveness or the magnitude of CO emission reductions that could be achieved by an enhanced vehicle I/M program.

We believe adopting Petition 95012 will result in one of two negative outcomes:

- Nevada will adopt less cost-effective control measures resulting in higher compliance costs for its residents
- Clark County will be reclassified by EPA from moderate to serious CO nonattainment status which carries the threat of federal sanctions and the ultimate requirement for an enhanced I/M program anyway

Since neither of these outcomes are advisable, ARCO recommends the Nevada State Environmental Commission reconsider the benefits of an enhanced I/M program. We are more than pleased to further discuss this issue with you.

Should you have any questions, please feel free to call me at (213) 486-0998. Thank you for the opportunity to provide comments and I plan to speak at the Commission public hearing on Tuesday, June 20 in Las Vegas.

Sincerely,

William A. Taraschi

cc: T.A. Markin - PAC 1281
G.A Ross - AP 4095
S.R. Stark - PAC 1206
Members of the Nevada Petroleum Resources Group

Mr. Taraschi thanked the Commission for the opportunity to address them on Petition 95012 and reiterated that ARCO recommends that the Commission seriously reconsider the benefits of the enhanced vehicle inspection and maintenance program for Clark County because the carbon monoxide reduction benefits of an enhanced vehicle inspection and maintenance program far exceed the emission reduction benefits obtained with a basic program only. We believe that enhanced inspection and maintenance results in nearly double the emission reductions achieved by basic inspection and maintenance, or I/M. Clark County is currently finalizing the revised carbon monoxide state implementation plan for review and approval by EPA and we believe that a key component missing from this program is an enhanced vehicle I/M program. ARCO supports using the best available science and criteria of cost effectiveness to identify control measures to help demonstrate attainment of Federal Ambient Air Standards defined in the Clean Air Act. An enhanced inspection and maintenance program meets both of these criteria. ARCO is viewed as an inspection and maintenance expert in California and have been closely involved in the negotiations between California and EPA concerning an agreed-to enhanced vehicle maintenance program. A consensus agreement between California and EPA is expected before the end of 1995.

Mr. Taraschi continued, the California negotiations are important for Nevada and other states.

Since Congress passed the Clean Air Act of 1990 EPA has previously staunchly defended their I/M 240 centralized inspection/test only program. EPA argues test data with I/M 240 doubles the vehicle emission reductions by basic inspection and maintenance programs. California, on the other hand, has fiercely argued their hybrid enhanced inspection and maintenance program known as the Accelerated Simulation Mode or ASM achieves emission reductions nearly identical to EPA's I/M 240 centralized only test only program. California estimates the cost per inspection bay for enhanced ASM, which also includes BAR 90 equipment, is between $40 and $45 thousand dollars above and beyond basic inspection and maintenance. EPA's I/M 240 centralized test only equipment costs somewhere between $120 and $160 thousand dollars above and beyond basic inspection and maintenance equipment. California and ARCO support EPA approving California's proposed ASM enhanced program. Should California prevail, and we think we have a good chance, Nevada and other states can implement and inspect an enhanced inspection and maintenance program similar to California's lower-cost alternative and help achieve attainment of the Federal Ambient Air Standard for carbon monoxide. The Clark County Health District recently estimated the cost effectiveness of basic inspection and maintenance at $900 per ton of carbon monoxide emissions eliminated and an enhanced inspection and maintenance at $910 per ton of carbon monoxide emissions eliminated. ARCO concludes the $10 difference per ton of emissions eliminated makes it incumbent to consider the enhanced program. No other control measures, when coupled with the basic inspection and maintenance program, can rival either the cost effectiveness or the magnitude of the carbon monoxide emissions reductions achieved by the enhanced inspection and maintenance program. Mr. Taraschi concluded, we recommend the Commission reconsider and support a program that is above and beyond what the gentleman from the Division of Environmental Protection recommended but not at the cost units of I/M 240.

Chairman Close asked for questions from the Commission.

Commissioner Turnipseed asked Mr. Taraschi if ARCO presently operates any smog testing facilities in Nevada. Mr. Taraschi replied, currently we do not.

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

Chairman Close asked Tom Porta if the Division had considered the ASM Program that was mentioned by Mr. Taraschi? Tom Porta replied that the Division had looked at the ASM Program but the rules which have been provided by EPA simply allowed us to do this program which is approximately $25,000 cheaper than the ASM Program, and we are able to meet the CO attainment. If we did change our program we would encounter problems getting it to EPA in a State Implementation Plan in time not to face sanctions. Clearly, the program that we have put forward meets the requirements of EPA, and Clark County will be demonstrating they can meet the CO attainment.

Commissioner Ober asked, considering the growth trend, how long will Clark County be able to meet the CO attainment? Mr. Porta replied he had viewed impressive graphs from the office of Michael Naylor, Clark County District Health, that show that even with the growth experienced in the last few years, the CO numbers are continually going downward in Clark County. Mr. Naylor credits that to newer vehicles and the newer fuels which the Commission will discuss later today.

Commissioner Tangredi stated there is the same amount of CO but it is redistributed and the air is not getting any healthier in Clark County, things are getting worse, atmospherically disabled.

A marvelous job was done in redistributing the traffic pockets in CO so it has gone further out into the valley. As population increases, the CO is not where those pockets once were, it is now way out in the new cities like Summerlin and with the new freeways and beltways they have basically eliminated it. There is still CO, more CO in this valley, but it is spread out to a point where the levels are discreetly acceptable.
Mr. Porta agreed and stated, as newer and newer vehicles come out you will have more cars but they will be producing less and less CO. Also, Clark County has a traffic signaling program that is supposed to be operable within the next couple of years to better improve flow at intersections. All these improvements are a plus. Our goal is to distribute CO so it does not reach unhealthful levels. Commissioner Tangredi stated, but as more cars come into the Valley things are going to get worse. Tom Porta replied, potentially. Commissioner Tangredi asked, if you have 100,000 cars now and in a decade you have 1,000,000 cars, how you can you just say "potentially"? It will get worse, no matter what the standards. Tom Porta replied we are also looking at new technology. Honda is producing a new engine and with formulated gasoline that vehicle qualifies for an ultra-low emission vehicle for CO emissions. I do not have the actual statistics on what the older cars produce in CO versus the newer cars but it is pretty dramatic. Commissioner Tangredi interjected, even if you have new cars, it will someday arrive at a point where no matter what the emission, the numbers of cars will then supersede the best saving CO on that car. It will arrive at a point where the curve will turn around and the sheer numbers will increase unless we have an alternative fuel program. Tom Porta replied that there certainly are other ways to approach the CO problem but for right now, the vehicle inspection program is the one way that we are looking at. If the CO does contend to be a problem in the future, we will have to conceive a new course of action.
Commissioner Jones stated he felt the Division is on the right track and suggested the Division continue to monitor the suggestion that ARCO is making. If it becomes a cost-effective way to reduce CO, then we should re-examine it at the time that occurs. Tom Porta agreed and noted that was one of the problems the Division faced with I/M 240. There are real questions regarding are we really getting the reduction in CO for the cost. I think that is why so many other states put their programs on hold. This allows us a more cautious approach and eventually, if we further test I/M 240 and it shows definite benefits, we could possibly be back before the Commission. For right now, we feel this is the best program possible and it is cost-effective.
Chairman Close asked for additional questions from the Commissioners.
Chairman Close called for comments from the public.
Bill Taraschi, ARCO, stated if you were going to use ASM versus what the Division is recommending, there are a series of other control measures that are included with the inspection and maintenance program that EPA has agreed to in order to turn in a plan that demonstrates attainment. There has been testing going on and California has been supplying that data to EPA to show that ASM does, in fact, get nearly double the emissions reductions of a basic I/M program. There are other components and measures which we believe are costlier for the State of Nevada and the consumers than if you went ahead and put in an ASM program. Chairman Close asked if the ASM program is conducted with different type of equipment than what we are suggesting to be used in the Nevada 94? Bill Taraschi replied that there is additional equipment. ASM would cost over basic, about $40 to $45 thousand dollars per bay. There are computer upgrades that are being made in the program that has been recommended in Petition

95012 but I am not sure if that is equivalent to the California BAR 90 upgrades that would be needed. It costs about $15 thousand dollars for California BAR 90 upgrades and another $25 thousand or so for the ASM equipment in order to have that vehicle inspection and maintenance.
Chairman Close asked for additional questions or comments from the public. There were no questions or comments.
Chairman Close called for a motion.
Commissioner Molini made a motion to adopt Petition 95012. Commissioner Griswold seconded the motion. The motion unanimously carried.
Chairman Close moved to agenda item II-C:
Petition 95013 temporarily amends Nevada Administrative Code 444.570 to 444.7499 "Disposal of Solid Waste". The proposed regulation grants a two year extension of the general effective date for new landfill standards for Class II solid waste landfills from October 9, 1995 to October 9, 1997. Amended is NAC 444.711, 444.716, 444.7045 and 444.717.
David Emme, Bureau Chief, Bureau of Waste Management, explained this proposal delays the effective date for new landfill regulations at Class II municipal landfills from October 9, 1995 until October 9, 1997. Mr. Emme noted the date extension relates to requirements for ground water monitoring at these small landfills. In October of 1991, when the federal landfill standards were first promulgated, Class II landfills were exempt from the requirement to monitor ground water. EPA was subsequently sued over this exemption and in May of 1993 the court ruled that the exemption was not consistent with the federal statute. Monitoring was then required at all landfills. Since small communities were now faced with the un-anticipated burden of monitoring ground water at their landfills, EPA then responded by delaying the effective date for small, arid landfills from the effective date of 1993, which was in place then, to October of 1995. The Southwestern states urged EPA to also amend the regulations to allow alternatives to ground water monitoring at these small landfills because requiring monitoring wells in arid areas where the water table is deep just does not make sense and there are viable alternatives to that. EPA has indicated that they will propose an amendment to allow alternatives to ground water monitoring at small arid landfills. Since we are bumping up against the October, 1995 deadline they will also further extend the effective date for small arid landfills to come into compliance. This would allow these small regulated communities to consider using the alternatives that EPA intends to propose and to adjust their plans accordingly.
Mr. Emme explained that Petition 95013 anticipates a corresponding federal delay in the landfill regulations at Class II landfills.
Chairman Close asked Mr. Emme to list the Class II landfills in Nevada.
Mr. Emme replied that a Class II site is defined as a site that accepts less than 20 tons of municipal waste a day, a size that corresponds to the landfill at the City of Ely. Class II sites are the size of Ely's landfill and smaller and comprise only 6% of the state's waste-stream. 94% of the state's waste-stream is being disposed of in the larger landfills which are already in compliance with the new standards.
Commissioner Griswold asked what criteria is used to determine an arid site. Mr. Emme replied, according to the federal regulations an arid site is a site located in an area that receives less than 25 inches of precipitation annually. Commissioner Griswold asked if this definition includes the depth of the water table. Mr. Emme replied that it does not account for the depth of the water table, it is only based on annual precipitation, so it includes all of Nevada without question.

Commissioner Jones noted, the proposal before us are dependent on the federal regulation waiver. If the waiver does not occur at the federal level will we be out of compliance? Mr. Emme explained, what is being proposed today would be adopted as a temporary regulation and we will be back before the Commission to adopt it as a permanent regulation. If there were some change in the proposal during that time, we could make an adjustment.
Commissioner Turnipseed asked Mr. Emme what the alternatives to ground water monitoring were. Mr. Emme replied, monitoring the unsaturated zone, instead of monitoring water at or below the water table by pumping samples from wells. We are looking for moisture that might be seeping down directly beneath, or adjacent, to the landfill. We are looking for infiltration of moisture directly below the landfill rather than monitoring, for instance, Tonopah at 800 feet down below the landfill.
Chairman Close asked for additional questions from the Commissioners. There were no additional questions. Chairman Close asked for public comment.
Clayton Barrow, United States Department of Energy, stated their prime contractor at the Nevada Test Site, Reynolds Electrical and Engineering Company, has reviewed the proposed petition. We find no fault with the petition itself but we think there may be one oversight. That oversight concerns NAC 444.6405 which is the permit to operate disposal sites requirements, exemptions and applications. We feel this needs to be extended also because it is requiring that the permits for the Class II landfills be submitted by October 9, 1996. That permit application will require the detailing of how ground water monitoring will be accomplished, etc. We ask that the petition be modified to include 444.6405 to also extend the date for the permit application.
David Emme noted Section 444.6405 reads that DEP is supposed to issue permits for all of the disposal sites by October 9, 1996 and agreed that date should be changed. Mr. Emme explained that date was included in the regulations in order to get our program approved by EPA. We were supposed to commit to permitting all of our landfills within 3 years of the regulations taking effect and at that time the effective date was 1993, so consequently the 1996 deadline. Mr. Emme cautioned, if we change that it should distinguish between the various classes of landfills.
Chairman Close asked Mr. Emme if he had proposed language ready. Mr. Emme asked for time to work out some language.
Mr. Emme noted that another section needed to be amended and distributed copies of Exhibit 1, an amendment to 444.728. Chairman Close explained to Mr. Emme that the Commission would take the proposed amendment to 444.728 at the time we talk about the other proposed language change.
Chairman Close asked for public comment or questions. No comments or questions were forthcoming. Mr. Close tabled Petition 95013 until the time the other amendments are drafted by Mr. Emme.

Chairman Close moved to agenda item III:
City of Mesquite request for an Alternative Fuels Fleet Waiver.

Chairman Close called upon a representative from the City of Mesquite. No one came forth.
David Cowperthwaite distributed Nevada Revised Statutes (NRS) Chapter 486A and identified the Commission's authority, Item 486A.140, sub-item 3. This section talks about the issue of applicability and the prerogative of the Commission to be able to define any person to be exempted by the Commission. This is also carried on to 486A.150, item 5 which establishes the procedure of approving exemptions to the requirement of this Chapter and gives the Commission

authority to deal with this matter of business.
Jolaine Johnson, Chief, Bureau of Air Quality, Division of Environmental Protection stated the Division supports the request for exemption. Ms. Johnson explained the City of Mesquite had approached the Division of Environmental Protection for an exemption from this program based on their rural location. Because they are located and operate in a county whose population is greater than 100,000, by statute and regulation as currently written, they are subject to the provisions of this program. Based upon their location, 80 - 90 miles outside the Las Vegas area, we would support the exemption of their city vehicles from the requirements of alternative fuels and we would support that on the basis that it is really not cost effective for them to convert their vehicles to alternative fuels in terms of the reduction in pollution in Las Vegas. Mesquite is not going to impact that. Ms. Johnson explained, the Commission has established a procedure for persons to come to the Division to receive an exemption. In order for them to receive an exemption we would have to make a finding that the vehicles, nor the fuel is not available in Mesquite, which we could not do. So, we support the City of Mesquite in requesting a specific exemption from the alternative fuel requirements on your action.
Chairman Close asked for questions.
Commissioner Jones asked Ms. Johnson if this same issue could surface in the future? Are there counties in Northern Nevada that could have a small entity? Ms. Johnson explained, the Division has addressed that. At one point we considered the option of going forth with an exemption for rural areas located within the large counties. In meetings with the various entities we found that Clark County did not have a concern for Mesquite but Washoe County did have concern for some of the outside areas in Washoe County. We could not get a consensus so that we could come to you for an exemption for outside areas. They wanted to consider exemptions on a case-by-case basis.
Commissioner Ober noted that Ms. Johnson said it was not cost effective and agreed with her but where Mesquite has a total of 44 vehicles, how do you make a decision as to when it become cost effective? Ms. Johnson replied that she did not have a vehicle number answer. The Division's reasoning was based on Mesquite being 80 miles from the area where there are air quality concerns.
Commissioner Molini stated that he understood the statute was only applicable to Washoe and Clark Counties with a population base of 100,000 or more. The remainder of the rural counties in Nevada won't need to come for exemptions because they are not covered by the statute.
Ms. Johnson agreed. The only others that would have to come for an exemption would be smaller communities located some distance outside of Reno or Las Vegas.
Ms. Johnson added that the statute defines an alternative fuel to include low-sulphur diesel fuel which, at this point, is widely available in the state and most all diesel vehicles that operate in the State of Nevada are running on alternative fuel today. Also, reformulated gasoline has been adopted by the State of California for marketing, beginning in July of 1996. When that fuel becomes more widely used, all gasoline powered vehicles will also be running on alternative fuels, in accordance with the current statute.
Deputy Attorney General Mischel asked Ms. Johnson to restate the regulations pursuant to NRS 4866.150. You stated that you could not find that the vehicles and fuels were not available but the Division would like to support the petition anyway? I am wondering if there is a catch-all there. The other issue is the definition of the exemption, the applicability language. Ms. Johnson

noted that the statute requires this Commission to establish provisions for exemption. That has been done and is codified as NAC 486A.200. The Commission has established the provision that any person can come to the Division with a request for exemption from the provision, but in order to do that the Division has to make a determination that the vehicles are not available or the fuel is not available, and we could not do that in the case of Mesquite.
Ms. Mischel recalled that several months ago she received a call from someone at the Division about this and I agreed that the Commission had the authority to grant this exemption but I didn't recall the statement that you had made that was in the regulations. The procedures in NAC 486A.200 are for the Director and not for this Commission specifically. The issue that I looked at, when I was first asked about this question from a legal standpoint, was 486A.140 subsection 2 which states that governmental agencies essentially must be exempted by federal statute or regulation and in paragraph 3, allows the Commission to exempt any person. Person in a legal sense is a very broad term. Although 486A does not have a definition of person we have definitions of person throughout Nevada State Statutes. One I found particularly helpful, given the unusual circumstances here that Mesquite really is in a rural community, but in the Clark County population base. 233B.037 states "person includes any political subdivision or public or private organization of any character, other than an agency". In this case it is helpful because it does distinguish between agency and a political subdivision and that is my primary concern, how broad was person if the federal rules were applicable to agencies? In my opinion, "person" is so broad that it gives the Commission the authority to grant this exemption. Ms. Mischel suggested that the exemption be limited in time or based upon some change or some kind of phase that would bring this back to the Commission in the event that the circumstances in Mesquite change. The Commission could direct the Division to have it reviewed in a certain number of years, given that nature of change that is occurring in Mesquite. In my opinion, the Commission has the authority to grant an exemption to the City of Mesquite.
Chairman Close asked Ms. Johnson if she felt a limitation should be placed on the exemption. Ms. Johnson replied that the current definition of alternative fuels is changing so this will not be an issue for any of these entities in the future but she would not have a problem going with a three-year exemption, reviewing it at the end of three years.
Commissioner Molini asked if low-sulphur diesel fuels are available in the state now and will California be requiring alternative fuels beginning in 1996? Ms. Johnson replied yes to both questions and noted that California will require alternative fuels July 1, 1996. Commissioner Molini asked, assuming that most of the gasoline that is delivered to Nevada comes from California refineries will it be alternative fuel that will meet the definition? Ms. Johnson replied, that takes a bit of a leap. I am aware of the statute that requires the Board of Agriculture to review changes in California standards for fuel and to adopt standards in the State of Nevada that are substantially similar to those of the State of California but I can't presume to answer as to how the Board is going to evaluate this change in standards of fuel to reformulated gasoline in California. Ms. Johnson continued, a question that comes up is, if the State of Nevada does not adopt the reformulated gasoline standard, does Nevada provide enough of a market for those California refineries to continue to produce standard fuel for the Nevada market versus just producing reformulated gasoline and sending us what they are refining? I don't have the market answers. A substantial portion of the fleets in Nevada, the buses and the truck fleets, are already running on alternative fuel.

Chairman Close asked Ms. Johnson if she could describe how the alternative fuel that is going to be manufactured in California differs from the present fuels. Ms. Johnson replied the alternative fuel will be more highly refined and will have carbon monoxide emissions 21% lower than standard gasoline, a substantial decrease in carbon monoxide emissions for any metropolitan area where motor vehicles are the primary emitter of carbon monoxide pollutant.
Commissioner Turnipseed noted that it is unknown if the majority of the gasoline sold in Nevada comes out of California refineries. The Elko area is in the Salt Lake City marketing and refining district but where does the Mesquite gasoline comes from? Ms. Johnson replied that she did not know but guessed that they have Utah fuel in Mesquite, to my knowledge, the low-sulphur diesel fuel is available in Mesquite.
Commissioner Tangredi noted Ms. Johnson statement, that she expects a 21% decrease in Nevada with alternative fuels - Ms. Johnson interjected, if I may clarify, the 21% is EPA's estimate. The federal EPA has established standards for this reformulated gasoline. Their estimates indicate a 21% reduction in carbon emissions when reformulated gasoline is used versus standard gasoline. Commissioner Tangredi asked, therefore you feel that 21% reduction is an improvement? Ms. Johnson replied that she thought a 21% reduction in carbon monoxide emissions from motor vehicles is substantial. Commissioner Tangredi asked, if there is an increase in the number of vehicles, in the millions, won't that 21% be eaten up in an instant? Ms. Johnson replied, of course there is a counter-balance to an increase in the number of vehicles, eventually you get back to a level of carbon monoxide emissions if the number of vehicles increase. Commissioner Tangredi asked, and don't you expect the growth of Clark County to increase? It is not a static population, is it? Ms. Johnson replied, not in my experience, no.
Commissioner Tangredi noted that this entire notion of looking forward to this paradise when there is going to be a 21% decrease in emissions will be eaten up by the sheer population growth and numbers of cars in the Las Vegas Valley and we are eventually going to be back to step one. We are using alternative fuels but we are all wearing gas masks. Am I correct? Ms. Johnson replied, I don't predict gas masks but certainly, you are correct. As the population increases the number of cars increase and despite the advantages that we gain through technological development and re-refining fuels there is a breakpoint where you are going to have more carbon monoxide. At that point, other control measures will be required to protect the public health from those concentrations. Commissioner Tangredi stated, that is using gasoline, but if we went to alternative fuels which are non-emission products such as electricity or propane we wouldn't have any problems. Deputy Attorney Jean Mischel interjected that the alternative fuels program, at this point, only applies to political entities, not to the general population base. It is essentially still in a pilot program phase. At this point we are only discussing the exemption that Mesquite has applied for in the current statutory language, not discussing whether or not to broaden the alternative fuels program. I think there is room for discussion on that but that is not what is before the Commission. Commissioner Tangredi replied that he had no problem with accepting the Mesquite situation but you can't help but wander off into the broad area when something like a 21% decrease is brought up.
Commissioner Armstrong asked what number comprises a fleet. Jolaine Johnson replied that a fleet is 10 vehicles or more operated by a state or local government agency.
Chairman Close asked for additional questions from the Commission.
Chairman Close asked for public comment.

No additional questions or public comment were received.
Chairman Close asked what specifically needed to be done to grant the exemption. Deputy Attorney General Mischel replied that the Commission needed to make a motion to either grant or deny the exemption and that would become part of the record as an order of the Commission.
Chairman Close requested a motion.
Commissioner Ober made a motion that the Commission approve the request for the City of Mesquite to obtain a waiver on the alternative fuel fleet and to have this waiver good for a 3 year period. Commissioner Turnipseed suggested the waiver be good for a 5 year period. Commissioner Ober accepted the amendment to his motion.
Commissioner Armstrong seconded the motion.
The motion, with a 5 year sunset provision, was unanimously approved.
Chairman Close called David Emme before the Commission regarding the language in Petition 95013.
David Emme stated that the last sentence in subsection 4 of NAC 444.6405 reads "all disposal sites which are to continue operations after November 8, 1993 must have a permit issued by the solid waste management authority by October 9, 1996." Mr. Emme asked to amend that sentence to read "Class I sites which are to continue operations after November 8, 1993 must have a permit issued by the solid waste management authority by October 9, 1996 and Class II sites must have a permit issued by October 9, 1999."
Chairman Close called for questions from the Commission.
Chairman Close asked for public comment on the proposed amendment of Petition 95013.
No questions or comments were received.
Chairman Close requested a motion.
Commissioner Fields moved for adoption of Petition 95013 with the amendments just read by Mr. Emme as well as the amendments in the May 25, 1995 memorandum we have before us.
Commissioner Molini seconded the motion. The motion unanimously carried.
Chairman Close called for a 10 minute recess at 11:00 a.m..

Chairman Close reconvened the meeting at 11:10 a.m..
Chairman Close moved to agenda item IV:
Statement of Support for Clark County's proposed regulation on Lower Reid Vapor Pressure Program as before the State Board of Agriculture.
Lew Dodgion, Administrator of the Division of Environmental Protection explained that he wanted to attend a State Board of Agriculture workshop on June 29, and a public hearing in August, regarding the Clark County proposed regulation on Lower Reid Vapor Pressure Program to support it for the Division and on behalf of the Environmental Commission.
Mr. Dodgion noted in Tom Porta's testimony for the low enhanced I/M Program that Clark County has to demonstrate through a computer modeling exercise that by establishing certain programs they can demonstrate bringing the Las Vegas Valley into attainment for carbon monoxide. One of the programs that Clark County is proposing, and is using to make that demonstration, is to lower the Reid Vapor Pressure requirement for gasoline to be sold in the Clark County/Las Vegas Valley area from the period of November 16 through January 25. The EPA data and computer modeling shows that there is a benefit, a reduction in the carbon

monoxide production, if you lower the Reid Vapor Pressure from 13 units down to 9 units. That petition will be in front of the Board of Agriculture on June 29. Without that component, they may have to do other things such as coming back to the Commission and adopting a more stringent I/M Program. This might give you a clue to what the gentleman from ARCO was talking about when he was urging you to go with a ASM Program or some more complex I/M Program because they are apparently opposed to the Reid Vapor Pressure reduction.
Commissioner Molini asked Mr. Dodgion if Reid Vapor Pressure has to do with the pump and the filling. Mr. Dodgion replied that it has to do with the volatility of the fuel. Commissioner Molini asked, they are talking of lowering this pressure, how does that relate to reformulated gasoline. Is it actually something to do with the formula in the gasoline?
Mr. Dodgion replied he did not know, technically, how lowering of the vapor pressure of the fuel itself is accomplished. It is technically feasible to do it. There is a program requiring that in the Phoenix area and Clark County has elected to use that as control technology in the Las Vegas Valley. When you can control the fuel, and we have talked about alternative fuels today, and everybody has to burn the fuel. Everyone goes to the pump, fills his vehicle with the improved fuel and the vehicle emits less pollutants. I intend to go before the Board of Agriculture in their work group on June 29 to support the proposed regulation and I ask for your permission to also represent that the Commission supports the petition.
Chairman Close asked for an explanation of what Reid Vapor Pressure is, how it works and what effect that lowering it is going to have. Tom Porta explained the reformulated gasoline will have a 2% oxygenate, i.e., your methanol/ethanol blend. With the 2% oxygenate under reformulated gas you have better combustion, more complete combustion, i.e., your CO reduction. Under the Reid Vapor Pressure lowering, I understand there is a canister in the system, in the car itself, that is attached to the gas tank and the fuel lines that takes out hyrdocarbons which are the result of high Reid Vapor Pressure. When the vehicle is running, that canister is purged into the carburation system, i.e., creating a fuel-rich situation producing more CO. By lowering the Reid Vapor Pressure you don't have as much hydrocarbons off-gassing from the gasoline tank, i.e., you don't have as much hydrocarbons in the canister to purge into the carburetor when the automobile is running. Commissioner Jones asked how it effects the automobile? Tom Porta replied, the pressure comes from the gasoline itself and this canister takes up those hydrocarbons as they are coming off of the gasoline. Instead of expelling them out into the air it recirculates them back into the carburation system.
Commissioner Griswold asked what the anticipated effect would be on the price of gasoline. Mr. Dodgion interjected that he did not know of any price effect. Clete Kus, Clark County Comprehensive Planning, stated research with Clark County Comprehensive Planning and the Clark County Health District has indicated that a price increase in the vicinity of approximately 2¢ per gallon could result as a result in the change in the Reid Vapor Pressure. Mr. Kus continued, for a number of years Clark County has also had a winter-time oxygenated fuel program and during the process of the Health District amending their regulations to reflect that information, there was also concern of a cost increase. However, as a result of that program being in effect for a number of years, and monitoring the prices of gasoline during the winter season, essentially when this Reid Vapor Pressure regulation would be in effect, we do not anticipate a price increase being passed on to the consumer and that is attributed to two facts:
1. The Las Vegas area is very competitive in terms of retail gasoline sales.

2. The demand for gasoline here is at its lowest.

In response to that, the oil companies are trying to make their profits based on volume and reducing the price will result in increased volume of sales. For those two reasons, we have not seen an increase in the price of fuel in Clark County over the past three winters seasons. Using that rationale, we don't anticipate seeing this increased cost being passed on to the consumer.

Chairman Close asked in this process, is this something that is added into the automobile itself, or is it something that is added to the gasoline? Mr. Kus replied, The Reid Vapor Pressure is changed during the refining process and what we are trying to do is really mimic what the Phoenix and Maricopa County area has done. The infrastructure from the West Coast that supplies the fuel to the Phoenix area also provides us with fuel. We don't consider it improbable for additional fuel with a similar specification to be delivered to the Las Vegas area.

Commissioner Turnipseed stated that kerosene, by its nature, has lower vapor pressure than gasoline, likewise lacquer thinner has a higher vapor pressure than gasoline. So, I assume as it comes out of the refinery it is going to be more toward the kerosene side than it is today. Is that right? Tom Porta replied yes, the higher the Reid Vapor Pressure the more off-gassing you have. The lower the Reid Vapor Pressure the lower off-gassing you have of hydrocarbons.

Commissioner Jones asked Mr. Kus, you are depending upon competition to keep the price down so the consumer does not receive an increase. However, in essence, until production of that fuel goes up there really is an increase in the cost of the fuel but economic factors and competition are keeping the cost down? Mr. Kus replied, that is correct. Commissioner Jones continued, this goes back to the question that was asked of the gentleman from ARCO. This is one more added element for you to meet the requirement in Clark County. How many elements are there and what is the cost of all those elements combined versus the ASM program? There is a cost analysis going on here and I am not clear on it, potentially 2¢ per gallon, economic factors aside, and that is a pretty big increase. It gets more complex as you consider all the aspects of it.

Lew Dodgion stated, as I indicated, on the effective side of it, if you can get the improvement into the fuel that goes into every vehicle then you have an improvement across the board. Improvement in carbon monoxide emissions came about when both Washoe and Clark counties adopted their Oxygenated Fuels Programs and I believe that has been much more effective than the I/M Program. I believe controlling the fuels through alternative fuels is going to continue to be far more effective than an I/M Program.

Chairman Close asked what involvement the State Board of Agriculture has in this whole situation. Mr. Dodgion explained that the State Board of Agriculture is vested with the authority to adopt standards for fuels for motor vehicles. Chairman Close asked how that happened? What is the rationale for the State Board of Agriculture having responsibility for that rather than this Commission, for example? Mr. Dodgion explained that the Bureau of Weights and Measures and the control and dispensing of gasoline products has been with the formerly "Department" of Agriculture as long as I can remember. There was discussion under reorganization in the 1993 legislative session about moving some of those functions and their laboratories into the "Department" of Environmental Protection but the legislature decided not to do that. At this point it is still with the Division of Agriculture and the Board of Agriculture has that authority and jurisdiction.

Chairman Close asked for additional questions from the Commission.

Chairman Close asked for public comment or questions on this issue.

There were no additional questions or comments.
Chairman Close asked the Commission to determine if they wanted to support Mr. Dodgion's presentation before the State Board of Agriculture.
Commissioner Armstrong made a motion that the Commission support Mr. Dodgion's presentation before the State Board of Agriculture. Commissioner Griswold seconded the motion. The motion unanimously approved.
Chairman Close moved to agenda item V:
Settlement Agreements on Air Quality Violations
A. Kennecott Rawhide Mining Co.: Notice of Alleged Violation # 1160
Don Del Porto, Supervisor of Compliance Enforcement Branch for the Bureau of Air Quality explained that Kennecott Rawhide Mining Company operates a gold mine located in Mineral County. An out-of-service of a crusher baghouse was reported as an incident on January 16, 1995. The crusher was operated for 5 hours and 17 minutes without the required pollution controls. Notice of Alleged Violation # 1160 was issued on February 17, 1995. An enforcement conference was held on March 9, 1995. Kennecott has agreed to the enforcement action and implemented written procedures outlining the actions to be taken, given the malfunction of a piece of pollution control equipment. The Division agreed that these actions were sufficient to bring the source back into compliance with the regulations and an administrative fine of $900 was agreed upon.
Chairman Close asked for questions from the Commission.
There were no questions.
Chairman Close asked for public comments.
There were no comments.
Commissioner Molini made a motion to support the settlement agreement with Kennecott Rawhide Mining Company as outlined by Don Del Porto.
Commissioner Turnipseed seconded the motion.
The motion unanimously carried.
B. Sierra Stone Co./All-Lite Aggregate: Notice of Alleged Violation # 1156
Don Del Porta explained that All-Lite Aggregate operates an aggregate screen crushing near Lockwood, Truckee River Canyon, in Storey County. An inspection of the aggregate crushing and screening plant documented the operation of a crushing screen system without the required fogging water sprays. The water source had been shut off and had been in disrepair. Notice of Alleged Violation # 1156 was issued for failure to install and operate the fogging water sprays. During an enforcement conference, All-Lite Aggregate stated that the company was dedicated to compliance and was issuing a written policy statement for all company employees which stated "pollution controls would be operated at all times the equipment was processing material and that if the pollution controls malfunctioned, the process would be shut down and the controls fixed immediately". The Division agreed that these actions were sufficient to bring the source back into compliance with the regulations and agreed upon an administrative fine of $4,180.
Chairman Close asked for questions.
Commissioner Griswold noted that this was the 6th violation for this company.
Chairman Close asked if anyone in the audience wished to testify in this matter.
No testimony was forthcoming.
Deputy Attorney General Mischel asked Mr. Del Porto, in terms of consistency, to explain what

the distinction is between this violation and the one in May, 1993. Commissioner Molini noted that it appeared, from the support material in the packet, to be the same violation, operation without fogging water sprays and failure to conduct a moisture analysis. That was in May, 1993. The settlement was $12,500. Don Del Porto recalled that they had two violations during that inspection. They also failed to conduct an ore moisture analysis that is required.
Chairman Close asked for comments or questions.
Commissioner Tangredi asked, this is their 6th violation is there any repeat offender mechanism that alerts us in something like this or do we just let it go? Chairman Close replied that he thought the Commission could decline to accept the recommendation, that is our prerogative. I would presume that the Bureau had considered the prior violations and the seriousness of this violation in arriving at your administrative fines. Chairman Close asked Mr. Del Porto to give some insight as to your thought process in arriving at the $4,180 fine. Don Del Porto explained that there are 5 factors taken into account when looking on a violation:

1. Potential for harm;
2. Volume of release (in this violation the volume was a relatively low amount);
3. Toxicity of the release (this was also very low);
4. History of non-compliance;
5. Environmental and public health risk that facility would pose; and

we also look at the extent of deviation to which they varied from the regulations.
We work up a matrix which gives us a starting base to calculate the penalty.
Commissioner Jones asked, with the virtually identical fine in 1993, does this prompt you to go check them more frequently? Do you automatically watch them more closely? Don Del Porto replied yes.
Chairman Close called for additional questions.
Chairman Close called for public comment.
There were no additional questions or comments.
Chairman Close called for a motion.
Commissioner Molini moved for acceptance of the settlement agreement with All-Lite Aggregate.
Commissioner Griswold seconded the motion.
The motion unanimously carried.
Chairman Close moved to agenda item VI:
Testimony from Division of Environmental Protection regarding the status of the States air quality State Implementation Plan (SIP) amendment submittal that concerns creation of the Air Quality Compliance Advisory Panel and a report on the general status of the Small Business Assistance Program.
David Cowperthwaite, Executive Secretary for the State Environmental Commission, explained that one of his duties, in terms of the Division, is to act as the Small Business Program Manager and handle the program development issues related to it. The Division has submitted to the U.S. EPA a State Implementation Plan submittal item that related to the Small Business Program. EPA approved 90% of it but we have some concerns that there be a public hearing and that there a certain adjustment to the State Implementation Plan documents submitted to EPA. Ralph Capurro is going to review the status of the Compliance Advisory Panel, the issue at hand and where we are at with that. We are asking that the Commission please allow public testimony

regarding this. That would complete our obligations with EPA and we could submit the completed SIP documents which would result in approval of our Small Business Program. The purpose of this hearing is for us to be able to not only inform you about the status of the Small Business Program but also to allow for general public input into the process in terms of the development of the Compliance Advisory Panel. Mr. Cowperthwaite called upon Ralph Capurro.

Ralph Capurro, employee at the Division of Environmental Protection, Office of the Administrator, reminded the Commission that he was introduced at the April 4, 1995 meeting as the new Ombudsman for Small Business. Mr. Capurro distributed to the general public and to Commission members two separate attachments for review, a stapled document included attachments 1, 2 and 3 and the State Implementation Plan, noted in the bottom right-hand corner as Exhibit 2.

Mr. Capurro explained the first part of his presentation will be a summarization of what the Small Business Stationary Source Technical and Environmental Compliance Assistance Program is and how the Program is implemented at the Division of Environmental Protection. The second part of my presentation will be a request for a public hearing on the amendment that was required by the Federal EPA to the State Implementation Plan (SIP) revision of June, 1994 regarding this specific program. Also, I will talk very briefly about the history of the act, amendments, the Section 507 provisions, the SIP revision requirements, the May 3, 1995 Federal Register and the SIP revision amendment.

Mr. Capurro continued, the Clean Air Act Amendments of 1990 were a major modification to an already complex federal legislation. There were changes made that certainly will have an effect on all business, but especially those considered to be small businesses who may be subject to regulations under the Clean Air Act Amendments for the first time. With this in mind, Congress adopted Section 507 of the Clean Air Act Amendments which ensure that small businesses would have access to technical and compliance assistance. Very briefly, Section 507 established a Small Business Stationary Source, Technical and Environmental Compliance Assistance Program. Again, abbreviated, Program, which passed substantial responsibilities for providing services for small businesses directly to the states. There are three major components to this program:

1. The Ombudsman. The dictionary defines an ombudsman as a representative and the primary function of this office is to represent small businesses to the appropriate governmental organizations. The office may be charged with the various duties and we are in the process now of defining those duties specifically for my position and are participating in a number of those duties, including promoting small business stationary sources in the regulatory development and implementation phase and to disseminate appropriate information to small business stationary sources.
2. A Small Business Assistance Program. This is primarily technical assistance in which that office provides sufficient written and oral communication to small businesses on such issues as permit issuance and applicability; the various rights that are part of the Clean Air Act that go to the small businesses; compliance methods and acceptable control technologies; pollution prevention; accidental release prevention and detection; and finally, giving advice on audit programs both giving them the small businesses information on how they may do self-audits as well as, for those who wish not to do that,

to provide lists of qualified auditors.

3. The Compliance Advisory Panel. This panel is made up of 7 individuals appointed by both the legislature and the governor to essentially provide advisory opinions to the Ombudsman and to the Small Business Assistance Program on the following issues:
   a. To help with the initial development of the programs;
   b. To look at the effectiveness of the programs;
   c. To look at the difficulties encountered;
   d. To look at the adequacy of the funding for those programs;
   e. To look at severity of enforcement by the various local and state air quality programs;
   f. To prepare reports on 3 separate federal legislation including the Paperwork Reduction Act;
   g. To review outputs to determine whether they are understandable to the lay business owner or operator;

   I would like to highlight item g because, as I will describe later, that is one of the items that EPA determined was missing in our initial SIP submittal.
   h. Review NRS/NAC and policies and proposed changes which, when they affect small businesses;
   i. Recommend development of further financial and technical programs that assist small businesses; and
   j. Encourage small businesses to pro-actively develop and modify state statutes and state regulations.

Mr. Capurro continued, the role of the program fell almost solely to the individuals states who are mandated to, after reasonable notice and public hearing, to adopt and to submit to the appropriate EPA regions a revision to the State Implementation Plan (SIP). This SIP is a working document which spells out how and when an agency, such as the Division of Environmental Protection, will in fact comply with the various mandates spelled out in the legislation. This specific SIP revision that was completed in June of 1994 and submitted to Region IX EPA, was solely for this Small Business Program, Section 507. The specific role of this SIP revision was to address these following items:

1. The establishment of the Ombudsman Program;
2. The establishment of the Small Business Assistance Program; and
3. The Establishment of the Compliance Advisory Panel.

Mr. Capurro addressed Attachment 2, a portion of the Federal Register published Wednesday, May 3, 1995, EPA's finding of Review on this Division of Environmental Protection State Implementation Plan revisions submittal of June 1994. This document is called "A Notice of Proposed Rulemaking". In this notice they proposed a partial approval and a partial disapproval on the SIP revision. Those items approved are:

The State Ombudsman Program;

The Small Business Assistance Program which included provisions to:

Develop and collect information on compliance methods;

Assisting small businesses on pollution prevention and accidental release detection prevention;

Assist small sources on permit applicability;

Assist small businesses in knowing their rights;
Inform sources of their obligations; and
To provide for request of modifications to work practices.

The partial approval of this section was specifically on the establishment of the Compliance Advisory Panel. EPA had no problem with the way that we were planning to create the panel, EPA had no problem on, once the Compliance Advisory Panel was formed, how that panel was going to render opinions on the effectiveness of the programs; the difficulties encountered; the adequacy of the funding; and the severity of the enforcement.

Part B, the report to EPA on the Small Business Assistance Program deterrence to those three federal legislation was approved.

Part D, developing and disseminating opinions made through the Small Business Program was approved.

Two parts were given a partial disapproval:

The implementation schedule of milestones when members will be appointed and when the program will be operational.

Unfortunately, at that time we had no program so we were not able to put a determination of time in there so that was why that was left out.

Part D. We are talking about the review and assurance that information for small business stationary sources was easily understandable.

Somehow that portion was inadvertently left out of the SIP submittal.

Both of these disapproval items have been addressed in a draft amendment to the SIP revision of June, 1994 that is labeled as Attachment 3 or Exhibit 2. This draft amendment is really the focus of the second part of my presentation which will ultimately lead to the hearing from the public.

Commissioner Turnipseed asked if the Compliance Advisory Panel had been appointed?

Mr. Capurro replied, we are in that process right now.

Mr. Capurro asked the State Environmental Commission to act as a forum for the public hearing on the draft amendment which is Attachment 3 or Exhibit 2.

Mr. Capurro continued, after the publication of the May 3, 1995 Federal Register Notice of Proposed Rulemaking, Attachment 2, my office contacted EPA Region IX to determine two things:

1. If the entire plan could be approved if certain amendments were prepared and submitted; and
2. Were there any other actions that were necessary in order to achieve compliance.

The contact at EPA indicated that the plan could be final approved if the amendment was prepared and submitted prior to the publication of their final rulemaking which is scheduled for sometime in late June or early July of this year. However, he informed us that in order to do this, the Division would not only have to answer those deficiencies in written format, which is spelled out in that Attachment 3, but we would also have to demonstrate that we had given adequate public notice and had held a public hearing on this amendment. We had the choice of holding the public hearing ourselves or to allow the State Environmental Commission to act as that forum for the hearing. After discussions with Mr. Cowperthwaite, Mr. Dodgion and Chairman Close, it was decided perhaps the most opportune way to public notice the greatest number of interested parties was to hold the public hearing before the State Environmental Commission.

At this time, I would like to indicate that Attachment 3 (Exhibit 2) is self-explanatory. Unless the

Chairman would rather I read the entire attachment, I would respectfully ask that it be incorporated into the record.
Chairman Close stated, if there is no objection, we will include Attachment 3 in the record.

ATTACHMENT 3 (Exhibit 2)
NEVADA STATE IMPLEMENTATION PLAN
SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM
Amendment to the June 1994, SIP Revision
June, 1995

This document will act as an amendment to the original June 1994 State Implementation Plan (SIP) Revision regarding the "Small Business Stationary Source Technical and Environmental Compliance Assistance Program" (PROGRAM) as mandated by Section 507 of the Clean Air Act Amendments of 1990 (CAAA). The original SIP Revision of June 1994 presented those tasks and milestones by which the Nevada Division of Environmental Protection (NDEP) would come into compliance with Section 507 of the CAAA, especially as it related to the PROGRAM.

In the May 3, 1995 Federal Register (Vol. 60, No. 85, pages 21781-21783), the Federal Environmental Protection Agency (EPA) proposed to "partially approve and partially disapprove" the SIP revision of June 1994. There were two major reasons why the EPA decided to give the "partial disapproval".

First, the SIP revision of June 1994 did not show that the "...Compliance Advisory Panel (CAP) had been given the authority to review the various documents prepared for small business stationary sources specifically for content and ease of reading...". In reviewing Section 8 of the SIP revision of June 1994, it appears that the NDEP failed to adequately address this portion of the CAAA, Section 507, requirements. Therefore the NDEP wishes to amend Section 8 by inserting an amendment on page 5 of the SIP revision to read as follows:

The Panel is authorized to carry-out the following functions:

A) Evaluate the effectiveness of the Small Business Assistance Program and the Small Business Ombudsman, and issue advisory opinions to the Governor, Department of Conservation and Natural Resources and the U.S. Environmental Protection Agency; **[and]**

B) Prepare periodic reports to the Governor, Department of Conservation and Natural Resources and the U.S. Environmental Protection Agency regarding the program's compliance with the Paperwork Reduction Act, the Regulatory Flexibility Act and the Equal Access to Justice Act; ***and***

C) Review information for small business stationary sources to assure such information is understandable by the layperson.

The second reason for "partial disapproval" was that NDEP had not started the process of forming the CAP at the time of the SIP revision submittal, and therefore did not have an "active" CAP. Because the state PROGRAM had not been established with a person occupying the Ombudsman position until March 15, 1995, the formation of the CAP was not accomplished. However, since the appointment of a State Ombudsman, this individual has diligently proceeded

in the establishment and charter of the CAP.

As defined in Section 507 of the CAAA, the CAP must be made up of at least seven (7) individuals, four (4) of which are to be appointed by the Legislative Branch of the State who represent small business interests; two (2) members appointed by the Governor who represent the general public; and one (1) member appointed by the State official responsible for the Air Pollution Permit Program. The NDEP has made contact with various trade associations, public interest groups and individuals in their quest to find individuals willing to serve as either the Governor or Legislative appointment to the CAP. Letters dated June 13, 1995, along with names of potential participants, were submitted to the State Legislature. The Governor appointees will made by July 10, 1995. The single appointment by the State official, will also be made by July 10, 1995.

After appointments are made and verified by the respective bodies, an initial planning meeting will be held to discuss such issues as: chairmanships, sub-committees, agenda items, meeting places and times, training of panel members, and other items appropriate for such a panel. It is envisioned that the CAP will meet at least quarterly. This first meeting shall be held by August 30, 1995 and will comply with all requirements of the "Nevada Open Meeting Law".

The balance of the SIP revision of June 1994 will remain intact and without further modification.

End of Attachment 3 (Exhibit 2)

Mr. Capurro answered Mr. Turnipseed's question regarding where we are with the Compliance Advisory Panel. I indicated that the Compliance Advisory Panel has to be made up of at least 7 members; 4 members have to be appointed by the Legislative Branch of the State and these individuals have to represent small business interest; 2 members are appointed by the Governor who represents the general public; and 1 member is appointed by the state official responsible for the Air Pollution Permit Program. We have collected names from various trade associations, public interest groups and individuals who have expressed interest in serving. We have submitted several names to the Legislative Branch for their approval and we plan to have the Governor's appointees by July 10 as well as the appointment by the state official. So we are in that process.

Chairman Close asked for additional questions.

Jean Mischel, Deputy Attorney General stated, as I read the EPA publication, I thought they want listed in your SIP the milestones for the appointments and how long a term is. Why isn't that stated? I see that in Attachment 3 you explain what is going on but don't they want specific current and future milestones in your SIP, just in terms of CAP? David Cowperthwaite explained the EPA officer did not make those requirements, in our discussions with him. The documents you see before you are just what they want.

Mr. Cowperthwaite explained, in adjunction to the issue of any public testimony that comes forward, all that they were looking for was to complete and close up this issue. We expect the terms to last for a period of 2 years because that is what the legislative cycle is and that the request that we have made of the legislators to make those appointments for a period of 2 years.

Chairman Close asked for additional questions.

Chairman Close asked for public comment.

No questions or comments were received.

Chairman Close asked for a motion. Commissioner Molini asked if a motion was needed.
Jean Mischel, Deputy Attorney General replied that this was not an action item.
Chairman Close asked, is this not supposed to be a public hearing? Don't we have to approve this? Jean Mischel, Deputy Attorney General stated the all DEP needs to go forward with this is any comment from the Commission and your body serves to take public comment.
Chairman Close asked for any comments on any of the issues that he has brought up or the matters that have been discussed? No comments were received.

Chairman Close moved to agenda item VII: Discussion Items

A. Diesel Emission Program Update

Tom Porta, Bureau of Air Quality, Division of Environmental Protection distributed copies of a report required of the Bureau under NAC 445B.775. NAC 445B.775 required the Division to look at Federal Test Procedure (FTP), conduct a field test for heavy duty vehicles, and make a comparison with the Federal Test Procedure and Opacity Certification Levels with levels we measured for opacity in the field. The report required us to see if there is a correlation between the field test data and the federal test procedure.

Mr. Porta continued, the Federal Test Procedure for Heavy Duty Engines involves basically putting the engine in a laboratory situation, running it through a test period and measuring the opacity. This is done on new engines and then that engine family is given an opacity level. Our field test procedures involved pulling over trucks at random and conducting what is called a snap/idle test for the measurement of opacity. We then compare these snap/idle tests in the field to this federal test procedure. Mr. Porta reviewed the data obtained from these tests.

We conducted over 1600 tests but only 535 of them were able to be compared to the federal test procedures. One reason for this was because FTP certification levels were not established until 1982 so any vehicle older than that did not have an FTP certification level. The second reason was that the engine number that has to be read off the vehicle was very difficult to do in the field, vehicle number translation errors were made by the staff or the engine number simply could not be found or read properly so we were unable to make the comparison to the federal test procedures. We were able to compare 535 vehicles, remember that these are what they call engine families - this is not necessarily a truck type - it is an engine family grouping.

Of the 535 the 1986 engine family # 6, was the best correlation that we found. The FTP for these 3 tests was fairly close, within 1% to 3 % opacity of what the FTP number was.

Engine family # 9 from 1990 also showed some correlation. This showed that the numbers that we received in the field test were consistently lower than the FTP test procedures, or the certification that the FTP gave this engine family. We had 12 vehicles in this test which gave us a better way to compare these Federal Test Procedures.

In contrast, engine family # 11, 1992, showed good correlation but field tests consistently higher than the Federal Test Procedure. In this category we tested 7 vehicles.

The last correlation I have was more typical of the over-all trucks tested and the engine families tested. Basically, we could not find a correlation . ½ the engines in this engine family tested in the field fell below the FTP certification level and ½ tested above the FTP certification level.

Mr. Porta stated my point is, that when we reviewed the 535 tests that data from those test indicate that there is no way we can use the FTP certification level to establish our field heavy-duty vehicle opacity standard. 45% of the vehicles tested fell over their FTP certification. In other words, 45 % of the numbers, lets say their opacity was 10%, tested above that FTP level.

55% showed lower than the FTP level, but at random numbers. Some were close to the FTP standard and some were well below that. It didn't make any difference on which engine. A newer family group, 1993, was tested. 36 of the 80 in that group tested in the 45% range and If we look at 1986, 17 of the 30 tested were above that FTP certification level.
When we put these 535 tests together we found some engine families correlated very well but other engine families did not. With the data that we do have it is our recommendation that we not use the Federal Test Procedures to establish an opacity diesel opacity standard for our field. We feel, using the 1,635 tests that we did conduct in the field, that we have enough information from that data to establish a cut-point. From the 1,635 tests that we conducted we have opacity cut points of 40% opacity on up to 90%. The 1991 and newer vehicles have a much higher passing percentage than do the older trucks, and that would be expected. We feel that the establishment of one cut-point for heavy duty diesel, heavy duty engine opacity standard would be appropriate, and somewhere in the neighborhood of 60% and 70% opacity for establishing that.
Mr. Porta continued, we intend to conduct 2 more public workshops and come back to the Commission within 60 days with a recommendation that:

1. We discontinue the field testing for the FTP and the Field Testing Certification.
2. That we adopt one level of opacity.

One of the issues that came up as a result of a prior workshop was that the test method that we had been using, the J-12-43, be upgraded to the new J-16-67, a more accurate method.
Mr. Porta explained, by adopting a cut-point upwards of 60% - 70%, we alleviate many of the questions and controversies that this program has come under. By adopting such a high cut-point we feel we can get those trucks that are really causing the smoke problems off the road without penalizing the marginal ones, which may be marginal as a result of the test procedure, which may be marginal because of altitude. California has faced some legal challenges on their program. Our Statute says "under this program we have to be substantially similar to California". California has adopted 2 cut-points. One cut-point is for 90 and older vehicles, an opacity limit of 55% and one cut-point for 91 and newer vehicles, the opacity limit is 40%. We feel with the altitude situation here in Nevada this would not be appropriate and the testing seemed to indicate that. Again, California is undergoing some legal challenges with that and we will have to wait to see how these turn out.
Mr. Porta continued, another good reason for adopting one cut-point, we simply eliminate confusion with regulations. In other words, the inspector happened to look up the engine type, the year, and he only has one number to deal with. Adopting one cut-point would help that situation out as well and make the regulation easier to understand for everybody.
Again, we would like to come back to the Commission in 2 - 3 months, after the workshops have been conducted, and present regulations to adopt these opacity cut-points.
Commissioner Jones stated, if you adopt 1 cut-point, unlike California that has the 2 cut-points based on the age, you will have a lot of older vehicles out of compliance. Isn't that going to be a big point of debate for you? Tom Porta replied that the big point of debate will be where we put that cut-point number and the report recommends somewhere between 60 and 70. Commissioner Jones noted that by not putting the 2 cut-points for the different ages you create a battle line. Tom Porta replied, we could. However, because of our altitude situation, and because of the issues that have been brought up with the test method itself every test method has some margin

of error, 5 - 10 - 15%. We feel by adopting a high enough cut-point we can take those issues out of concern. And that is a reason for going back in the next 60 days, talking to the California Trucking Association, giving them our idea of what we think so hopefully we can eliminate these issues. I think by doing that we take care of these trucks that are the real smokers versus the ones that may not pass because of test error or altitude considerations.
Commissioner Griswold asked, given this proposal right here, what percentage of pass/fail is there? Tom Porta replied, this shows it quite clearly. Let's say we adopted a 70% cut-point. We see that at 70% of 1990 or older vehicles would have a fail rate of about 15%. The 1991 or newer vehicles are up to 97% passing, 3% failure.
Commissioner Griswold asked Mr. Porta to explain what altitude has to do with this issue. Tom Porta explained that concern was brought by the California Trucking Association that the test procedure that we use, the JA-12-43, is biased with altitude, that it shows opacity at altitude because of the less dense air and that the meter will show higher opacity readings than it would at sea level. If you tested the same truck at sea level, that truck would pass a 40% Standard. If you brought that truck to Nevada where our valleys are typically 4,000 feet, that same truck would fail although nothing has been done to the truck. That is the argument, altitude does effect the way opacity is measured. Commissioner Griswold asked, doesn't altitude also affect the way that truck engine is operating? Tom Porta explained that is why we probably see a higher fail rate in the older trucks. The newer trucks have altitude compensating equipment on the engine to allow for fuel adjustment, air mixture, etc. The specific issue lies with this test method, taking one of these newer trucks that has all the altitude compensation, that same truck would fail at altitude, the California Trucking Association argues, versus passing at sea level.
Commissioner Jones agreed that was a legitimate concern and it places an unfair burden on the vehicles. Tom Porta replied, and that is why we think, by adopting a higher cut-point we can eliminate this and still address those trucks which we feel are the real problems with this smoking diesel issue.
Commissioner Turnipseed asked, in the testing procedures, did you do all kinds of trucks - long hauls, around town. Mr. Porta explained it was a random check with check points set up at weigh stations operated by the highway patrol. The truckers were asked to voluntarily submit to the test. We averaged testing about 10 engine families per year so we obtained a fairly good cross section. We did not look at the data unless we had 3 or more trucks in an engine family. A problem with pulling trucks over randomly is we can't select engine families that way and it is to difficult to single out a certain engine family that we may need to test. Commissioner Turnipseed asked if these tests were at the weigh stations and not the delivery truck around town or the dump truck - Tom Porta replied that only a few tests were done on trucks in town, most testing was done along the interstates.
Chairman Close asked for additional questions from the Commissioners.
Chairman Close asked for public comment.
No additional questions or comments were received.
Chairman Close moved to the next agenda item.

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

Lew Dodgion, Administrator, Division of Environmental Protection stated he had nothing to report and asked the Commission if they had any questions regarding the activities of the Division.

Commissioner Molini asked Mr. Dodgion if he was going to highlight the legislation.
Chairman Close acknowledged that he had missed that agenda item and would call on David Cowperthwaite to do that.
Mr. Dodgion asked to comment on one piece of legislation and explained there are two bills in the legislature, one on each side, called an Environmental Audit Privilege Bill. This Bill basically allows a company to do an environmental audit and for all the information collected during this audit and for all the people who are involved in the audit, it is privileged. In other words, it can't be discovered and can't be pierced except through a court process and if they choose to disclose it, then they are granted immunity from any penalties irrespective of flat cause to violations. There is an opportunity for the regulatory agency or the Division to pierce that privilege and to show that it was gained for some purpose other than what the act afforded it. The Division has taken a strong position and opposition to that type of legislation, particularly to the privilege to where the audits can be made secret and to where the employees of the organization can be compromised and not able to blow the whistle on their employer for violations of environmental law. Both bills provide for criminal prosecution of anyone who might disclose any portion of the audit. One bill made disclosure a gross demeanor and the second bill made it just a demeanor. We have taken a strong position in opposition to that kind of legislation. We have supported the concept that if someone wants to voluntarily come in and say we want to do an audit and grant them some amnesty or some immunity from civil penalty for that provided it is done all in the light of day and all done up front.
Chairman Close inquired into the status of the bills. Lew Dodgion replied that there had been no action on the Senate side, Assembly Bill 591 has 2 amendments floating around and neither of them has been acted on at this time. I prepared one of the amendments, in response to the chairman saying "alright, how would you write the bill". The amendment that I wrote contained just what I said, everything is done in the light of day, everything is done up front and everything is done according to an enforceable agreement and in exchange for that the person gets rebuttable presumption and immunity from penalty. Commissioner Turnipseed asked. under EPA mandates, if you find an environmental problem you seek out a principal responsible party. Presumably, if they have done the audit they are exempt from any penalty under state law but the state cannot legislate that they are exempt from any penalty under federal law.
Lew Dodgion replied that there is a real problem in the delegation process and EPA has stated that they will increase their oversight of any state that has this environmental privilege legislation. The chances of EPA increasing the number of over-filings and enforcement actions in those states is greatly enhanced as well. Our state legislature can grant them immunity from the state regulatory agencies but they do not and cannot grant them immunity from enforcement action, or give them privilege, from the federal government.

Chairman Close moved to the next agenda item.

B. Legislative Update

David Cowperthwaite distributed a listing of the legislative bills that affect the administrative process and noted bills that affect, very directly, the authority of the Commission as it relates to its regulatory authority. Mr. Cowperthwaite stated because the legislature is now in the process of closing down, a report by media (air quality, water quality, hazardous waste) and all the areas that impact the Division will be forwarded to the Commission in mid July.
Chairman Close called for questions.

No questions were received.

Chairman Close moved to the next agenda item.

D. Past and Future Meetings of the Environmental Commission

David Cowperthwaite explained we are now going into the permanent regulatory cycle. The petitions adopted today are the last temporary regulations to be placed into the docket with the Legislative Counsel Bureau (LCB). The temporary regulations expire on November 1, 1995. The next Commission meeting will be in September.

Chairman Close moved to the next item on the agenda.

E. General Commission or Public Comment

No comments were received from the Commission or the public.

Chairman Close made the following presentation to Commissioner Hal Ober.

> Hal Ober has been a member of the Commission for 9 years. He has done a very superior job, outstanding. His questions have always been good and if you ever served with him on a panel you know that he is an excellent panel member to have with you and he has done a very fine job for the Environmental Commission. He has elected not to serve again, and stated "if selected to serve he would not attend our meetings". We are going to miss him. This is his last meeting and we would like to give him this letter, signed by the Commission members, thanking him for his service and a note of our appreciation.

Hal Ober thanked Chairman Close and stated that he wished to personally tell the Commission that the last 9 years have been a real joy. I looked forward to these meetings but after 9 years it is time for someone else to enjoy your company. Mr. Ober thanked Mr. Dodgion, Mr. Cowperthwaite, Jean Mischel and all the staff for their wonderful courtesies and for selecting me for many nice appeal hearings of "short" duration. Mr. Ober continued, it has really been quite an experience, I am very grateful for it, I have learned from it, and I have enjoyed the companionship and the association with so many good people. Thank you.

Chairman Close declared the meeting adjourned at 12:20 p.m.

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Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: JUNE 20, 1995

Location: GRANT SAWYER BUILDING - LAS VEGAS, NEVADA

REGULATORY EXHIBIT LOG

#	Item	Item Description	Accepted Yes/No
1	Memorandum from Les Gould, Bureau of Waste Management	Request amendment of subsection 5(a) of NAC 444.728 by changing the compliance date of October 9, 1993 to October 7, 1997.	YES
2	Nevada State Implementation Plan Draft Document	Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Amendment to June, 1994 SIP Revision. June, 1995	YES
3	Letter	Letter from William Taraschi, ARCO faxed to SEC Members recommending reconsidering the benefits of an enhanced I/M program.	YES