NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF August 11, 1994

HELD AT: Carson City, Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

A G E N D A

NEVADA STATE ENVIRONMENTAL COMMISSION
PUBLIC HEARING

The Nevada State Environmental Commission will conduct an appeal hearing commencing **9:30 a.m., on Thursday, August 11, 1994** at the Nevada State Library, Conference Room A, located at 100 North Stewart Street, Carson City, Nevada.

This agenda has been posted at the Division of Environmental Protection Office in Las Vegas, Nevada, the Washoe County Library in Reno, Nevada; the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this hearing was published on July 12, July 20 and July 28, 1994 in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

I. Approval of minutes from the May 26, 1994 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. **Petition 94013** is a proposed permanent amendment to the Nevada Administrative Code 445.1341 through 445.13421, for revisions to the water quality standards on the Carson River from Stateline to Weeks. The petition proposes to revise the water quality standards for pH, total nitrogen, turbidity, total dissolved solids, chlorides and fecal coliform.

B. **Petition 94014** proposes to permanently amend the Nevada Administrative Code 445.6615, by the repeal of an adopted reference to "Threshold Limit Values and Biological Exposure Indices for 19887-1988". The reference has been superseded by other changes to the State's air quality operating permit.

C. **Petition 94015** proposes to permanently amend Nevada Administrative Code 445.240 by updating the reference to the phone number of the Division of Environmental Protection concerning unscheduled releases to the environment involving hazardous waste, pollutants, contaminants or petroleum products.

D. **Petition 94016** proposed to permanently amend Nevada Administrative Code 444.8632 by adopting 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270, inclusive and Part 279 as those sections existed on July 1, 1994. The proposed amendments updates the state's authority to receive authorization from the U.S. EPA regarding new provisions of the resource Conservation & Recovery Act (RCRA) adopted since July 1, 1994.

E. **Petition 94017** proposes to permanently amend Nevada Administrative Code 444.8458 by expanding the conditions under which a person who proposes to construct or operate a new or expanding facility for the management of hazardous waste must seek a certificate of designation from the administrator of the Division of Environmental Protection.

F. **Petition 94020** proposes to permanently amend Nevada Administrative Code 459.9542 to increase the annual fees for the regulation of facilities using highly hazardous chemicals. The proposed amendments increase the base fee from $3,100 to $6,820 and increase the graduated facility fee from $10.50 to $23.10 for "highly hazardous units". A cop of $30,000 is proposed to be placed on the total fees annually required by any regulated facility.

III. Settlement Agreements on Air Quality Violations * ACTION

A. The Moltan Company: Notice of Alleged Violation # 1078
B. U.S. Gypsum Company: Notice of Alleged Violation # 1080
C. Smitten Oil and Tire Co.: Notice of Alleged Violation # 1077

IV. Discussion Items

A. Senate Bill 127 - Strategy Update
B. Best Management Practices Manual Briefing
C. Air Quality Small Business Program Update
D. Status of Division of Environmental Protection's Programs and Policies
E. Future Meetings of the Environmental Commission
F. 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. August 5, 1994.**

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:30 a.m. on August 11, 1994**, at the Nevada State Library, Conference Room A, 100 North Stewart Street, **Carson City**, 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 94013** is a proposed permanent amendment to the Nevada Administrative Code 445.1341 through 445.13421, for revisions to the water quality standards on the Carson River from Stateline to Weeks. The petition proposes to revise the water quality standards for pH, total nitrogen, turbidity, total dissolved solids, chlorides and fecal coliform.

2. **Petition 94014** proposes to permanently amend the Nevada Administrative Code 445.6615, by the repeal of an adopted reference to "Threshold Limit Values and Biological Exposure Indices for 1987-1988". The reference has been superseded by other changes to the State's air quality operating permit program

3. **Petition 94015** proposes to permanently amend Nevada Administrative Code 445.240 by updating the reference to the phone number of the Division of Environmental Protection concerning unscheduled releases to the environment involving hazardous waste, pollutants, contaminants or petroleum products.

4. **Petition 94016** proposes to permanently amend Nevada Administrative Code 444.8632 by adopting 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270, inclusive and Part 279 as those sections existed on July 1, 1994. The proposed amendments updates the state's authority to receive authorization from the U.S. EPA regarding new provisions of the Resource Conservation & Recovery Act (RCRA) adopted since July 1, 1993.

5. **Petition 94017** proposes to permanently amend Nevada Administrative Code 444.8458 by expanding the conditions under which a person who proposes to construct or operate a new or expanding facility for the management of hazardous waste must seek a certificate of designation from the administrator of the Division of Environmental Protection.

6. **Petition 94020** proposes to permanently amend Nevada Administrative Code 459.9542 to increase the annual fees for the regulation of facilities using highly hazardous chemicals. The proposed amendments increase the base fee from $3,100 to $6,820 and increase the graduated facility fee from $10.50 to $23.10 for "highly hazardous units". A cap of $30,000 is proposed to be placed on the total fees annually required by any regulated facility.

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

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

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

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

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

STATE ENVIRONMENTAL COMMISSION
Meeting of August 11, 1994
Carson City, Nevada
Adopted Minutes

MEMBERS PRESENT:
William Molini, Vice chairman
Russell Fields
Mike Turnipseed
William Bentley
Marla Griswold
Fred Gifford
Joseph Tangredi
Roy Trenoweth

MEMBERS ABSENT:
Melvin Close, Chairman
Harold Ober
Tom Ballow

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

The meeting convened at 9:40 a.m. in Conference Room A at the Nevada State Library, 100 South Stewart Street, Carson City, Nevada.
Vice chairman William Molini read the public noticing as defined in the agenda for August 11, 1994.

Item I. Approval of Minutes
Vice chairman Molini opened the meeting with a request for a motion to approve the minutes of the May 26, 1994 hearing as presented by staff. Commissioner Turnipseed made a motion to strike all of Jim Van Dells' testimony from the minutes as being irrelevant as it did not add materially to the hearing nor to the decision by the Commission. Counsel Jean Mischel advised that the minutes should be accepted as written with Commissioner Turnipseed comments written into the minutes of this hearing. Commissioner Turnipseed withdrew his motion.

Commissioner Fields made a motion that the minutes be adopted with Commissioner Turnipseed's concern being recognized in the minutes of the August 11, 1994 meeting. The motion was seconded by Marla Griswold. The motion was approved.

Item II: Regulatory Petitions
Vice chairman Molini reviewed agenda item II-A: Petition 94013

Petition 94013 is a proposed amendment to the Nevada Administrative Code 445.1341 through 445.13421 for revisions to the water quality standards on the Carson River from Stateline to Weeks. The petition proposes to revise the water quality standards for pH, total nitrogen, turbidity, total dissolved solids, chlorides and fecal coliform.

Adele Basham, Supervisor for the Water Quality Standards Branch in the Bureau of Water

Quality Planning, Nevada Division of Environmental Protection, explained that Section 303 of the federal Clean Water Act requires that states periodically review water quality standards. The Carson River standards were last reviewed in 1984 and were reviewed in detail prior to requesting this petition. Three public workshops were held in June to present the findings and provide the opportunity for public input. Ms. Basham continued, this proposal is to revise the existing pH standard of 7.0 - 8.3 to 6.5 - 9.0 for all eleven control points. This change is necessary to be consistent with EPA's most recent national criteria and it is also consistent with the recent changes to the Truckee River standards adopted by the Commission in 1993. Ms. Basham explained that NRS 445.253 requires that any surface waters of the state whose quality is higher than the applicable beneficial use standards, must be maintained in their higher quality. This is accomplished through the establishment of requirements to maintain existing higher quality or RMHQs. We analyzed data from the last sixteen years and percent exceedances of the existing RMHQs were calculated. If the percent exceedance of an existing RMHQ was less than 5%, indicating an improvement in water quality, all available data for the period of record were analyzed and 95th percentiles calculated.

Ms. Basham explained the proposed changes to RMHQs for pH, total nitrogen. total dissolved solids, chlorides and fecal coliform. Because we are proposing to relax the beneficial use standard, in order to comply with antidegradation requirements, we are also proposing a RMHQ for pH based on the 5th percentile for the lower limit and the 95th percentile for the upper limit. Ms. Basham noted an error on pages 10, 12, 17 and 21 in the rationale contained in the packets sent to the Commissioners. East Fork at Stateline should read West Fork at stateline. Ms. Basham noted that the data analysis tables in Appendix B and the proposed changes submitted to LCB are correct.

Commissioner Fields asked Ms. Basham if changing the range to the new range of 6.5 - 9.0 is relaxing the standards. Adele Basham replied that in terms of beneficial use, yes. Lew Dodgion, Administrator for the Division of Environmental Protection, explained that the RHMQ number can be varied as there are processes within the Clean Water Act that allows you to change that number for over-riding social and economic reasons but you cannot vary for beneficial use. Vice chairman Molini asked if the standard for higher quality is the applicable standard. Lew Dodgion replied yes.

Vice chairman Molini called for questions from the Commission or public. No questions were forthcoming. Commissioner Turnipseed made a motion that the Water Quality Standards for the Carson River outlined in Petition 94013 be adopted. Commissioner Fields seconded the motion. The motion carried.

Vice chairman Molini moved to agenda item II - B: Petition 94014
Petition 94014 proposes to permanently amend the Nevada Administrative Code 445.6615, by the repeal of an adopted reference to "Threshold Limit Values and Biological Exposure Indices for 1987-1988". The reference has been superseded by other changes to the States air quality operating permit program.

Tom Fronapfel, Chief of the Bureau of Air Quality, explained that the EPA s list of 129 toxic compounds threshold limit values was adopted by the Commission in November, 1993. When

the codified version came back from the Legislative Counsel Bureau we had omitted repealing this adopted reference that has been superseded by other citations. Commissioner Fields made a motion to repeal NAC 445.6615 as set out in Petition 94014. The motion was seconded by Commissioner Bentley. The motion carried.

Vice chairman Molini moved to agenda item Il- C. Petition 94015

Petition 94015 proposes to permanently amend Nevada Administrative Code 445.240 by updating the reference to the phone number of the Division of Environmental Protection concerning unscheduled releases to the environment involving hazardous waste, pollutants, contaminants or petroleum products.

Allen Biaggi. Chief of the Bureau of Corrective Actions explained that this petition modifies NAC 445.240 to reflect the correct phone number of the Division of Environmental Protection. Commissioner Bentley made the motion for adoption of Petition 94015. Commissioner Griswold seconded the motion. The motion carried.

Vice chairman Molini moved to agenda item II- D. Petition 94016

Petition 94016 proposes to permanently amend Nevada Administrative Code 444.8632 by adopting 40 CFR Parts 2. Subpart A. 124, Subparts A and B. Parts 260 to 270, inclusive and Part 279 as those sections existed on July 1, 1994. The proposed amendments update the state's authority to receive authorization from the U.S. EPA regarding new provision of the Resource Conservation & Recovery Act (RCRA) adopted since July 1, 1993.

Colleen Cripps, Bureau of Waste Management, explained the Bureau is required to update the regulations to maintain an equivalent state program with the Federal program. Yearly, after the state adopts the state regulations, we are required to submit a new authorization package to EPA Region IX which demonstrates that we have a consistent program . Vice chairman Molini asked if the requirement only included parts of the program dealing with solid waste. Ms. Cripps replied that this is part of the program that deals with hazardous waste management. Vice chairman Molini called for discussion and/or public comment. No comments were received. Commissioner Bentley made a motion that Petition 94016 be approved. Commissioner Turnipseed seconded the motion. The motion was approved.

Vice chairman Molini moved to agenda item Il- E. Petition 94017

Petition 94017 proposes to permanently amend Nevada Administrative Code 444.8458 by expanding the conditions under which a person who proposes to construct or operate a new or expanding facility for the management of hazardous waste must seek a certificate of designation from the administrator of the Division of Environmental Protection.

Colleen Cripps stated that this technical correction was requested by the Legislative Counsel Bureau (LCB) to the regulation adopted by the Commission in January, 1994. This regulation eliminates the language in NAC 444.8458 that already is included in the definition of "new or expanded facility". LCB notes the language would be much clearer it we eliminated the phrase "for which a permit is required".

LCB also included a second change in the definition of permits and the language. "a permit to construct or operate that facility". LCB wants a modifier to describe the permit itself in the language. In the petition before you, we did not feel the language LCB selected was appropriate because the permit that we are dealing with is not a permit to construct. We asked LCB to correct this. LCB faxed new language to us today which reads:

> "A person who proposes to construct or operate a new or expanding facility for the management of hazardous waste, must obtain a certificate of designation from the administrator before the permission of an applicant for a permit or class 3 modification required pursuant to 40 CFR part 124, subparts A and B, and part 270. subparts A through F inclusive."

Ms. Cripps explained this language will make this regulation consistent with the definition of a new or expanded facility that was adopted in section 5 under LCB File # R-174-93 but it will not change the regulation. Vice chairman Molini asked if there was a simpler way, noting that the regulated community must find the Code of Federal Regulations, look up Chapter 40, Part 124 subparts A and B and part 270 subparts A-F inclusive to know what the permit is for. Commissioner Fields asked if you could reference the NAC instead of the Code of Federal Regulations. Ms. Cripps replied that there is no definition of a permit in the regulations. Deputy Attorney General Jean Mischel explained that the Commission could establish a permit definition for these purposes except that it would have to reflect what is required in 40 CFR.

Ms. Mischel explained that entities that must comply with Commission rules have to refer to 40 C.F.R., for just about any purpose. Commissioner Bentley asked if LCB would allow excerpting from 40 C.F.R. - Ms. Mischel, Deputy Attorney General, replied that you adopt by reference, thus you would have to put a date on it, i.e., as it existed on July 1, 1994. Your own permit definition would have to change whenever the federal rules were modified. Ms. Mischel explained that people would interpret your regulation as meaning something different from the federal regulation. resulting in a problem making those two definitions consistent on enforcement
actions.

Vice chairman Molini called for comments from the public.

Chuck Salo, Nevada Operations stated that it is complicated and difficult to review the Federal Regulations, 40 C.F.R. and apply that to the state level and suggested the state adopt a permit definition into the regulations. Vice chairman Molini suggested to Ms. Cripps that, for future consideration, the state should adopt a permit definition.

Commissioner Fields noted that Deputy Attorney General Jean Mischel had advised that a date be tied to the C.F.R., as they existed on July 1, 1994. Colleen Cripps stated that where we adopt by reference there is a date. Commissioner Fields made a motion that the Commission accept the changes set out in Petition 94017, LCB R-113-94, as modified by Ms. Cripps testimony and language in the fax received from the Legislative Counsel Bureau today. Commissioner Bentley seconded the motion. The motion was approved.

Vice chairman Molini moved to agenda Item II F: Petition 94020

Petition 94020 proposes to permanently amend Nevada Administrative Code NAC 459.9542 to increase the annual fees for the regulation of facilities using highly hazardous chemicals. The

proposed amendments increase the base fee from $3,100 to $6,820 and increase the graduated facility fee from $10.50 to $23.10 for "highly hazardous units". A cap of $30,000 is proposed to be placed on the total fees annually required by any regulated facility.

Jolaine Johnson, Chief, Bureau of Waste Management. Nevada Division of Environmental Protection introduced Mark Zusy, Supervisor, and Michael Leigh with the Chemical Accident Prevention program. Ms. Johnson explained the purpose of Petition 94020 is to amend NAC 459.9542 pursuant to the authority given to the Commission by NRS 459.3824. The action increases facility fees in the amount necessary for the Division of Environmental Protection to administer the Chemical Catastrophe Prevention Act. Ms. Johnson distributed information (Exhibit 6) to the commission which presented the basic NDEP budget requirements to fulfill the mandates of the Chemical Catastrophe Prevention Act adopted by the legislature in 1991.
Ms. Johnson explained that in 1992 the Commission adopted a base fee in the amount of $3,100 and a fee of $10.50 for every unit of highly hazardous substance. Ms. Johnson defined a unit of highly hazardous substance as being equal to one threshold quantity. Under the current regulations if 1500 pounds is the threshold for chlorine, a facility pays $10.50 for every 1500 pounds of chlorine they have in their facility.
Ms. Johnson explained that the Division of Environmental Protection is mandated by statute to:

1. Evaluate and coordinate other laws and programs that relate to the management of highly hazardous substances.
2. Required to adopt regulations (the Division actually adopts some of those regulations, the Commission has separate authority for fees).
3. Required to register facilities on a yearly basis.
4. Required to assess annual reports.
5. Every three years, or whenever any changes occur at a facility. we receive reports on safety. We are required to evaluate those to confirm that all issues established by the statute are addressed.
6. Based on information submitted by the facility, based on their quantities and their location, we must adopt a schedule for performing and submitting the assessment for analysis of hazards. Facilities are required to re-perform that assessment every 5 years so we have established a 5 year spread of submittal for a substance, again on a prioritized basis.
7. We are required to evaluate the qualifications submitted by the facility and approve or reject the team based on it they meet the qualifications for performing the assessment.
8. The Division is required to review the assessments that are submitted under the program to insure that they are complete, that the process has been evaluated by the team and that the mitigation plan has been approved.
9. We are required to public notice and allow for public review and comment on all submittals of chemical process hazards particularly their proposed mitigation plan.
10. Based upon our review and assessment and any public comment that we receive and facility input, we are required to actually adopt an appropriate mitigation plan based on the hazards that they govern. Once we adopt it, that mitigation plan becomes assessable by law.
11. Once the assessment and mitigation plan have been adopted we must perform an

annual inspection at each facility to insure that mitigation, plan is being implemented as adopted.

Commissioner Turnipseed asked Ms. Johnson how and if the permitting and review process interfaced with the Division of Occupational Health. Ms. Johnson replied that there is a separate federal program, similar to the requirement of this program, that the facility is required to develop a chemical process program but they are not required to submit it. OSHA requires that this program be at the facility if and when OSHA arrives to inspect. Ms. Johnson explained that the division has worked with State OSHA, trying to coordinate these requirements and there is currently a memorandum of understanding with State OSHA that, on any enforcement action, we will work together to not double enforce. Ms. Johnson stated that the division has prepared a guidance document on how to have a correct chemical process safety program so that the facility is in compliance with both laws.

Jolaine Johnson stated, all regulated facilities under the program were invited to attend the workshops that were held in Carson City, Battle Mountain and Las Vegas. As a result of these workshops we received excellent suggestions on how to better utilize our resources and how to combine our resources with other resources and based on this input we have evaluated our manpower assessment and needs on performing the mandates established by the statute. Ms. Johnson presented a budget summary outlining the budget requirements from 1992 through l996. The summary included revenue collected (and interest earned) to date. Ms. Johnson explained that in fiscal year 1995 the division is carrying over $141,000 and they will be using that money to balance the budget. She noted that in addition to this carryover, through fiscal year 1996 the division will require an additional $260,000 to fulfill the mandates.

Vice chairman Molini asked if this proposed fee increase would become effective on July 31, 1996. Ms. Johnson replied that the facilities would have to pay it July 1, 1995, the beginning of fiscal year 1996. Vice chairman Molini noted that in 1994 there was a total revenue of & $220,000 and a projected revenue of $260,000 in fiscal year l995. That is not a substantial increase in revenue compared to the increase requested. Ms. Johnson noted that is due to a declining number of facilities and explained that in the beginning there were 48 facilities under the program but in the 1993 Legislative session exempted mining and agricultural facilities. They had paid fees the first year. Ms. Johnson also noted that facilities are finding substitute chemicals or changing their processes so they can get below threshold quantities. Currently, 38 facilities are in the program which explains the drop in revenue for fiscal year 1995. Vice chairman Molini asked if the division anticipates the number of facilities will continue to decline. Ms. Johnson replied yes, and stated another difficulty, which the division is attempting to legally address, is that the federal facilities, such as the base in Hawthorne, are claiming sovereign immunity and not paying fees. Ms. Johnson stated that we will end up with the equivalent of 36 facilities this year and based on information facilities have given us, that number will drop to 33 in fiscal year 1996. Vice chairman Molini asked for a breakdown of these facilities. Ms. Johnson replied that of the 36 facilities approximately 20 are water treatment or waste water treatment facilities with chlorine or sulphur dioxide; 10 are manufacturing; 3 use chlorine to treat swimming pools; and 2 use anhydrous ammonia.

Commissioner Griswold asked, in light of the declining facilities, is there still the need for

increasing staff, and if so, why? Ms. Johnson replied the reason for the graduated staffing is that the division has gradually implemented more of the program requirements.

Commissioner Gifford noted a 300% increase in the number of staff positions and total expenses in four years and asked Ms. Johnson if there was a corresponding 300% decrease in chemical accident prevention. Ms. Johnson replied that she could not relate that directly to the program but there is great value to having division staff visit the mid-size and small facilities that do not have environmental resources and are not as attentive to the hazard of their chemicals. We are making a difference in their potential for a chemical accident. We are making a difference but we have not reduced chemical accidents by 300%. Ms. Johnson explained that Nevada has had two major chemical accidents, Pepcon and Pioneer which resulted in this law being adopted by the legislature.

Ms. Johnson reviewed NRS 459.3824. The statute requires a base fee for every regulated facility and allows the commission to adopt a graduated fee based upon the quantity of hazardous substances located at each facility. The statute does not dictate how you balance it. Ms. Johnson continued, that based on our projected revenue of 33 paying facilities in fiscal year 1996, the division needs $260,000 to carry out the provisions of the mandate. We are proposing to amend the base fee to $4,898 and a graduated fee of $16.59 for each highly hazardous substance unit present. We also propose that we not have a cap and request that the language "the annual fee for any regulated facility will not exceed $30,000" be removed from the proposed regulation.

Commissioner Gifford noted the $4,898 base fee would place a burden on the smaller facility and asked Ms. Johnson if any thought was given to putting the fees primarily on the hazardous unit basis letting the facilities that have the high number of hazardous units carry the load rather than having a standard base fee. Ms. Johnson replied that option was suggested at the workshops. Ms. Johnson stated that in her opinion, the total quantity is not necessarily directly related to the total risk at a facility because risk depends on many other factors, how they handle the chemical and how complicated the process is. Risk is a very complex issue. If we could base this fee on risk it would be more equitable. We do not have the authority to do it that way. The division proposes that a base fee is the most equitable.

Commissioner Turnipseed asked if facilities like Westpac with 5 water treatment plants would pay 5 base fees. Ms. Johnson replied that each regulated facility must pay the fee.

Commissioner Griswold asked Ms. Johnson if the program would continue to function if the Commission did not act upon this today. Ms. Johnson replied that adequate funds are available for this fiscal year and this proposal is for payment of fees in July, 1995. We will have to eliminate one of our positions and re-assign it to another area of the division. We would not be able to fully carry out our mandates under this program but we will do what we have to do with the resources that are provided to us.

Commissioner Tangredi asked, if you have a problem plant, can part of your fee be based on subsidies from violations at this plant? Ms. Johnson replied we do have authority and substantial penalty provisions for violation of any of these statutes and any penalty we collect augments the fund.

State Environmental Commission (SEC) Counsel Jean Mischel asked if penalties had been factored into the total revenue need projection. Ms. Johnson replied that the division has the authority to settle violations in any manner we believe appropriate. Five enforcement actions have been taken but the division has worked with these companies to get them into compliance and no penalties were collected. SEC Counsel Mischel asked if, in trying to phase this program in, the division felt it best to work with the facilities and not enforce the fines. Ms. Johnson replied yes. Vice chairman Molini asked what the division penalty parameters were under their authority. Ms. Johnson replied that the NRS states that "any facility that fails to register a new or new existing facility, if they have not complied with registration, is subject to $25,000 plus $2,000 per day from the day they should have registered. Failure to pay an annual fee is 75% of that fee. Failure to submit a safety report is $10,000 plus $1,000 a day. Ms. Johnson noted that the division administrator has forgiven all penalties thus far. The division has met their education goal because we have met with every regulated facility, provided them with a guidance document and discussed the program with them. In the future, any facility that has ignored this program will see enforcement action and we will collect penalties.

Commissioner Fields stated that the lack of imposing a penalty on the early violations makes a lot of sense. The legislature has adopted a brand new program, it is complex and requires a lot of new things and many people in the regulated community are not up to speed. I like the type of regulation that gives them an opportunity, with your help, to get into compliance.

Commissioner Tangredi suggested that this proposed regulation be withheld for a period of several months to see what happens to the violation revenues collected. Vice chairman Molini noted that the goal of the statute is to prevent catastrophes related to chemical spills or hazards. and to reach that goal, we have to fund the program and to make that program successful we have to have cooperative facilities that want to achieve the goal. We are more apt to get there if we work with the facilities rather than pulling out the big club early. Commissioner Bentley noted that it is difficult and dangerous to budget penalties.

Vice chairman Molini asked that two letters of protest received by the Commission be read into the record:

> Letter #1: (Exhibit #3) from Nevada Chemical Company:
> Dear Mr. Close:
> A letter received by my company from the Division of Environmental Protection was the most upsetting letter a business can get from government. It is an outrage that government can so arbitrarily impose a huge fee on a small business. My company is a swimming pool service company which grosses about $500,000 annually and on which you want to impose a $6,400 annual fee! This is so upsetting and absolutely unfair to my size business. I use approximately 60-80 hazardous units a year of chlorine gas and you want to charge me approximately $100 per hazardous unit. My company employs 10 people and we may have to consider a layoff. This is detrimental to that employee and also to my company. This fee imposes hardship on my business. Many big companies, I am told, will pay a $40,000 to $50,000 annual fee. This is about eight times what I am being asked to pay. These big companies gross at least 100 million dollars annually. Based on gross sales, my fee being $6,400, the fee for these large companies should be $1,280,000. This figure, I hope, illustrates the enormity of the fee for our small

company. This comparison just screams for an adjustment. Please give us some relief and charge us a fee per hazardous unit used. We also pay many other fees that seem to duplicate what the Division of Environmental Protection covers. There has to be at least one sane individual in Nevada's government that can understand the plight of a small business like mine. I sincerely hope that I am addressing that individual.
Signed: Robert A. Nisco

Letter #2 (Exhibit # 7) from the City of Henderson:

Mark Zusy, Supervisor - Chemical Accident Prevention Branch, Bureau of Waste Management Division of Environmental Protection:

Dear Mr. Zusy:

The City of Henderson appreciate the mandate for the Chemical Accident Prevention Program (CAPP), but feels that questions raised at the August 1, 1994 meeting held at Kerr-McGee in Clark County should first be addressed before consideration is given by the Commission to any fee increase. Some of the suggestions for containment that was highlighted at the August 1, 1994 meeting include:

1. Sharing the work load with other units of the Nevada Division of Environmental Protection, especially where such work loads may overlap.
2. Evaluating the project work load on a "per facility: basis, as well as the possibility that the work load may decrease after initial assessments of regulated facilities are completed.
3. Prioritizing the CAPP Mandates to utilize limited funds more efficiently.We are concerned that there appears to be no cap on the fees that could be levied on facilities under this program, and do not look favorable on the prospect of rapidly escalating fees.

Your consideration of these suggestions and concerns is appreciated.

Signed: Kurt Segler, Utility Services Division Manager

Two letters were distributed for the Commissioners to review and were entered into the meeting record.

1. City of Las Vegas: Thomas J. McCaffrey, P.E. City Sanitary Engineer, (Exhibit #4)
2. Coastal Chem, Inc.: Peter S. Illoway, Manager, Energy Supplies and Public Relations (Exhibit # 5).

Vice chairman Molini called for additional questions and discussion from the Commissioners. Commissioner Fields asked Ms. Johnson if State OSHA charged any fees regulating similar facilities, and if they do on-site inspections. Ms. Johnson replied that State OSHA does not charge any fees directly related to the federal law that is comparable to this law and they were not provided any additional resources to implement that federal law. Ms. Johnson stated that it was her understanding that on a regional basis, in Region IX, which includes California, Hawaii, Nevada and Arizona, one inspection will be performed every three years. SEC Counsel Jean Mischel pointed out that the mission of OSHA does not focus on community safety.

Vice chairman Molini called for public comment.

Brett Skinner, President of Pool Chlor Inc., in Las Vegas stated that his company stores gas chlorine at their site. The legislature has mandated the EPA to ensure that there are no accidents at our site. I think the goal would be more difficult to reach because the way it is set up at the moment, the basic responsibility for safety has been given to the EPA and the responsibility should be on my shoulders with a corresponding penalty. As an incentive, I levy a $1000 fine (to pay the insurance deductible) on my employees if they are in an accident of their fault and I also give them $1000 if they keep their record clean for a year. This incentive program has cut our accidents in half. If a high fee is charged, businesses will start cutting corners in the quality of employees and employee training. Equipment will not be updated - all this contributes to more accidents. I urge the commission not to raise the fees and suggest that we go to the legislature to work out a better program. I want the responsibility to be placed on us and let us spend the money where we think it is needed.

Vice chairman Molini asked Mr. Skinner if it was true that all his competitors would be subject to the same fees so it would not affect his competitive advantage. Mr. Skinner replied that only 4 companies in Las Vegas use gas chlorine and are regulated. The companies that use tablets or liquid are not regulated. This does put a big burden on the regulated businesses.

Commissioner Griswold asked Mr. Skinner how many times the Division of Environmental Protection had visited his place of business or how many times he had sought their advice last year. Mr. Skinner replied that he had been visited a few weeks ago and usually is visited every year and that he also attends all meetings the Division schedules in Las Vegas.

Vice chairman Molini called on Donna Williams.

Donna Williams Personalized Pool Service in Las Vegas stated that her company has been chlorinating pools with gas and have been accident free since 1971. I charge $25 a month per pool. If this regulation is adopted, I will have to raise my fees by $10 a month and the public will not accept that increase. The fee should be reflected in the amount of hours the DEP has to spend on our particular company which will be less than 4 hours a year. I employ 11 people and this fee will place an extreme burden on me. Commissioner Turnipseed asked how the per unit cost works with a pool service company and if there was an advantage to using chlorine gas. Ms. Williams replied that cost is based on the number of units that you have in storage at any one particular time and that gas chlorine is an element. It is better to put an element into the natural resource of water than to put in calcium, sodium, or a caustic as it diffuses better. Gas chlorine is healthier, there is no algae, the water is clearer and more sanitary. Gas chlorine is the only type of chlorine that you can use in the heat of Las Vegas and only chlorinate the swimming pool once a week.

Vice chairman Molini called upon Larry Blaylock, Sierra Pacific Power:

Mr. Blaylock. Supervisor of the Hazardous Material Program in Sierra Pacific Power Company's Environmental Affairs Department in Reno stated that Sierra Pacific Power will be impacted because it has four water treatment facilities that utilize chlorine. Mr. Blaylock respectfully submitted the following comments pertinent to NAC 459.9542:

1. Sierra is opposed to the proposed amendment as it was written and later changed

in Mark Zusy's July 21, 1994. letter. Sierra believe those who are producing the greatest number of highly hazardous units are not the ones paying an equitable amount of the fees. The statistics below are based on 42 regulated facilities. The Chemical Distribution Facilities produce 59.7% of the total hazardous units, but pay only 31.4% of the total fees and the Manufacturing Facilities produce 29.8% of the hazardous units, but pay only 20.1% of the total fees. These two entities produce 90% of the total hazardous units and pay only 51% of the total fees. Compared to these two entities, the Water Treatment Plants and Waste Water Treatment Facilities which utilize a single highly hazardous substance - chlorine -are paying more than an equitable amount for the number of highly hazardous units produced. Water Treatment Plants produce 4.3% of the total hazardous units and pay 16.5% of the total fees. The Waste Water Treatment Plants produce 5.1% of the total hazardous units and pay 13.8% of the total fees. Combined, Water Treatment and Waste Water Treatment Facilities produce 9.4% of the total hazardous units yet pay 30.3% of the total fees. This is the main reason, the lack of equitable fees, that Sierra opposes the proposed amendment.

2. Sierra Pacific also opposes the proposed amendment based upon the fee cap. In a meeting hosted by Nevada Division of Environmental Protection it was stated the cap fee would be dropped. Sierra agrees with that course of action. Sierra would like to go on record as opposing any carryover funds generated from fees imposed relevant to this program.
3. Earlier reference was made to Mark Zusy's August 9. 1994. internal memo which addresses the fee increase. Sierra has reviewed this memo and would like to address selected responses to comments NDEP received regarding the fee increase.The memo states:
"... the burden of conducting a thorough assessment with an acceptable mitigation plan is placed upon the facility.." Sierra agrees with this statement and the one following in it that states "..NDEP must ensure that the assessment has been performed adequately. "This assessment apparently will take the form of "..a fair level of assessment review....." as stated in Mr. Zusy's memo. The memo goes on to state it appears that approximately 65% of the task effort is dedicated to fixed items that are identical to each facility regardless of size. This means 35% of the review is based upon facility complexity. Sierra's position is that the facility will be preparing the risk assessment and mitigation plan for each of its four facilities. As all four facilities utilize a single regulated chemical and the same process, the complexity needed to be reviewed by NDEP will not be that great and is not commensurate with the proposed fees. This is affirmed by the statement "The hazardous unit fees are not always a fair approximation of the facility complexity or the time spent." , and "...quantities are not always a fair approximation of facility complexity or required staff time..".

Mr. Blaylock reiterated that Sierra disagrees with the proposed amendment and, therefore. would like to propose the following:

1. Restructure the fee schedule so that the majority of funding comes from the hazardous units and not the base.
2. Reduce the base fee from the current $3,100 to a maximum of $2,000 per site.
3. Establish a hazardous unit fee so that those producing the most hazardous units

pay the most fees.

4. Collect permit fees that will only support the program budget and not create any extra to be carried over.
5. Do not establish a fee cap.

Mr. Blaylock noted that three fee proposals for this program were received in the past month which indicates the fees need to be amended. Sierra is prepared to work with NDEP'S Bureau of Chemical Hazardous Management to develop an amendment and an equitable fee schedule.

Commissioner Gifford asked Mr. Blaylock if the risk of a problem is less in the larger facilities. Mr. Blaylock replied that Sierra believes that the more units you have, if you use more than one chemical, the greater the hazard is in a facility. Sierra uses one chemical which is chlorine and our four facilities produce 53 units total.

Vice chairman Molini called upon Ray Bacon.

Mr. Bacon, Nevada Manufacturers Association, stated that recently NDEP notified us of their plan to increase Chemical Accident Prevention Program (CAPP) fees 103%. With the proposal placed before us today, we will argue with Ms. Johnson's comments that this program is not duplicated by other federal programs. We believe that the Federal Process Safety Management Act (PSM) and what is coming forth in the Clean Air Act are going to completely duplicate this program. We would also point out that there are 4 states (Delaware, California. New Jersey & Nevada) that have this particular type of statute. None of those other states require the annual inspection so this is the most restrictive and most prohibitive statute in the entire country. The law has many flaws and is not good legislation, resulting in a problem for NDEP to put forth reasonable regulations. We would like to address the time spent on the program.

1. The administrative person for the program can be eliminated or reduced by taking action to combine the fees with the State Emergency Response Commission and Fire Marshall's fee. These are all due at the same time. NDEP has committed to fee consolidation and consolidating these 35 to 40 accounts is a do-able task.
2. The number of sites involved in the program is continuing to decline yet the staff is continuing to increase. We estimated the total man hours, man years involved and the actual work load involved is about 260 man days which is approximately 1 person per year excluding vacation versus the EPA estimate of 1.5 people. We did not include training and general overhead expenses in our estimate.

Mr. Bacon stated that the burden needs to remain on the regulated facilities. If the burden shifts to the regulators, liability will shift to their pocket and the Commission's pocket.

Mr. Bacon reviewed Ms. Johnson's list of duties and commented:

1. Adopt regulations for 1.2 man years (31 days).
   The regulations have been adopted. There may be changes in 1996 and 1997.
2. Coordination with other laws and other statutes - 54 man days for 1995, 98 man days in 1998.
   In late 1995 and 1996 the Clean Air Act of Risk Management Assessment Proposals are going to be due so man days will be required but we think

that 54 man days is excessive.

3. Annual facility registrations - 26 man days.
   Everyone is registered. There will be no new chemical plants in this state with this regulation in place.
4. Evaluation of the report on safety - 143 man days
   1995 is the year the report is to be submitted. That should not take over 5 man days.
5. Public notice/public comment on adoption mitigation. 500 man days.
   That number should not be above 90 man days.

Mr. Bacon continued, Nevada has an Economic Development Department specifically intended to bring manufacturing facilities into the state but by imposing fees of this magnitude no new business will come to Nevada. We need to look at how can we do the job more efficiently and more effectively. We ask you 4 specific questions:

1. Is there an adequate accounting of the time and money for CAPP? Does it really take 512 man days to go through the reports of assessment and adoption of mitigation plans.
2. How will CAPP demonstrate an increase in safety and what will this program do that other programs don't to improve safety?
3. Has NDEP done a cost benefit analysis to show the added fees will be worth the additional cost to government or the public?
4. The "Guidance" documents for the CAPP are dated July, 1994, long after the first submittal date to NDEP. The Commission should insure us that no facility is asked to resubmit a report to meet NDEP's format unless their document was totally inadequate. Addendums to existing reports can clarify or fix minor omissions.

Mr. Bacon stated that the Manufacturers Association believes that there is strong reason to decline any increase and asked that the request be tabled until the next Commission meeting.

Vice chairman Molini asked Mr. Bacon if he thought there was a legislative remedy and if so, does the Manufacturers Association have plans to go before the legislature. Mr. Bacon replied yes.

Vice chairman Molini called on Terry Graves.

Terry Graves, Pioneer Chlor Alkali, reinforced Mr. Bacon's comments and noted that he was on scene at the State Legislature in 1991 and this legislation has grown into everything that citizens see that is bad in government and regulations. Mr. Graves continued, the legislation was passed due to extreme pressure because of Pioneer Chlor Alkali's chlorine leak and it was also aided by the Pepcon explosion. There is no argument with industry that this type of regulation, in concept, is appropriate. What is being proposed at the federal level in terms of OSHA - PSM program, and what is being proposed in the Clean Air Act and Risk Management Assessment are more reasonable programs that we would subscribe to. We are dealing with bad legislation and we have problems continuing to finance it. In 1991 we were assured that every effort would be made to avoid duplication of this program with any other state or federal program. It was in fact, stated in the bill. I don't know if that language was deleted in the final drafting or in the Legislative

Counsel Bureau. We were misled on that from the point of the original legislation. The state legislation is bad for the regulated industries in the state because they cannot compete with industries in other states on a global basis. Mr. Graves stated that he opposed using fines to finance the program because you run the risk of turning a policing situation into a gestapo situation. Mr. Graves stated that a hazardous operations review, which we performed before our chlorine incident three years ago. cost us $200,000. Updates will cost $10,000 and those costs come before we ever pay any fee to NDEP. I don't think there is a solution that will satisfy everyone. Kerr-McGee Chemical Corporation, as a result of the Pepcon incident, moved their storage facility at a cost of tens of millions of dollars to a completely remote location 20 miles north of Las Vegas. There is practically no public exposure at that facility but, under the terms of this program, they will be paying one of the highest fees. The larger facilities become self-regulating under these programs and the state ends up spending most of its time with smaller facilities. There is much concern expressed by civic leaders, fire departments and emergency response people regarding the location of these small facilities, in warehouses and on the back streets of industrial areas. Mr. Graves recommended that this regulation be set aside or converted to what is to come in the Clean Air Act under Risk Management Assessment because more facilities will come under that program resulting in a wider distribution of the cost.

Commissioner Tangredi asked Mr. Graves if he disagreed with the imposition of fines. Mr. Graves replied that he disagreed with using fines as a financing mode for the program.

Vice chairman Molini called upon Tom Thatcher.

Tom Thatcher from The Thatcher Company distributed a risk assessment graph to the Commissioner's and outlined the concept of risk. Mr. Thatcher compared the incident risk of a chemical release to the daily risks that people take, such as flying, driving and swimming. Mr. Thatcher stated that because of the kneejerk reaction to one chemical release bad legislation was enacted. Commissioner Bentley pointed out that people choose to take certain risks such as driving, flying or swimming and that regardless of the legislation being good or bad, the Commission is mandated to carry out the provisions of the legislation. Commissioner Griswold stated that personal responsibility has a big effect on the outcome of any risk they take but a private citizen has no control over a chemical accident.

Vice chairman Molini declared a break for lunch at 12:30 p.m.

The meeting reconvened at 1:45 p.m.

Vice chairman Molini called upon Patrick Corbett:

Patrick Corbett, operator of the Kerr-McGee Defense and Aerospace facilities in Southern Nevada stated that their storage facility, constructed in 1990 using the best technology available, is located 20 miles outside of Las Vegas and that to date, I have paid $60,000 in fees for that facility and with the proposed increase I will be paying $30,000 per year. Public safety is of paramount importance but this fee increase is a big concern for me. We spent a great deal of time and effort developing the Process Hazard Analysis and the Risk Assessments that go with them. I am concerned if it is not carefully managed they will re-do what we have already spent several

hundred thousand dollars doing. And, when the state starts to take over our responsibilities, doing hazard analysis, providing recommendations and requirements, where does my liability end and their liability begin? Commissioner Fields asked Mr. Corbett if he understood that the NDEP was proposing to eliminate the $30,000 per year cap on the fee and asked what Kerr-McGee's new fee would be, eliminating this cap. Mr. Corbett replied $30,000.

Vice chairman Molini asked Jolaine Johnson to explain any duplicity between NDEP's program and existing or proposed federal programs such as the Process Safety Management Act or Clean Air Act. Ms. Johnson replied that the Clean Air Act amendments adopted by Congress in 1990 has three key elements:

1. Assess the potential of accidental release of any regulated substance.
2. Develop a program for preventing accident release ok the regulated substances.
3. Develop a response program for specific actions to be taken in a response to a chemical spill.

Ms. Johnson continued that OSHA, which is already in effect, has established extensive requirements of facilities for the Process Safety Management program:

1. It establishes who is regulated by the facility. OSHA has established a list of highly hazardous substances, essentially equivalent to the list of highly hazardous substances that we use in this program. It has additional chemicals that we are not regulating, primarily explosives and flammables.
2. It establishes requirements of employers to establish an employee participation program.
3. It establishes requirements of employers to prepare and make available process safety information.
4. It establishes requirements tom employers to perform a Process Hazards Analysis which is very similar to the Process Hazards Analysis that we require under our program. The Nevada program puts a great deal more on the facility and a great deal more on this agency in regards to ensuring that these activities are conducted and corrections are made to the hazards that are identified in the analysis.
5. OSHA requires employers to establish clear operating procedures and to provide training to employees regarding process safety. They have provisions for relationships with contractors in process safety; pre-start up reviews before a process is changed or started up for the first time; they have to perform specific types of review to assure that the safety has been addressed; they require a mechanical integrity program; management of change (an accident is most likely to occur when change is taking place); they have to investigate their incidents; they have to provide for emergency planning and response; they have to perform compliance audits on their own facilities and there are provisions for trade secrets in the OSHA program.

Ms Johnson continued, in terms of timing. OSHA Process Safety Management regulations went into effect shortly after this law was adopted. The Risk Management Program requirement of EPA, according to the Clean Air Act, has proposed regulation. The last we heard is that they are proposing to final that rule by November of 1995. We know that EPA is looking very closely at Nevada's program as they consider us the primary candidate for a state that will take that

program and fully integrate it into our own program. Without knowing the details of their requirements, it is very difficult for us to determine what kind of legislative changes we might need at this point in order to implement it. Regarding the number of facilities that will be regulated by that program, according to the list of chemicals that they have adopted, we anticipate 165 facilities in Nevada will be subject to the Risk Management Program requirements. Ms. Johnson stated that the program that we have in the state goes far beyond what the EPA requirements will mandate. Facilities do have to submit these documents but it does not put any substantial requirements on the implementing agency to review, evaluate, comment on, or to approve or disapprove their mitigation plan and it does not require yearly inspections. Our input from EPA is that it will be put in a position where there will be facilities that will never be inspected under that program. Ms. Johnson stated that the Division did work with State OSHA to try to implement these requirements. We worked with the facilities and we developed a memorandum of understanding with OSHA that they would actually review the same document that we are reviewing to ensure the facilities that we are not going to say OK to their assessment, then OSHA comes in a week later and says no. We have coordinated the enforcement actions and we have provided a combined guidance document to facilities to fulfill the requirements of both programs in one process safety management effort. The programs are duplicative, they have similar requirements and each program also has elements that the others do not have. To combine them is going to take some changes.

Vice chairman Molini asked Ms. Johnson, if, in her judgement, the State Program and the two Federal Programs constitute overkill for what we are trying to accomplish? Ms. Johnson replied yes, I believe the Legislature recognized that there was a Federal OSHA program coming and that OSHA would not have the resources to totally implement the Federal requirement. The Legislature adopted a very stringent, extensive law that puts the responsibility for ensuring that these facilities comply with the mandates upon this agency. We gave a report to the Legislature in the 1993 session explaining how we were implementing the program and the progress of the program. The Legislature asked us if we would recommend changes to the legislation. We did recommend changes on the basis of three programs, all with the same purpose - prevention of chemical accidents. We recommended that they take out some of the detailed requirements and leave us with an opportunity to coordinate the two federal laws that Congress has mandated, which would result in a program that would be easier for facilities to comply with. The Legislature chose not to act on that recommendation.

Commissioner Turnipseed noted that the Legislature over-reacts to a particular problem and asked Ms. Johnson if, were it not for Pepcon and the Pioneer Chlor-Alkali incidents, there would even be a Nevada law today. Ms. Johnson replied that she believed that statement was correct, there would be no law if those incidents had not occurred. Commissioner Turnipseed stated that the Commission should send the Legislature a message. He continued, I don't think we should impose all of this burden on the little guy out there servicing swimming pools because the big guys caused the problem resulting in this law, and those that caused the problem should pay the lions share of the fee. The big facilities are the most likely to get the law changed if it needs to be changed or to get the flexibility required in the Division of Environmental Protection in implementing the Federal law. If the Legislature views it as a public safety issue and the general public is the benefactor of this program, then maybe the program should be funded out of general funds. Commissioner Turnipseed continued that he would prefer to see a $2,000 base fee and

then whatever you need to fund the program on the per unit fee. Thus, the larger facility pays. Ms. Johnson replied that there have been two unfortunate accidents in the state. One company has left the state and the other major company runs a very good operation in terms of overall community safety and is paying the highest fees in the state because of their large inventory of ammonium chlorate but this company did not cause the legislation. Commissioner Turnipseed asked if a fee based on risk rather than a per unit basis would only be in effect until the Federal EPA program, which Nevada will be mandated to adopt, comes into effect. Ms. Johnson replied that the legislature knew that both of these laws were coming and that we wanted to coordinate them. Commissioner Turnipseed replied that hopefully, when we get some direction from the Federal EPA on how to implement their program it will be based on some kind of science rather than reaction.

Vice chairman Molini asked Ms. Johnson, if this type restriction and regulation does indeed transfer some liability to the regulating entity. Ms. Johnson replied that she has been very conscious of the potential for liability in both assessing our responsibilities under this program and directing the staff in how to perform our activities under this program. I have interpreted this regulation to say that our role does require us to have some assurance that the facility team has conducted their assessment properly. Thus, we have to be involved and know the process, critical equipment and components of a facility in order to know that they have addressed all of the potential hazards of the facility. I believe the liability lies in not attempting to thoroughly identify all the hazards in that facility. The facilities may miss some hazards and we would also miss some hazards because we are not experts on every process in the state. I don't believe that the manpower assessment that we have presented puts us in a position of re-performing the hazard assessment that is being submitted to us. I believe there is more liability if the agency fails to carry through with our mandates under this program. lt puts a great deal of liability on us in the event of an accident. The law sets up the governor's right to establish a committee, if there is an accident, and the committee will scrutinize the Division of Environmental Protection as thoroughly as they scrutinize a facility. SEC Counsel Jean Mischel stated that there is greater liability to the Division for not carrying out their Legislative mandate. That the standard any court would look at is, did they follow the law, not if they caught every potential hazard in a facility. If the Division can show that they acted within their authority and if all the mandates were carried out within the parameters of the legislation provided there is no liability. Counsel Mischel noted that Ms. Johnson is acting within her scope. She has indicated that she is conscious that DEP must not take over a facilities hazards assessment.

Commissioner Gifford asked Ms. Johnson if, after hearing all the testimony, did her budget projections for the various categories account for the 4.6 man years of time. Ms. Johnson replied that she did believe that was an accurate evaluation of the time required to deal with the Legislative mandate. I do support the information that has been presented to you today. If legislation allowed us to, we could cut some of the mandates.

Commissioner Tangredi asked Ms. Johnson how many times a year her department visit each site. Ms. Johnson replied that in past eight months, implementing this program and providing the guidance documents to the facilities, we have visited a representative of every site. We have not physically visited every site because some representatives. such as Westpac, have more than one site. We have visited the key facilities that are due for assessment this year. We have taken a

process tour and spent time learning the process prior to receiving their assessment so that we can be prepared. We are required by statute to visit each site once each year. Commissioner Tangredi asked if that meant making between 40 and 45 on-site visits each year. Ms. Johnson replied yes. Commissioner Tangredi asked if only 45 on-site visits are made a year and there are 200 working days a year, why do they need another employee. Ms. Johnson referred the Commission to the packet of information distributed to them this morning and the chart showing the manpower breakdown regarding staff duties and explained those duties. Commissioner Tangredi asked how many days a plant site inspection takes. Ms. Johnson replied that depends on the complexity of the facility and the chemicals stored at a facility. Ms. Johnson explained that a recent visit to Pioneer Chlor Alkali, inspecting the facility and evaluating the hazard assessment, took three long days.

Commissioner Griswold asked Ms. Johnson if she felt that the legislators that were involved in this legislation had a concept of the amount of fee that is being proposed today. Ms. Johnson replied, when the legislation was originally adopted, the legislature asked for a budget presentation of how many people it was going to take to implement this program. Projections at that time were that it would take 6 technical people and one clerical person. Commissioner Griswold asked how many facilities were they basing that budget on. Ms. Johnson replied 50 facilities were anticipated by the legislature. We are now down to 36 facilities. The legislature did not know the exact base fee or unit fee and what it would mean in terms of impact to any of these facilities but they did accept the fiscal package that the agency presented in terms of resource requirements.

Commissioner Fields asked if it would be possible to explore the area of duplication of fees with State OSHA explaining that under state reorganization, the Division of Minerals became part of the Department of Business and Industry directed by Rose McKinney James who has given all the administrators in her agency very clear directions about the need to avoid duplication and to do whatever can be done to develop a good business environment in Nevada. Mr. Fields continued, when I hear remarks like Ray Bacon's that "you won't have another chemical plant come into Nevada", that runs contrary to what my director is telling me. Ms. Johnson replied that she is for consolidation and coordination of state resources. Our agency works with minimal resources and any coordination is for the benefit of the public, regulated community and our agencies alike. I believe there is certainly an open door with State OSHA regarding coordination of this program. There are some legislative restrictions that prevent us from fully coordinating this program and I will work with the facilities to determine if there is more opportunity to accomplish what this law requires, and to coordinate it with OSHA. Commissioner Fields suggested that Ms. Johnson talk with the Division of Industrial Relations about what they envision as their plan for State OSHA.

Commissioner Bentley asked if it would it be possible to develop a graduated base fee? Ms. Johnson replied the statute requires us to apply a base fee to each regulated facility and the latitude in interpreting that will require legal advice. Ms. Johnson continued, the statute does allow the Commission to adopt a graduated unit, or quantity fee. SEC Counsel Jean Mischel stated that the Legislature could have easily drafted the language more openly and it did not, there was no justification to make the base fee fair to a facility, It specifically uses the singular in the amount. Ms. Mischel advised that there is nothing in the statute that would prevent the

Commission from setting a lower fee and then revisiting it later on. Commissioner Bentley noted that some regulated facilities are simple, others complex. The division has handled that complexity with the unit fee but is it possible to do the same with the base fee? Should that be changed relative to size. Commissioner Fields stated that the argument that some of the witnesses would make would be that size and risk are not necessarily linked together. SEC Counsel Mischel noted that the statute reads "the owner of a regulated facility shall pay to the division an annual fee based on the fiscal year" - if you read it literally you could probably set up a fee per personal ability but you don't have adequate information to do that. You would have to determine what is necessary based on each facility's ability to pay or the risk involved. SEC Counsel Mischel advised that the Commission has to set a fee that is necessary to carry out the mandates. Vice chairman Molini asked if that meant that the Commission has to set a "base fee" but we don't have to set a "unit fee". SEC Counsel Mischel replied that is discretionary.

Vice chairman Molini called on the public for additional comment.

Terry Graves, Pioneer Chlor Alkali stated that this is a terrible piece of legislation and it should be replaced by the Federal law. Mr. Graves encouraged the Commission to send a message to the Legislature that the law has tremendous failings. When we were working through this law with the Legislature, our environmental attorney, from a very substantial Washington based law firm, said "this is an attorney's right to work act". Patrick Corbett had a Risk and Hazards Analysis expert in his plant as a consultant when this legislation was being considered and that consultant read, and could not understand, this law. Interpreting the legal fees is the simple part of the interpretation of the law. There are pieces of this legislation that we don't understand. We have talked frequently about risk assessment and we interpreted that means a hazard safety review analysis. It is not. A risk assessment is something entirely different. During the legislative session we were assured by the sponsors of this bill that there were hundreds of consultants that could do risk assessments. We found out that there are only 3 people in the world that can do a risk assessment. When this law gets in operation there are going to be some very serious challenges as to what is really meant by the law. I strongly recommend that the Commission consider replacing this bad piece of legislation by the Federal statutes when they become available.

Ray Bacon, Nevada Manufacturers Association, stated that when the Legislature passed this law in 1991 it was their belief that the base number of facilities would be in the neighborhood of 150 - 200. He noted shock reaction from some of the Legislators he talked to in 1993 when they learned that we are discussing less than 50 facilities. Vice chairman Molini replied that knowing this, the 1993 Legislature still did not amend their legislation of 1991. Verne Rosse, Deputy Administrator for the Division of Environmental Protection stated that he was extensively involved in working on this legislation and was asked numerous times how many facilities were going to be regulated. That number was always around 45, less than 50 facilities so the Legislature knew the numbers and their statute was based on those fees. Vice chairman Molini asked Mr. Rosse if the legislature recognized the magnitude of the range of fees. Mr. Rosse replied that in the original version of the bill a $100 fee was assessed on all the SARA (Superfund Amendments & Reauthorization Act) TITLE III facilities. We collected somewhere between $100,000 and $120,000 based on $100 per facility. As I recall, the Division sent invoices to around 1200 facilities to get the program started, to develop the regulation and to

establish a fee mechanism which the legislative bill suggested.

Commissioner Tangredi asked Mr. Rosse, in terms of comparing your group with the Federal group, do you feel that your group has more surveillance and more handle on the sites and visits them more; requests more compliance and is more on top of things than the Federal EPA? Mr. Rosse replied that all the Federal EPA does at the present time is a safety audit. I think the Division of Environmental Protection has more presence at the facilities in the State of Nevada than the Federal Program ever had in the past. Commissioner Tangredi asked if Mr. Rosse felt that the Legislature prefers our own state group that has more of a presence protecting the people of the State of Nevada to what the Federal EPA is doing? Mr. Rosse replied yes. Commissioner Tangredi asked if Mr. Rosse thought that is what the Legislature had in mind, that the Federal EPA was not doing that much of a job, complying with safety. Mr. Rosse replied that the purpose of the legislation was the legislature's attempt to deal with issues like the Pepcon incident and Pioneer's chlorine release. The Steelworkers Union requested this legislation which they picked up out of draft legislation in Washington that eventually became the OSHA Program. Commissioner Turnipseed asked Mr. Rosse if, because of the two accidents prior to the 1991 Legislature, is this legislation an example of hysteria type legislation? Mr. Rosse replied this bill was introduced in one of the houses and it went through the whole legislative process in the last 14 days of the session.

Commissioner Fields asked, based on the estimated current number of 36 paying facilities and the current fees, how much revenue will the $3100 base fee and the $10.50 unit fee generate. Jolaine Johnson replied that we are collecting $174,187 from facilities under the current fee structure. That amount is what will be generated in fiscal year 1995.

Commissioner Gifford noted that although he feels the Commission is caught, he is opposed to the requested 60% fee increase. He suggested a 10% increase in fees per year over a 6 year period, to take the opportunity to review these other mandates coming up to see how they duplicate the program, and to resolve how we get rid of the duplication problems. I think a graduated increase would be much more palatable.

Commissioner Griswold stated that she was not prepared to support this proposed increase and asked if it would be possible to re-visit Petition 94020, to request the Division do some more work on this Petition and come back before the Commission again. That action might in part send a little bit of a message to someplace.

Commissioner Turnipseed noted that there were 4 people on staff now so the Bureau's expenses are fixed. Commissioner Griswold reminded the Commission that Jolaine Johnson had stated earlier that it would probably mean transferring one person to another branch. Vice chairman Molini noted that in reviewing the revenue chart, fiscal year 1994 indicates a carry forward of $91,600 and asked Ms. Johnson if that amount would also carry forward to fiscal year 1995. Ms. Johnson replied that

$91,600 was money carried forward from fiscal year 1993 into fiscal year 1994 and $141,000 was carried forward from fiscal year 1994 into fiscal year 1995. Ms. Johnson explained the fiscal year 1995 column on the revenue chart is based on the current fee. She stated the Bureau has sufficient financial resources to fund the program throughout fiscal year 1995 but the

problem will come on July 1, 1995 when we will need to collect revenue for fiscal year 1996. The Bureau will require the additional revenue to balance fiscal year's 1996 budget.

Vice chairman Molini recognized that the Division was doing the best they can to try to implement the Legislative mandate and noted that testimony from the regulated community indicates that they appreciate the opportunity for input. Mr. Molini slated maybe the legislative foundation is somewhat flawed. With two federal programs just getting started or coming into play, it may be that we could end up with far less cost in the regulation with similar diminishment of risk. Vice chairman Molini noted that this Commission has dealt with a number of difficult issues and set some high fees in the past but noted the cost benefits from those high fees have been better than the benefits appear to be in this regulation. However good a job the regulated facilities do does not preclude the chance of another major disaster like Pepcon. If that happens again, we have spent all this money and the Legislature has not accomplished what they wanted to accomplish. Mr. Molini expressed concern about adopting this fee increase at this point.

Commissioner Fields stated that he wanted to table the adoption of the fees for a period of six months, allowing time for staff to fine-tune the budget, work with the other agency as suggested earlier, to meet again with members of the regulated community to discuss this fee increase, to further track the Federal Legislation to see how that can interface with the States role and finally, use those six months to transmit our views and concerns, however it needs to be done protocol wise, to the Legislative committee chairmen that have purview over this issue. Based upon testimony heard today. I am not ready to adopt this fee increase.

Commissioner Turnipseed asked if Executive Secretary David Cowperthwaite would draft a resolution to present to the Legislative committee saying that this legislation is a piece of garbage. SEC Counsel Jean Mischel replied that the Commission can provide input, through David Cowperthwaite or through a Commission member, to the Legislature on any area that they have jurisdiction over. Ms. Mischel cautioned the Commission to be careful about consistency with the Division of Environmental Protection, to know what their position is going to be on this legislation. SEC Counsel Mischel advised that with respect to "tabling" this petition the word is "continue". You don't want to re-hear testimony heard today and you don't want to re-submit the petition to LCB as a temporary regulation. Your basic mandate is that you have to approve fees that are necessary to carry out the program as the legislation stands today. Continuing this petition does not create a big problem, you can ask them to revisit it because you don't agree with what is necessary as the law stands today.

Commissioner Bentley asked Jolaine Johnson if this is continued until sometime in 1995, do you have sufficient funds to operate the program until July 1, 1995 and do you feel the Federal program will have something to replace Nevada's program by the Fall of 1995. Ms. Johnson replied yes, she would have the funds to continue the program. To continue the program past July 1, of 1995 will depend upon the direction of the Legislators on how to fix it or integrate it into the Federal program.

Commissioner Turnipseed stated that he understood that under the Federal program there would 165 facilities in 198 regulated processes. Jolaine Johnson replied 165 facilities and 198 processes

because some facilities have more than one process. Commissioner Turnipseed asked, assuming that we are going to get that program, what kind of manpower is it going to take to implement that program and if we spread the 6 or 8 people over that many facilities and that many processes maybe the burden on the individual regulated entity is not as great as what we have discussed today. Jolaine Johnson noted that if the state law is still in place it cannot be ignored. Commissioner Turnipseed asked if, from the Commission and the Division's standpoint, it would be best if the Legislature would just repeal this current legislation in 1995 and have the Federal program delegated to the states to take care of it. Ms. Johnson agreed.

Vice chairman Molini asked Jolaine Johnson, if the Commission makes a decision in April or May of 1995 and at that time we elect to adopt the fees that you propose, could you have them in place and start billing on July 1, l995. Ms. Johnson replied yes.

Commissioner Bentley made a motion that the Commission continue Petition 94020 for at least six months. Commissioner Fields seconded the motion. Vice chairman Molini asked if the motion meant for at least 6 months but before July, 1995 so that if nothing happens we can give them relief if we are so inclined. Commissioner Bentley replied he thought that would be sufficient.

Vice chairman Molini called for discussion on the motion.

Commissioner Gifford stated that he had not heard anything that justified putting off action on this petition, that he did not think it will be easier six months down the road, and suggested the Commission resolve some action today.

Commissioner Turnipseed stated that he would like to amend the motion that the Commission adopt a resolution to the Legislature that they either fix the present legislation to make it fair and equitable or repeal it. Commissioner Bentley asked if this action would require another hearing or would it be a continuation of this one. Vice chairman Molini replied that the Commission could hold another hearing but he would encourage all the people who testified today not to repeat their testimony.

Commissioner Fields made a motion that during this continuation staff sharpen their pencils on this budget and work with the regulated community and other agencies, in particular State OSHA to determine areas of overlap to determine whether or not this budget can be trimmed.

Vice chairman Molini stated that Commissioner Turnipseed did not move to amend and called for a vote on Commissioner Field's motion. Commissioner's Fields, Bentley, Turnipseed, Tangredi and Griswold voted aye. Commissioner Gifford opposed the motion. The motion carried .

Commissioner Turnipseed made a motion that the Executive Secretary, David Cowperthwaite, draft language for a resolution to ask the legislature to fix NRS 459.380 through 459.3874 to make it clear and equitable or to repeal it and move that the U.S. Congress have the State of Nevada carry out the Federal program. Commissioner Griswold seconded the motion.

Vice chairman Molini called for discussion on the motion.

Commissioner Fields suggested the resolution should include language like "in light of Federal Legislation which seems to address the issues that the legislature intended to address when they adopted this statute in 1991, that public safety is the goal", etc. Commissioner Gifford stated that he had reservation on this resolution, not that he disagrees with it in principal. I am uncomfortable making that resolution without being more familiar with what is coming down the line as a proposed substitute for what we have. I am going to vote against a motion. Vice chairman Molini stated that the Commission would have a chance to read and review the resolution draft. Commissioner Gifford replied that we are voting on a resolution, whether we like the wording or not. Vice chairman Molini stated that he would like it if the Commission would vote an adoption of the resolution at the meeting in October or November and asked David Cowperthwaite to have the draft resolution included in the support material sent the Commission prior to the meeting, then at the meeting the Commission can do all the word-smithing that we want to do. Commissioner Gifford asked if the end point of the resolution is a draft statement that goes to the Commission members and if it is stopped there, there is no further action unless the Commission as a body acts on it. Vice chairman Molini replied that is correct. SEC Counsel Jean Mischel advised that the purpose of the resolution is to request repeal of the Chemical Accident Prevention Program. Commissioner Turnipseed interjected, or to modify it so that it is fair and equitable because the economic burden on the 33 - 36 facilities is horrendous. Commissioner Gifford noted that in the verbiage on economic impacts I have not seen a single number presented by any firm indicating exactly how much of a economic impact it will have, so I don't feel comfortable with that statement either. I don't have numbers in front of me to make an intelligent decision. Commissioner Bentley reminded Mr. Gifford that Ms. Williams stated that her monthly charge would have to go up from $25 to $35 per month and that is an economic impact. Commissioner Turnipseed noted that Exhibit #3 from Nevada Chemical Company also lists economic impacts.

SEC Counsel Jean Mischel stated that with respect to the amount of the fee, the legislation does not set the fee. Commissioner Turnipseed replied that the Legislature only gives us two alternatives to fund the program; a base fee or a graduated fee. Testimony indicates to me that when the legislature first envisioned this law there were 50 regulated entities and now there are between 33 and 36 which obviously increases those per entity fees substantially. SEC Counsel Mischel stated, if NDEP comes back and tells you that this is the money we need to fund the program and you say it is to much of a burden on the facility, then there is no program. So, are you asking to repeal and not to modify it? You can work with NDEP to determine how the cost can be lowered. Commissioner Turnipseed replied that if the general public is the benefactor of this program then maybe the program should be funded in part with general fund money.

Vice chairman Molini asked if the Commission would consider a conceptual way of resolution rather than a repeal, that we think the program needs another look, it needs modification, and it needs evaluation as to whether or not the Federal program will accomplish the same end. We also want to state that we have a concern that the cost benefit ratio does not provide a substantial enough public benefit for the cost incurred. Commissioner Griswold noted that the department succeeded in justifying the need for the funds they were requesting.

Commissioner Turnipseed stated that he did not think that the State is at less a risk today than we were before the legislation was passed, therefore I don't think the legislation has accomplished its goal.

Vice chairman Molini stated that we do not need to word-smith the resolution now. We only wish to relay a concept that Mr. Cowperthwaite can develop. We will then review and discuss the resolution thoroughly at the next hearing.

Commissioner Turnipseed stated that if regulating the 165 facilities and 198 processes accomplishes what the 1991 session of the Legislature intended, preventing accidents, funding the program can be spread among those entities. It seems that would be better for the general public and less of a burden to the people that are paying the high tariff. Commissioner Bentley commented that you don't know if prevention works until you don't prevent it and we hope nothing happens. There is no control group going along with it.

Commissioner Tangredi asked the Commission if they felt that the Legislature would jettison a program intended to protect the public, and if they don't, as far as financing the program, do the members of the Commission feel that they are going to take the people's money out of the general fund to pay for the program rather than have the companies that make the chemicals pay for it. I think that we have to think the way the Legislature is going to think and we have to do a lot of compromising, and maybe settle the issue of increasing the Bureau's budget right now, or in the shortest possible time, because eventually the ball is going to be thrown back to us.

Commissioner Fields asked Commissioner Turnipseed if his motion included a suggestion as to how to fund the program through general funds. Commissioner Turnipseed replied no, that was only a comment, it is not under our jurisdiction. Commissioner Fields stated that the likelihood of the Legislature going to the general fund for these kinds of dollars is zero. Commissioner Tangredi agreed.

Vice chairman Molini repeated that the motion on the floor is to draft a resolution to give a message to the Legislature that we evaluate this program and try to make it more cost effective. Commissioner's Molini, Fields, Bentley. Turnipseed and Griswold voted aye. Commissioner's Tangredi, Trenoweth and Gifford voted nay. The motion carried.

Jolaine Johnson stated that Division staff has done a thorough assessment and comparison of the three programs and offered to provide that information to the Commission members before they revisit the resolution. Ms. Johnson noted that the Division would, as Mr. Fields suggested, explore all opportunities to coordinate with other agencies, sharpen pencils and attempt to trim this budget, and to work with the regulated facilities in doing that. Ms. Johnson asked if the Commission had any other direction to the Division in regards to the public testimony and any direction in how to balance the base versus the unit fee. Commissioner Turnipseed replied that he did not want specific names of the regulated community but he would like to know how many of the 33 or 36 entities are the little facilities and how many are the big facilities. Ms. Johnson replied that the Division had prepared a list of facilities, their chemicals and the fees they would be paying under this program and asked Commissioner Turnipseed if this is the type of information he would like to see. Commissioner Turnipseed replied yes, that information would

give the Commission a feel of what kind of economic burden we would be placing on them.

Commissioner Griswold complimented Jolaine Johnson on her clear and fair presentation.

Vice chairman Molini moved to Agenda Item III - Air Quality Violations
Item III-A. The Moltan Company - NOAV # 1078

Tom Fronapfel, Bureau Chief, Bureau of Air Quality explained that the Moltan Company operates a diatomaceous earth processing plant located at the I-80 Nightingale exit east of Fernley, Nevada. An inspection of February 25, 1994 documented a mill electrostatic precipatator stack operating in excess of the allowed 7% opacity. Notice of Alleged Violation # 1078 was issued on March 11, 1994 for violation of NAC 445.696, violation of an air quality permit restriction and Code of Federal Regulation Title 40, Part 60, section 672, violation of the 7% opacity rule. During an enforcement conference on March 14, 1994 and subsequent negotiations, Moltan stated that the ESP controls were not rapping properly and that approximately one hour before the inspection plant personnel had observed the stack emissions and no visible emission problem was noted. Moltan Company has repaired the rappers and has agreed to install a continuous particulate monitor in the mill ESP stack by August 15, 1994. Nevada Division of Environmental Protection agreed that these actions were sufficient to bring the source back into compliance with the regulations. An administrative fine of $3,000 was agreed upon for the violation. Mr. Fronapfel noted that this was a continuance from the May 26, 1994 hearing at which time Moltan Company was not able to be present. You will note in the packet a history of their air quality violations but they are presently in compliance with all the necessary requirements.

Edward Lucas, Moltan Company representative, reported that Moltan employs fifty three people mining, processing and packaging diatomaceous earth for use as industrial absorbent and kitty litter. The plant is highly visible from Interstate 80 and for the greater part of the day the sun is behind the plant which give the plant a much worse appearance than actual emissions would warrant. Mr. Lucas noted that several inconsistencies within the administration of the law should be addressed.

1. There is no consideration given to plant location. Moltan feels if the end objective of environmental regulation is to protect the health and welfare of our citizens, common sense would dictate a consideration of plant location in administering the law.
2. Criteria used for issuance of notices for alleged violation. Violations are issued in many cases, based on opacity. We know that opacity is not a measure of particulate emission, hazardous stack constituents, VOC's or PM_{10}. The continued use of opacity as a regulatory criteria may well be a carryover from earlier legislation.
3. Visual stack evaluation is a subjective art, not a science. The actual reading can be influenced by the location of the sun, the color and contrast of the background, and by the light conditions (clear, overcast or cloudy). Mr. Lucas continued we are all aware of the effect of viewing a light colored paint chip against a black background as opposed to a contrasting blue background. This can significantly influence the perceived value of the light colored paint. Whether the stack evaluation of 13% opacity read late in the afternoon on an overcast day and against a black mountain was 13 or 7 or 5 really becomes a moot point since rather than question the reading, which could have been done on scientific grounds, we accepted the cited violation as

real and paid the fine. The Moltan Company humbly requests that the limitations of accuracy and repeatability of this test be taken into consideration when making close calls under less than ideal conditions.

Commissioner Fields asked Mr. Fronapfel to clarify for the Commission whether it makes a difference if the plant is located right next to Reno or if it is out in the middle of nowhere. Tom Fronapfel replied that some of the established permit conditions do in fact account for location of the facility in terms of what the ambient air quality standards are at the property boundary for that facility. Mr. Fronapfel explained that opacity is not measured at the property boundary, it is measured at the exit of the stack. Moltan's plant location would not be relevant. Commissioner Turnipseed made a motion that the negotiated settlement with Moltan Company be accepted. Commissioner Bentley seconded the motion. The motion carried.

Item III - B. U.S. Gypsum Company: NOAV # 1080

Tom Fronapfel stated that U. S. Gypsum Company operates a crushing system located approximately 6 miles southeast of Empire. Nevada. Operating Permit No. 2294, which is issued tom the crushing system, states, in part that: "Yearly production and hours of operation will be submitted in writing to the Bureau of Air Quality by April 15 annually for the preceding calendar year". U.S. Gypsum submitted a summary report of its 1992 and 1993 operations on March 8, 1994. A staff review of the summary report noted the crushing system throughput had exceeded the permitted limit of 180.0 tons per hour. The 1992 and 1993 throughput indicated the average production rate was 203.5 and 318 tons per hour. respectively. During an 24 enforcement conference of April 7, 1994, representatives of U.S. Gypsum stated that the throughputs had been calculated wrong due to personnel turnover. The company stated that the report was based on the amount of ore removed from the pit and that not all the ore removed from the pit is processed through the crushing system. It was also stated that the hourly production rate was based on the number of hours the feeder operated. The company representatives stated that this number was erroneous as the feeder operates for a short period of time and then stops while the crusher continues to crush material. U.S. Gypsum has agreed to take corrective actions to insure accurate and timely reporting. NDEP agreed that these actions were sufficient to bring the source back into compliance with the regulations. An administrative fine of $500 was agreed upon for the violation. U.S. Gypsum is currently in compliance with all the regulations.

Commissioner Griswold made a motion that the Commission accept the settlement agreement with the U. S. Gypsum Company. Commissioner Tangredi seconded the motion. The motion carried.

Item III - C: Smitten Oil and Tire Company; Notice of Alleged Violation # 1077

Tom Fronapfel reported that Smitten Oil and Tire Company requested the Commission continue this action because the company representative who was to to appear today is very ill. The Commission agreed to continue this item to the next meeting.

Vice chairman Molini moved to Item IV - Discussion items
Item IV - A. - Senate Bill 127 - Strategy Update

Allen Biaggi, Chief of the Bureau of Corrective Actions, Division of Environmental Protection, reported that SB 127 requires that consolidation efforts be undertaken and a report be prepared for submission to the Sixty-Eighth session of the Legislature outlining the planning and recommendations for the consolidation of fees and services. The Department of Taxation, in cooperation with the Environmental Commission is tasked with the preparation of this report. Mr. Biaggi reported that the committee has:

1. Identified the regulatory entities involved in UST oversight activities.
2. Established two consolidation task forces; one in Southern Nevada and one in Northern Nevada.
3. Identified the fees, services and collection methods of each of those entities.
4. Identified the forms used and the details of their databases. That information has been placed into a matrix system for evaluation purposes.

Mr. Biaggi noted that in early September the task forces will reconvene for review of the information collected and to evaluate consolidation opportunities and in October a draft of the consolidation report will be available for peer, task force, and Commission review.

Mr. Biaggi identified the significant findings to date:

1. Oversight of underground storage tanks falls into three main categories: environmental, fire protection and hazardous materials prevention and safety. In general, Underground Storage Tanks specific fees are charged for:
   a.The State Petroleum Fund which is administered by the Division of Environmental Protection.
   b. Floor inspection. installation, decommission and design reviews by local fire departments and building departments.
2. One bright spot is a memorandum of understanding that is in place in Clark County between the local health district and the fire agencies for inspections and UST oversights. This type of memo will continue to be used throughout the State.

Mr. Biaggi concluded that the S.B. 127 report is proceeding on schedule and the final report will reach the Legislature on time.

Vice chairman Molini asked Executive Secretary Cowperthwaite if, due to time constraints, the remaining discussion items could be continued to the next meeting.

Mr. Cowperthwaite briefly introduced Naomi Duerr and Colleen Bathker from the Division of Water Planning. Ms. Duerr reported that she and Ms. Bathker will attend the next Commission meeting to give an overview of the Environmental Resource Plan that the Division of Water Planning is tasked with preparing.

Mr. Cowperthwaite noted that the remaining discussion items could be continued to the next meeting.
Vice chairman Molini called for public comment.
No public comment was received.
The meeting adjourned at 3:00 p.m.

As submitted by David Cowperthwaite, Executive Secretary.

CONCORDANCE