

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF August 22, 2000**

**HELD AT: Carson City, Nevada**

**TYPE OF HEARING:**

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

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

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

**NEVADA STATE ENVIRONMENTAL COMMISSION**  
**A G E N D A**  
**August 22, 2000**

The Nevada State Environmental Commission will conduct a public hearing commencing at **10:00 a.m. on Tuesday, August 22, 2000**, at the Nevada Commission on Tourism, Commission Chamber, 2nd Floor, 401 N. Carson Street, Carson City, Nevada (The Laxalt Building is located immediately south of the Carson Nugget and two blocks north of the Capitol Building).

This agenda has been posted at the Clark County Library and the Grant Sawyer State Office Building in Las Vegas, the Washoe County Library in Reno, the Department of Museums, Library and Arts, the Division of Environmental Protection Office and the Commission on Tourism in Carson City. The Public Notice for this hearing was published on July 20, July 25, July 26 and August 3, 2000 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 June 20, 2000 meeting. \* ACTION**

**II. Introduction of newly appointed Commissioner Hugh Ricci**

**III. Selection of Vice Chairman for the Commission \* ACTION**

**IV. Regulatory Petitions \* ACTION**

**A. Petition 2001-01 (LCB R-120-00)** is a permanent amendment to NAC 519A.235, the mining regulation and reclamation rules. The amendment establishes a trust fund for emergency reclamation activities with fees to be collected in the years 2000 and 2002.

**B. Petition 2000-11 (LCB R-118-00)** is a permanent amendment to NAC 445B.010 to 445B.395 the air pollution control regulations. The petition proposes to amend NAC 445B.264, monitoring system: recordation of data, by removing language regarding six-minute opacity averages being used in calculations. NAC 445B.354, the maximum opacity of emissions is amended to incorporate Title 40 CFR Part 60, Appendix A, Reference Method 9 and that emission units being subject to Title 40 CFR Part 60, subparts D or Da are limited to 27 percent opacity. The existing language requires the use of an aggregate reading to determine opacity, for which no standard reference method exists.

**V. Settlement Agreements on Air Quality Violations \* ACTION**

- A. Rees's Enterprise; Notice of Alleged Violation #1452
- B. Wulfenstein Construction Company; Notice of Alleged Violation #1447
- C. Sierra Nevada Feeds; Notice of Alleged Violation # 1439
- D. Q & D Construction; Notice of Alleged Violations # 1444
- E. Granite Construction; Notice of Alleged Violations # 1441, 1442 and 1443.

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**VI. Request for Exemptions to NAC 486A - Alternative Fuel Regulations \* ACTION**

Request by the Clark County Health District for an amendment of exemption pursuant to NAC 486A.135(3) for 30 days to October 31, 2000 as approved by the Environmental Commission on April 20, 2000.

**VII. Status of State Environmental Commission request for the State Board of Health to designate a representative with a medical background. \* ACTION**

**VIII. Request for Declaratory Order by David Langlieb**

**IX. Presentation by Nevada Dept. of Agriculture regarding their Fuels Management Program.**

**X. Status of Division of Environmental Protection's Programs and Policies**

**XI. General Commission or Public Comment**

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (775) 687-4670, extension 3118. The public notice and the text of the proposed permanent regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition the State Environmental Commission maintains an Internet site at <http://www.state.nv.us/ndep/admin/envir01.htm>.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-4670, extension 3117, no later than 5:00 p.m. **August 17, 2000.**

# NEVADA STATE ENVIRONMENTAL COMMISSION

## NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **10:00 a.m. on Tuesday, August 22, 2000**, at the **at the Nevada Commission on Tourism, Commission Chamber, 2nd Floor, 401 N. Carson Street, Carson City, Nevada (The Laxalt Building is located immediately south of the Carson Nugget and two blocks north of the Capitol Building).**

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 2001-01 (LCB R-120-00)** is a permanent amendment to NAC 519A.235, the mining regulation and reclamation rules. The amendment establishes a trust fund for emergency reclamation activities with fees to be collected in the years 2000 and 2002.

The public would be better protected from possible financial impacts due to unsecured closure of mining operations and emergency fluid management obligations. The public is not adversely affected in the immediate or long-term. Mine operators with process fluid stabilization needs may be required to post additional surety. Fees are based upon the total reclamation liability, with surety for process fluid stabilization required through mine closure. Fees for the readiness fund would be collected for only three years and the fund is to be replenished by surety money collected. No additional costs are expected for collection of the fees. The Bureau of Land Management and the USDA Forest Service requires surety for process fluid stabilization on public lands, but not on private lands.

Through joint bonding, done by a Memorandum of Understanding, duplication is avoided. There is no equivalent federal regulation for the fund. The regulation is no more stringent than federal requirements. The total amount collected for the readiness fund is anticipated to be approximately \$1,000,000 over three years. The fund is to be used as a bridge to support the management of mining process fluids during the surety revocation process, with the fund being replenished by surety money collected.

**2. Petition 2000-11 (LCB R-118-00)** is a permanent amendment to NAC 445B.010 to 445B.395 the air pollution control regulations. The petition proposes to amend NAC 445B.264, monitoring system: recordation of data, by removing language regarding six-minute opacity averages being used in calculations. NAC 445B.354, the maximum opacity of emissions is amended to incorporate Title 40 CFR Part 60, Appendix A, Reference Method 9 and that emission units being subject to Title 40 CFR Part 60, subparts D or Da are limited to 27 percent opacity. The existing language requires the use of an aggregate reading to determine opacity, for which no standard reference method exists.

There will be no adverse economic impact upon the regulated business community. The amendments will reduce the time required to collect measurements from one-hour to six minutes per emission unit, resulting in an economic benefit to regulated sources. The exact economic benefit will vary depending upon the number of units to be evaluated by each regulated facility. The proposed amendments will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the amendments overlap or duplicate. The amendment incorporates Title 40 CFR Part 60.42(a)(2) and Part 60.42(a)(b) which is administered by the federal Environmental Protection Agency. This regulation is no more restrictive or stringent than the federal requirements. The amendment does not provide a new fee and it does not amend existing fees.

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Pursuant to NRS 233B.0603 the provisions of NRS 233B.064 (2) are hereby provided:

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption."

Persons wishing to comment on 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 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notice have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition, the State Environmental Commission maintains an Internet site. It is at <http://www.state.nv.us/ndep/admin/envir01.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on **August 17, 2000**.

This public notice has been posted at the following locations: Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library in Reno, and Division of Environmental Protection, Department of Museums, Library and Arts and the Commission on Tourism in Carson City.

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**STATE ENVIRONMENTAL COMMISSION**  
**Meeting of August 22, 2000**  
Commission on Tourism  
Carson City, Nevada  
**Adopted Minutes**

**MEMBERS PRESENT:**

Melvin Close, Chairman  
Alan Coyner, Vice Chairman  
Terry Crawford  
Demar Dahl  
Mark Doppe  
Fred Gifford  
Paul Iverson  
Joseph L. Johnson  
Robert Jones  
Hugh Ricci  
Roy Trenoweth

**MEMBERS ABSENT:**

None

**Staff Present:**

Deputy Attorney General Charles Meredith - Deputy Attorney General  
David Cowperthwaite - Executive Secretary  
Sheri Gregory - Recording Secretary

Chairman Close called the meeting to order. He noted that the meeting had been properly noticed in compliance with the Nevada Open Meeting Law.

**Agenda Item I. Approval of minutes from the June 20, 2000 meeting.**

**Commissioner Crawford moved for acceptance of the minutes.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

**Agenda Item II. Introduction of newly appointed Commissioner Hugh Ricci**

**Chairman Close introduced and welcomed Mr. Ricci to the Commission.**

**Agenda Item III. Selection of Vice Chairman for the Commission**

**Commissioner Trenoweth moved to select Alan Coyner as the Vice Chairman.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item IV. B. Petition 2001-01**

**(Petition 2001-01 (LCB R-120-00)** is a permanent amendment to NAC 519A.235, the mining regulation and reclamation rules. The amendment establishes a trust fund for emergency reclamation activities with fees to be collected in the years 2000 and 2002.)

Commissioner Dahl interrupted the meeting to address concerns he had regarding the delivery of his Commission packet. He stated I don't know how it happens with the rest of you, but this information I got just yesterday afternoon delivered to my office and picked it up myself this morning. So, I feel a little bit handicapped when it comes to being able to have myself up to speed on the things that are being discussed and I would just like to talk about the process of how the information comes in and if that's normal and if it is what can we do to change it so that, I would like to get this earlier is what I'm saying.

Chairman Close explained normally we do get them well in advance of the meetings.

David Cowperthwaite explained the Commission packets are usually sent out two weeks prior to a meeting. In this case the agenda was in flux so in order for the Commission to have a complete package, it was sent out a week prior. In your situation, we sent it out Express twice through our State Mail Room. We sent it out the first time on Tuesday. They sent it back. We said, "What's going on?" They said, "It's our mistake." We sent it out again through that mail service, they sent it back again. The third time around we finally sent it to you via Federal Express. So I want you to know that every attempt was made to do an express delivery to you to get you the package at least a week in advance.

Commissioner Dahl stated okay. Thank you Mr. Chairman. Thank you.

Chairman Close continued with Item 2001-01.

David Gaskin introduced himself as being the chief for the Bureau of Mining Regulation and Reclamation with NDEP. He stated decreased metals prices over the past several years have lead to a number of mine bankruptcies and abandonments and this has caused us problems since many mines, especially heap leach operations, require constant fluid management to prevent overflow of process solutions in the process ponds. Without active fluid management these ponds may overflow in a matter of days or even hours resulting in a release of cyanide solution in the case of gold mines, or acid solution in the case of copper mines, and this is a primary concern to us when bankruptcy and/or abandonment threaten a mine site. Mine operators are required to post financial assurance. However, it may take as long as six months for the surety to be recovered and a contract implemented to get personnel on site to manage those fluids. This is due to the necessary administrative steps of surety forfeiture, procrastination of bonding companies, and the administrative steps required in the issuance of a government contract for services. Currently, management of fluids during this interim period between site abandonment and the time when we can get people on site is funded through either a negotiated agreement with the bonding company with a (inaudible) and reduction in the overall surety amount or with NDEP emergency funds such as the Environmental Mitigation Assessment and Remediation program or EMAR program.

Emergency funds are limited and have been seriously depleted by sites such as the Yerington mine which

was abandoned at the beginning of this year. In close cooperation with the mining industry we have developed a better solution to this problem. This proposed regulation in front of you today will require fees to establish a trust fund for interim fluid management at these sites. Only companies that have a mine which is required to have an industrial or artificial pond permit from the Division of Wildlife would be required to pay fees into this fund. The purpose of this condition is to exclude companies solely involved in an activity such as exploration, the mining of industrial minerals, or sites whose ponds are not toxic. Those operations are not likely to have interim fluid management concerns if they were abandoned. The Division of Wildlife would not have any role in the collection, management, or expenditure of these funds. Our goal is to establish a fund of \$1 million to be collected in three equal installments: on October 1, 2000, April 15, 2001, and April 15, 2002. The fee amounts are based upon each mining company's total reclamation surety for all of its projects in the state.

We can go through the revised proposed regulation that I believe you should have in front of you. It's LCB File No. R120-00 dated August 14, 2000. What this does is establish a part of NAC 519A whereby the fees will be collected on three dates that I mentioned. That's Parts 1, 2 and 3 are virtually identical with the exception of the different date. You can see in Part 1(a) it begins the fee schedule based on the total amount of surety. It says that the fee would be \$36,000 if the total amount of surety the operator is required to provide under the reclamation regulations is more than \$35 million, \$24,000 if it's between \$35 million and \$7 million, \$6,000 if it's between \$1 million and \$7 million, and \$1,000 if it's under \$1 million or equal to \$1 million. So that's the majority of this rather lengthy proposed regulation.

Part 4 outlines what the Division shall do with this. It says, "(a) Establish the trust fund for short-term fluid management," which is as I mentioned. "(b) Deposit money collected pursuant to this section in the trust fund. (c) Credit all interest earned on the money in the trust fund to the trust fund, and (d) Use the money in the trust fund only for the management of fluids at the site while the process for forfeiture of a surety pursuant to the reclamation regulations is pending, and (e) After the conclusion of the process for forfeiture of assurety reimburse the trust fund from that surety amount."

We're working diligently with industry right now to include a separate line item entry for interim fluid management in each surety for each mining operation. In this way the interim fluid management fund can be reimbursed without sacrificing other necessary reclamation activities.

Commissioner Jones asked I was just wondering how (inaudible) I appreciate (inaudible) \$1 million (inaudible) and you've done your best to spread that out on existing mines, but then you put the load on existing mines (inaudible) in this process or is does it just remain at \$1 million and (inaudible)?

Mr. Gaskin explained if they come in prior to the last date mentioned in these regulations, they will contribute to the fund. Otherwise, they would not under this existing arrangement. I anticipate that in the year 2003 and in all the time in between we will be reevaluating where we're at with this fund, how well it's doing, do we need to adjust it up or down, or continue payments or is everything fine? The fund is planned to be self-sustaining both on the interest and reimbursement from the bond. So, we anticipate this pool of money will be sufficient on its own without additional contributions after that.



Chairman Close asked does the interest that you earn continue to build up onto the million dollars so at a point in time you'll have more than a million dollars if that occurred?

Mr. Gaskin explained yes, but there may be sites where the bond is not available or is insufficient so that hopefully will counter-balance that to maintain \$1 million in the fund.

Chairman Close asked what will happen if the fund becomes less than \$1 million?

Mr. Gaskin answered then we'll reevaluate where we're at. We are anticipating that that is a good amount to last us quite a while even with adverse contingencies.

Chairman Close asked and so if an event happened and it takes you down to \$800,000 would you have another assessment to bring it back up to \$1 million?

Mr. Gaskin answered that's a possibility, but we don't have a definite plan for that. We'd have to reevaluate where we are at the time.

Commissioner Johnson asked would you have to come back to the Commission for that?

Mr. Gaskin answered yes we would, absolutely.

Commissioner Gifford stated one of the letters that we received in the packet addressed the idea of a contingency with the possibility that the money would cover the detoxifying of a leach pile. But in terms of having to run the leach pile for a while, is that a problem at all in your mind? Is a contingency fund needed and if so, would this fund approximate that kind of a concept?

Mr. Gaskin answered yes. Essentially this is a fund for a specific contingency whereby the site is abandoned and we need some time to revoke the bond surety amount for that site and get a contract in place. So, it's not a vague general contingency; it's a specific contingency and we are calculating that and implementing that using the actual costs that the mines take to recirculate their solutions. So it is a realistic contingency fund.

Commissioner Johnson asked so the fund could be used for operating as well as the actual fluid management part of it?

Mr. Gaskin answered it's solely for fluid management. We don't anticipate recovering any precious metals or doing any activities other than the interim fluid management with this money.

Commissioner Jones asked if a company pulls out its mine operations (inaudible) processing reclamation (inaudible)?

Mr. Gaskin answered no. They would utilize their own funds as they normally would and then when the

activities were completed they would recover the money from the bond that they had previously put up for that specific site. So that wouldn't affect this fund.

Commissioner Jones asked they're part of the deposit process in starting this fund up though, correct? And if they were to leave the business, and I'm not suggesting they have any problem, they went through our normal process of reclaiming it and closing down the project and they wanted to back out of business, would they then pull out their money that they put in?

Mr. Gaskin answered we would not anticipate that. It should be just a one-time, one-way contribution of funds without reimbursement.

Commissioner Johnson stated when the company has failed, you've spent the money in fluid management and then you go to the bond, I think there was concern that the amount of the bond for reclamation would be depleted by the amount that you have spent in the emergency situation. You commented that you're presently looking for a fluid management portion to the fund. What type of time schedule could we anticipate that you would implement that and would it be retroactive to those existing bonds?

Mr. Gaskin explained it is retroactive to existing bonds and we are working with industry diligently even as we speak to make sure that those line items are included. They are already included in several bonds we've worked on recently. But as it is now, that money may be depleted, but we negotiate with bonding companies to provide the funding for interim fluid management or we take it from our emergency fund. So there's several different ways it can go. But, in order to ensure that the reclamation bond is not depleted, we are making sure that each bond has a line item in it to cover that.

We do have several letters of support as exhibits that I would like to read into the record if there is time or if not I can summarize them for you.

Chairman Close stated Russ has a letter. He's going to be speaking also so I guess we'll let him do his own. If you'd like to read the others in that's not a problem.

Mr. Gaskin stated Exhibit No. 2 is a very brief letter from Barrick Goldstrike Mines. One paragraph, it's from Richie Haddock, Senior Counsel to the Nevada State Environmental Commission dated August 14, 2000.

“Dear Mr. Cowperthwaite: I'm writing on behalf of Barrick Goldstrike Mines, Inc. (Barrick) to provide comments regarding the above reference petition. Barrick commends the Nevada Division of Environmental Protection for the effort and thought that has gone into the promulgation of the proposed regulation. Barrick urges the State Environmental Commission to adopt the regulation as proposed without delay. Thank you for your consideration in this matter. Very truly yours, Richie Haddock.”

There is one comment letter which is included as Exhibit No. 3 from Great Basin Mine Watch. I would

summarize that as containing two main points, one of which was brought up by Mr. Johnson which is the concept that reclamation bonds might be decreased by the amount required to reimburse the fund and that might be a problem and I believe we've covered that by ensuring that line item costs are included in each bond to cover that. The second minor concern they have is that new mines coming in after 2003 would not take part in this fund and Mr. Jones brought that point up as well.

Chairman Close called for further questions and thanked Mr. Gaskin. He then called upon Russ Fields.

Russ Fields introduced himself as being president of the Nevada Mining Association. He stated I'm here representing our 400 or so member companies of our association some of which include the largest gold mining companies in the world to actually support this regulation. We've worked very closely with the Division. We commend them on their efforts to work with you to promulgate new rules that make Nevada's regulations and regulatory system for mining even stronger than it is currently. Behind me in the audience today are representatives from a couple of our member companies, Barrick Goldstrike, you heard the letter written by Richie Haddock in support. We also have represented in the audience Franco Nevada, which is one of our larger mining companies in the state and, indeed, one of the largest mining companies in the world, as of course Barrick is. The letter I submitted to the Commission, which I believe has been handed to you this morning simply states that we support this. We appreciate the opportunity to work with the Division to identify potential mechanisms to create this \$1 million fund. In the letter we've asked your consideration on actually, the Division's consideration about their use of the term "operator." In Nevada we have a number of mines that are joint venture operations where one company is the operator. The joint venture partner who is not the operator is not involved with the day-to-day activities of the mining property. We think that the regulation means what it says, that an operator is just that. He is the person or the company that's in charge of the day-to-day operations at that site. He may have several sites around the state and the reclamation liability at those several sites should be what's used to count how much they are into this pool for, not each and every individual site. I think that's what the regulation means and that's what we're asking for is a little clarification there. So perhaps when I'm done you can invite the Division back up to address that part of our letter. I think just clarification in the record is sufficient there.

The second point deals with Item (e) in the regulation, it would be Part 4(e) that's at the top of page 4 of the regulation. Our proposal there is one simply to clarify what you've already asked questions about that the pool is to be replenished, the trust fund is to be replenished once the bond is collected in an amount equal to the amount that was spent on process fluid management. That way the fund theoretically could stay at the level that it's at or even grow with the interest that's added. So we've proposed that (e) be read as follows: "After the conclusion of the process for forfeiture of a surety pursuant to NAC 519A.390 if the surety was forfeited reimburse the trust fund for" and this is new language that we propose, "for the monies expended from the trust fund with the surety which was forfeited" and we propose "for the amount of money used from the trust fund at the site for which the surety was forfeited."

In summation, we think this strengthens Nevada's regulatory program. We think it further reduces risk to the public and risk to the State of Nevada in the sense that there are monies available to handle process

fluids now before a bond can be collected. This is cash. It's ready. It's accessible. It can be used immediately on a Sunday night or whenever it needs to be used. And we think that, again, strengthens Nevada's program. We urge your adoption. Thank you very much. I'd be happy to answer any questions.

Commissioner Johnson stated I have a question on the operator, and I'm not at all in disagreement with your suggestion, but most of the operators are majority owners, but not necessarily. I can't think of a specific example, but a lot of joint ventures will be operated by a parent that's a major and there's the minor companies that are partners in the operation as far as ownership. I can see where you're going with this and I don't disagree. But is the wording that's presently in Section 5 adequate to address that problem or would a statement of our intent serve that purpose?

Mr. Fields answered I think a statement of your intent will serve the purpose. As a practical matter, the closest we come at a joint venture property is 50/50. There is no minority holder operating a mine. To my knowledge that's never happened in Nevada. A simple statement of intent of the Commission, based on the description that perhaps the Division will give you now of how they view that. It was actually that understanding that we have just made that was used to do the calculations to come up with the million dollars. And so the million dollars is predicated on our understanding and the Division's understanding that operators get to count all of their reclamation liability cumulatively rather than mine by mine.

Mr. Gaskin stated we are in full concurrence with the Nevada Mining Association's interpretation under the first part here regarding the organization of companies and the total amount of reclamation surety and we have talked over with them a number of specific examples. There aren't a whole lot of these cases that we'll have to deal with and we have already talked with industry as to how they will handle it and we are conceptually in complete agreement.

Commissioner Gifford stated a million dollars sounds like a lot of money. Can you give the Commission some idea of funds that have been expended in the past where you had these emergency procedures? How much is involved in terms of whatever experience you've had in rectifying some of these problem areas where sites have been abandoned due to whatever cause?

Mr. Gaskin explained the sites we've been dealing with up to this point have been in the medium to small range. The medium size mines usually start out a little above \$50,000 a month and then we're able to really optimize costs after that and bring that down. The power bill is a big thing that can really be optimized quickly. We work with the power company and the operators to really reduce any extraneous power expenditures on the site. The labor costs can really be streamlined. We're getting a lot better at really figuring out exactly what you need out there just for interim fluid management. You're not doing a lot of extraneous activities. You're not doing mining. You're not doing processing. There's a lot of expenses that we're not going to need to address. We'll really do the bare-bones minimum just to recirculate fluids in that heap, keep ponds from overflowing. But, generally between \$50,000 and \$100,000 per month is a pretty good number now that we've been working with for a decent size mine.

Commissioner Gifford asked how many sites are pending at this point in terms of needed action?

Mr. Gaskin answered we are currently providing interim fluid management at the Yerington site, at Paradise Peak, county line, Ketchup Flat. The Yerington mine is the only one now that requires constant fluid management. The others we've managed to put into just inspecting once a week and making sure the pond levels are okay. So once you get the fluids down to a nice normal level it's pretty easy. We have several other sites right now. We're working with the Alta Gold Companies. They had three sites with active fluid management. We're currently working with the bonding companies still having the bonding company pay for the fluid management at two of those sites and the Forest Service is helping us out with the others. So, there's a lot more resources coming to bear. The burden is not all on us right now. So there's only a couple of sites out there right now that are in immanent danger of needing some type of emergency interim fluid management.

Commissioner Jones asked are you satisfied with the language change that they suggested that just clarifies the reimbursement of the fund?

Mr. Gaskin answered yes. That's totally consistent with our understanding of that.

Commissioner Jones asked and that it doesn't represent a major change in this so we can do that?

Mr. Gaskin answered no it does not.

Chairman Close asked if anyone else wished to testify on this matter. Since there was no further testimony, he called the public portion of the meeting closed. He stated if there's no objection, we'll adopt Exhibits 1, 2 and 3 as part of our record. He called for a motion.

Commissioner Johnson stated Mr. Chairman I think that we need to adopt Item No. 6 also because that contains the language proposed in the change.

Chairman Close stated you're right, 1, 2, 3 and 6. Any comment? Is there a motion?

**Commissioner Coyner moved to approve Petition 2001-01 with the addition of language as indicated in a letter from Russell Fields in Exhibit 6.**

**Commissioner Gifford seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item No. IV.B. Petition 2000-11.**

**(Petition 2000-11 (LCB R-118-00))** is a permanent amendment to NAC 445B.010 to 445B.395 the air pollution control regulations. The petition proposes to amend NAC 445B.264, monitoring system: recordation of data, by removing language regarding six-minute opacity averages being used in

calculations. NAC 445B.354, the maximum opacity of emissions is amended to incorporate Title 40 CFR Part 60, Appendix A, Reference Method 9 and that emission units being subject to Title 40 CFR Part 60, subparts D or Da are limited to 27 percent opacity. The existing language requires the use of an aggregate reading to determine opacity, for which no standard reference method exists.)

Eric Taxer introduced himself as being the supervisor of the Compliance and Enforcement Branch for the Bureau of Air Quality. He stated today I'm proposing amendments to the opacity regulations for the Bureau of Air Quality. Just as a refresher, opacity is a measure of the density of smoke coming out of the stack. Zero percent opacity would be you could see clearly through the emissions coming out of the stack, 100 percent opacity the visual site is completely obstructed and you cannot see anything behind the emission coming out of the stack. What we're doing today with the amendments is that we're updating the method used to measure the opacity in order to provide consistency with the federal reference methods. We are providing two alternative methods in order to determine the opacity and to replace the existing method that is currently in our regulations. The first alternative to measure opacity is the federal reference method, Method 9 which is a six-minute visual observation. This is being adopted pursuant to the federal reference method and it also has an added benefit that it reduces the amount of time necessary to collect the data from one hour to six minutes. So it really helps out the regulated community that way.

The other alternative for measuring opacity is to allow data from continuous monitoring systems. Currently, certain facilities that are subject to new source performance standards and to the acid rain program already have these pieces of equipment in place, pursuant to those programs. Again, if we allow them this additional method to determine opacity in addition to the visual method. The second reason for adopting the amendment to the regulation is that it relaxes the 20 percent statewide opacity standard for certain units at certain utilities. It is just for the utility industry and what it does is it allows for one 27 percent six-minute exceedence in an hour's period. And this is being done because it's already allowed in the new source performance standards pursuant to the Federal Clean Air Act. So it's providing consistency between a state regulation and the federal regulation in that respect.

In Section 1 we're updating the data collection method for the facilities using the continuous opacity monitoring systems. This is where we're providing the consistency to the new source performance standards in the acid rain programs that those facilities are already subject to.

In Section 2, subsection 1 we are replacing the existing method for determining opacity with the federal reference method 9 visual determination and with the continuous opacity monitoring systems. Those two methods are both federally accepted methods. In Section 2, subsection 2 the amendments were proposed by the Legislative Counsel Bureau and they don't provide any substantive changes to the regulation. It's just purely an editing purpose on LCB's part.

In Section 2, subsection 3 the new language reflects where we are relaxing the 20 percent opacity standard for those utility sectors that are subject to the federal new source performance standards subparts D and Da.

We conducted a workshop on these amendments on August 17th. Seven people attended the workshop and no adverse comments were received. In addition, we did receive two written comments from Sierra Pacific Resources and from Southern California Edison. Both companies supported the amendments that we are proposing today and they also requested that we include some additional language with respect to the overall statewide opacity standard and with respect to continuous emission monitors that examine constituents other than opacity. NDEP is not proposing that we address those issues at that time because we felt that those comments were rather substantive in nature and were not properly noticed for the public review period. What we would like to do instead is continue working with Sierra Pacific Resources and Southern California Edison to more accurately define what those issues are and to come back to the Commission at a later date with any necessary regulatory amendments at that time.

Commissioner Gifford stated in reading, I can't remember which one it was, but I think it was the Sierra Pacific letter and perhaps both of them mentioned it, but the calculation for the 20 percent, it sounded like, based on the current methodologies and decimal point rounding a little updating on that 20 percent figure would certainly be warranted. One of the suggestions which I thought was fairly minor, but a good one, was the fact of just changing that to "greater" than 20 percent would be logical based on current technology in terms of measuring opacity. So, I would certainly encourage you to do that.

Chairman Close stated if there's no objection we'll admit Exhibits 4 and 5 as part of your testimony. He called for public testimony. Since there was none he called the public meeting to a close. He called for comments from the Commission.

Commissioner Coyner asked are we to include or take into account the language of the two letters that would advise us to change the wording from "equal to" to "in excess of 20 percent?" Do we want to remain with the "equal to?" Fred you spoke to this. Do you see it that way?

Commissioner Gifford answered Mr. Chairman I spoke to it but it was my understanding that would be addressed some time later. Is that correct? Did I understand you correctly?

Mr. Taxer answered that's correct. The reason why we're requesting that we bring that to a later date is that by changing the language from "greater than" to or from "greater than or equal to" to "greater than" it's a relaxation of the statewide standard. Granted it's only a 1 percent change, but it's still a relaxation and I felt that it would be appropriate to notice it as a relaxation of the standard so that we don't come into any conflict with any public comment rules.

Chairman Close called for a motion.

**Commissioner Doppe moved to adopt Petition 2000-11.**

**Commissioner Gifford seconded the motion.**

**The motion carried unanimously.**

**Chairman Close moved to Item No. VI. A request by Clark County Health District for an amendment of exemption pursuant to NAC 486A.135(3) for 30 days to October 31, 2000.**

Michael Naylor introduced himself as being an air quality consultant working for the chief health officer at the Clark County Health District. He stated we have a new director now, or at least a new acting director, and his name is Mike Sword. This is my first appearance wearing my new hat as a consultant to the chief health officer.

Last April the Health District asked for an exemption from the alternate fuel regulations for our pre-2000 vehicles for the time from last spring through October 1. The reason we are doing it is that for our pre-2000 vehicles we're using federal reformulated gasoline to meet the state's alternate fuels mandate. However, during the summer months the federally reformulated gasoline that was available to us contains MTBE and we are seeking to avoid the use of MTBE in the Health District vehicles. So, our proposal that we presented last April was that during the winter months we would use a federally reformulated gasoline that does not contain MTBE and we have used that in all of the Health District vehicles and not just the newer ones that require the alternate fuels. At the time we made the request we understood that we could be obtaining the non-MTBE reformulated gasoline from Maricopa County starting in early October and that will allow us to use that gasoline through the end of March. We're now understanding that the pipeline will not be getting it to Maricopa County until late October. So, our plans to use the non-MTBE reformulated gasoline in October are not working out. So, therefore, we are asking that we be allowed one more month to be exempt from the alternate fuels program and it would just be this October of the year 2000. Starting in November we'll have a reformulated gasoline that meets the federal alternate fuel requirements, plus it will have the maximum amount of ethanol allowed by law, which is 3.5 percent and it will also be meeting the Division of Agriculture's rule for 9 lbs. vapor pressure. We can arguably say that during the wintertime months we will have the cleanest gasoline in the United States, or at least no one will be any cleaner than our wintertime gasoline for addressing carbon monoxide.

We're still looking at some options for later in the year 2001, but we think possibly by the spring of 2001 Arizona will have a summertime gasoline that's reformulated and will not have MTBE. That's still in the works, we're not sure. But for right now our immediate problem is the month of October of 2000. We need one more month for our exemption. I would like to say that with our cleaner gasoline rules that are into effect, which is the re-vapor pressure, the ethanol in the gasoline, and being reformulated, Las Vegas valley has had its best season yet for carbon monoxide. We've had six quarters now since December of '98, we've had six quarters that have not had an exceedence of carbon monoxide. If the valley has clean data for the rest of this year, that will be the last two quarters, then the valley can request a designation as attainment. But we think that the cleaner fuels have definitely made a big difference is us approaching attainment.

Commissioner Dahl asked what happens if the gas line isn't finished on schedule?

Mr. Naylor answered the pipeline is there. If it's not on schedule, Maricopa County's plans for the same



gasoline go up in smoke, literally. So, I'm very confident that the petroleum refineries in southern California will be shipping the product to Maricopa County by that time. We're a minor user of that gasoline. You have two million residents in Maricopa County who will be using the same gasoline that we'll be using in the Las Vegas area.

Commissioner Dahl asked you're pretty sure one month is enough to . . .

Mr. Naylor answered if there's a problem for us, there's a problem for all of Maricopa County. So, I don't think that's going to happen.

Commissioner Jones asked wouldn't it be easier to grant them the exemption until such time as the fuel is available? That way if, this is reformulated fuel that I'm talking about, in case it's off by a couple of days or something he wouldn't have to come back for another exemption?

Mr. Naylor answered I guess that would be the safest recourse until the fuel is available, but we do expect it to be available by late October.

Comm. Crawford asked Mr. Naylor do I recall correctly that in our last discussion on this we ended on kind of the same note and in your previous hat you said this is all going to be done and we don't need any more time? So we had kind of the same discussion on this at the previous meeting?

Mr. Naylor answered I thought the previous meeting was more on whether this would be a multi-year exemption and we agreed to limit it just to the calendar year.

Comm. Crawford asked based on your recommendation that we don't need to go multi-year . . . ?

Mr. Naylor answered I don't think we need the multi-year. We are hopeful that by spring of 2000 we'll have a year-round supply of reformulated gasoline that does not include MTBE. But for the time, so I think I (inaudible) my remark that we might be back to you in the future. But for the time being that one season exemption should be adequate. I would like to add that for vehicles that we're buying later this fall, they will be on natural gas. We'll have about a dozen vehicles purchased through the State motor vehicle acquisition process that are on natural gas. So the vehicles we're referring to are pre-model year 2000.

Comm. Crawford stated I guess I don't hear any real affirmative yes this will be, we're hopeful of, this looks like it should be. We had this same discussion in April.

Mr. Naylor stated we're understanding Tosco, among others, expects to have a non-MTBE gasoline in Maricopa County by spring of 2000, but it's not 100 percent for sure at this point. But that's their marketing plan at this point.

Commissioner Gifford stated I'd appreciate some comments from the State in terms of the one-month

extension versus more of an open-ended extension as has been proposed.

Jim Smitherman introduced himself as being with the Bureau of Air Quality. He stated in late July the Health District supplied us calculations to compare strict adherence to the regulations as far as running approximately a third of their fleet all year on alternative fuel versus running the entire fleet for six months on the Maricopa County gasoline and then revise that to five months anticipating that they couldn't get the fuel in time and it still looks like a good trade to us. The numbers work out. Actually it looks like the break-even point would be somewhere between three and four months where we would be trading equal number of alternative fuel gallons burned in a year. So, I would be supportive of the request that Mr. Naylor is making and also of making some sort of an allowance for him until the fuel is available because I don't think that the amount of time that we'd be allowing is going to exceed that break-even point. Even at the break-even point I think it's more advantageous for them to be burning the Maricopa County gas during the winter time because that is when the carbon monoxide problem is most likely to manifest.

Commissioner Johnson stated actually the intent of the law that we're looking at here is in regulations is to encourage perhaps natural gas or ones that are not dependent upon a fuel that wasn't available and in essence by granting this waiver we've rewarded or kind of endorsed what I considered at the time of the hearing and why I voted and against the issuance to begin with is simply that I think that wasn't the intent and particularly for an agency that's responsible in the area to have purchased vehicles that were dependant upon a fuel that may or may not be available is problematic to me. I am not in favor of leaving an open-ended opportunity here because I think and I addressed that new vehicles will be natural gas fueled and I think this is where the intent was that agencies such as air quality agencies would live to the standards that we ask the rest of the State government to perform to. I would vote for the October 30th, but not an open-ended one because I wish to encourage natural gas vehicle purchases.

Chairman Close asked is there any objection if we grant an additional 15 or 30 days so that if something does happen in Maricopa County you will not have a particular problem?

Mr. Smitherman stated I have no objection.

Chairman Close called for questions from the public. Since there were none, he called the public hearing to a close. He called for comments by the Commissioners.

Commissioner Doppe stated I think it's important to point out that the Clark County Health District would be in compliance today. All they have to do is run out and buy that MTBE gasoline and I think to their credit they've come up with a way where they can comply with the intent of the law and avoid having to do that. So I personally am willing to grant whatever flexibility we can to: (a) comply with the alternate fuels intent and (b) avoid the use of MTBE. So I'm going to support what I hope will ultimately be a motion in favor of this.

Chairman Close called for further comments. There were none. He called for a motion.

**Commissioner Gifford moved to approve the exemption as stated in the letter by Mr. Naylor, that would be through October 31st.**

**Commissioner Johnson seconded the motion.**

**The motion carried.**

Chairman Close moved to **Item No. V. Settlement Agreements on Air Quality Violations.**

**A. Rees's Enterprises; Notice of Alleged Violation #1452**

Mr. Taxer asked to discuss the Granite issue first since they had quite a few representatives present who were prepared to speak to that issue.

Chairman Close moved to **Item No. V. Settlement Agreements on Air Quality Violations.**

**E. Granite Construction Company; Notice of Alleged Violations #1441, 1442 and 1443.**

Mr. Taxer reported Granite Construction is one of Nevada's larger excavating companies and contractors. They're in the process of providing excavating activities for the Carson City Costco site. The facility is located near the intersection of Highway 395 and Highway 50 in the south end of Carson City. An inspection was conducted on June 21st due to the observation of fugitive dust emissions from the facility. During the inspection fugitive dust emissions were officially documented and a subsequent file review indicated that a permit had not been issued for the site. This is a 16 acre site and permits are required, a surface area disturbance permit is required for any excavating activity greater than five acres. Subsequently, a stop order was issued that day until a permit could be issued. A permit was issued on June 23rd. We also had a discussion with Granite to determine what measures could be implemented to control the fugitive dust emissions from that site. On June 26 fugitive dust was again observed from Highway 50. An inspection was conducted and emissions were confirmed and a stop order was again issued until the controls could be implemented and operated effectively, which they were done that afternoon. Three violations were issued for this facility: 1441 for operating without a permit and NOAV 1442 and 1443 for the two fugitive dust violations that were observed on June 21st and June 26th. On August 2nd NDEP and Granite had a meeting to discuss long-term corrective action measures that could be implemented to avoid these problems in the future and this meeting was initiated by Granite Construction in order to be more proactive in their approach to complying with air quality regulations. At that meeting, Granite agreed to evaluate all of their permitted activities throughout Nevada and to recommend a procedure to NDEP that would ensure ongoing compliance with environmental regulations. Representatives from Granite Construction are here to discuss those procedures in more detail. NDEP has reviewed those procedures and that we feel quite comfortable that the procedures that they are going to outline to you will help immensely to increase their compliance throughout the state with the air quality regulations and they will also increase their compliance in other environmental areas as well.

With respect to the penalty for the operating without a permit, this represented the major deviation from the requirements, but yet it was a minor potential for harm in that operating without a permit is more of a

paper violation and not a violation associated with emissions. Using that, we used a base penalty of \$600 per day for the two days of operating without a permit. On top of that we added a 65 percent factor for their history of past noncompliance for a total penalty for that issue of \$1,980. For the fugitive dust violations they both represented a major potential, or a major deviation from the requirements and they both represented a moderate potential for harm in that they are close to Highway 395 and Highway 50 and they're also right next door to a trailer park. The base penalty was calculated for each of those violations in the amount of \$3,600. For the fugitive dust violation that was observed on June 21st we added a 70 percent adjustment factor to consider their history of past noncompliance and that penalty came out to \$6,120. For the fugitive dust violation that was observed on June 26th we added an adjustment factor of 75 percent for the history of past noncompliance and another factor of 25 percent which represented the fact that we had talked to them after the incident on the 21st and came to an agreement that they were going to implement controls on that site, but yet we still observed fugitive dust on the 26th. So that penalty amount came up to \$7,200. The total penalty that was negotiated for the three violations is \$15,400. Granite is here to discuss the procedures, or to outline the procedures that NDEP has agreed will help immensely in ensuring future compliance in the future.

Commissioner Jones stated for the record I would like to say that I know the folks at Granite Construction. I don't think in any way it will interfere with my involvement in this particular discussion, but I just wanted to disclose that.

Commissioner Iverson stated I think I'm repeating something I've said for many, many years sitting on this Commission, but I'm seeing something that concerns me and maybe there's not an answer. We have certain large companies in this state that are very important to this state and in developing infrastructure and highways and development areas and it appears there's four or five of these that seem to be in here all the time. And I'm not putting any fault on anyone as far as why they do it or why they don't do it. But it appears that the monetary penalties that are being placed on these companies it is really not the only way to get compliance and I think what you're doing here in sitting down with Granite or whoever and coming up with some long-time, long-term procedures is definitely the answer. I think from this Commission's side and from the Division of Environmental Protection, we have a regulatory role too in many of our programs and we try through monetary penalties to get compliance and in a lot of cases I think some of these companies just figure that they do all they can do and that's all they can do and that at the end of the year they just put in a figure in their budget that says, "All we can do, this is what we do. You can't disturb the ground in this country without some type of dust or some type of issue being presented."

I can drive up and down the highways and I see companies working, a tremendous amount of dust coming up and when I come to the Commission there will be two or three folks that have got the same problem that have been brought in and there's been a settlement negotiated. I think the answer, and maybe, and I don't know how to get there, maybe you guys do, you've been doing this a lot longer than I have is through these long-term procedures where you can really sit down and try to come up with a solution because I don't think monetarily you're charging them enough to really make a difference in their operations. I think there's a point where they come to you and say that's the best they can do. Maybe it's not a monetary penalty that they need. Maybe it's more of a sit down and come up with some policies

and procedures and on an annual basis, or every six months, review those policies and procedures. If there's a problem, rather than just hitting them with a fine, coming in and sitting down and looking at the procedures with their management. Maybe these companies need to go back to their main management and dedicate some real decision making personnel to these issues that can really make a difference rather than just hitting them with penalties.

I can just about guarantee you, after five years, that we can go ahead and approve a \$15,600 fine, or whatever it is, and before the year is over I would almost bet that we will be talking to these people again. I'm not so sure that we ever get the problem settled by just issuing fines. I think maybe we take the \$15,600, or what they should have been fined, and really dedicate more time to long-time protocol, long-time procedures and some review and monitoring. They'd probably be better off to take all of their money, do what the mining companies originally did, put it into the general fund so that you can hire a couple of staff and go around and work with these companies and come up with some real long-term procedures that work. I know DEP has the ability, and I've seen it just recently with our issue in Pahrump, where you can sit down with individuals and companies, some of which are extremely agitated, and work out an issue and resolve problems.

Mr. Taxer stated actually, one of the things that we are going to be doing is working with the Association of General Contractors to develop an environmental working group or a subgroup of that association and discuss these very issues with them and come up with some sort of an industry-wide strategy, if you will, on what can be done to more effectively control fugitive dust and other types of emission issues throughout the State of Nevada. So, hopefully, that effort will go a long way towards reducing my time up here in front of all of you.

Commissioner Doppe stated I could not agree more with Commissioner Iverson and I guess I can relay just a quick second of my background in this particular issue in southern Nevada where we are under the gun from the EPA. They do not have the same level of tolerance that the State Division is exhibiting with this thing and for a good reason because the federal law ultimately places a community in violation of the federal PM10 requirements. At that point Granite, or the next guy, everybody is on the sidelines because the community can no longer afford to operate without the federal funding that they forego by remaining in violation. So at some point I have seen the AGC and the industry get deadly serious about solving that problem, forget about the concept of fines because it's no longer an issue of that. It's an issue of fundamentally are we going to be in business as, and I'm now speaking as a construction industry person, are we going to be in business or not? And it's no longer a question of can I build in \$5,000 or \$10,000 into the project costs of this particular project to pay the fines. It's a question of am I going to be here next year to do business. My suggestion is long before the EPA gets here, or maybe they don't get to Carson City because Carson City doesn't run the risk of a PM10 non-attainment. But before they get to that point, in any case, we need to as a state I think say, "We can't allow them to get to that point." And it's not a question of fine on top of fine. Granite has been fined 16 times in the last 7 years. So, Commissioner Iverson is right. They're getting fined or warned 22 times total in the last 7 years. They're going to be here three times a year forever because apparently that's just the way it works. But that's not good enough and I don't think that the State should continue to sit on the sidelines and allow that to

happen. I think that we need to move a lot more strenuously because I'm here to tell you that there are people beyond our borders who will ultimately take an interest in this and they don't have any tolerance at all and that's my comment.

Mr. Biaggi stated Mr. Doppe and Mr. Iverson I agree with you 100 percent. Obviously, the fining and monetary and enforcement perspective is not working not only for Granite but more in an industry-wide basis. Mr. Taxer has eluded to some discussions that we've had both with AGC Associated General Contractors and with Granite Construction to get to the bottom of this and to bring these issues to the forefront to achieve compliance. I think that it would be appropriate at this time to hear from Granite Construction and from some of the fairly innovative and aggressive activities they have voluntarily undertaken in an attempt to address this very serious issue and then I think we can come back and revisit a final disposition of this particular fine.

Paul Gianoli introduced himself as being an employee with Granite Construction Company for 20 years, since they've been in Reno. He stated the last 15 years I've served as either the assistance branch manager or the manager. Recently, within the last month, I've stepped down from the manager's position and agreed to take on the task of managing Granite's materials business which would include the production of aggregates, asphalt and concrete. When I stepped into this new job one of the first issues that I solved was the issue that we just described here with Costco and a problem with your Commission and the NDEP. When I looked at that we went down with some of my staff members and met with Allen Biaggi and members of his staff to try to come up with a more innovative way to deal with these problems and a stronger commitment on the part of our company. Through discussions with Allen and his group, we've decided to hire a full-time environmental permitting individual. I don't know whether it will be an engineer or not. We're currently in the process of writing a job description for that individual. We have done this in the State of Utah.

Mrs. Mystere Sapia has joined me here. She handles this job for us in Utah. I'd like her to give you a brief description of her job and what she's been able to accomplish in the State of Utah. I think Mr. Iverson brought the whole thing to the position where it needs to be. This needs to be more of a partnering atmosphere and we need to work with your Commission and have a person that's a full-time liaison to deal with the issues that come up with the State of Nevada as well as Clark County and Washoe County. I think that's where our attempts are going to be. I have the horsepower now to make sure that this happens in our company and I'm here to tell you we're going to make it happen. We're going to raise the bar on what we do and we're going to make every attempt to have a person who is 100 percent dedicated to these issues and hopefully can stop us coming before you with these kinds of issues. It will be a challenge, but I'm here to tell you that I'm committed to that challenge. We are actively writing a job description for this person as we speak. I hope to have this person on board within 60 to no more than 90 days, depending on the number of applicants that we get and the screening process.

Mrs. Sapia stated about four and a half years ago Granite Construction acquired a really large construction and construction materials firm in Utah. About two and a half years ago the handling of permitting (inaudible) matters came to light. They hired me to come in and to assess their situation and

look at their existing and future permitting and compliance requirements. I come from a public planning background, planner for a city and planner for a county in California. Lots of time in doing code enforcement. Lots of time in working with people to come into compliance with our permits and as well as spending a little bit of time in court. So I was able to look at what was required, where we were going, and this includes air quality, this includes any kind of a local land use permit as well as water and begin to develop and implement a compliance program. I've been there for about two and a half years now. We've been very successful, much to my pleasure.

A team approach is really what it's all about. I believe that Nevada is going to consider the same approach. The team approach starts with my field people. They are my eyes and ears every single day for compliance. I handle monthly compliance record keeping as well as annual emission inventories for our state. But it's the folks on the site, it's my site supervisors, it's my loader operators, it's the haul truck people, it's the water truck people. We've gone through and assessed their training, what they needed to know, whether it was opacity certification, whether it was actually understanding every permit condition that they had to monitor. We also have managers in the office that are committed to this. This is part of our culture in Utah. Our environmental compliance is as important as our safety. The third component of this is our corporation. We have expertise and support out of our Watsonville corporate office and that helps with some of the larger federal issues.

The fourth leg of this has been the public agencies. Coming from a background of a public agency I have a lot of empathy for how much they're worked and how little they're paid as well as coming from a compliance background I can understand when they write permit conditions, who writes them and how do we comply with them? They are also on my team. I involve them in what I do. We sit down and go over draft conditions. How do I comply with this as well as provide them with some training? A lot of the people who work with me have not been in the industry so they're writing, for instance, boiler plate permit conditions. We know what the end result is. How do we get there? I can provide them with the training on how we can get there. So we work as a team. Eric also mentioned working with the AGC. I'm the environmental committee chairperson for the AGC in Utah. That's been a real boon for us. Not only do I have relationships with the people who do what I do in my industry, the other environmental compliance permitting people, but we also bring the public agencies in. We've had Air Quality 101 classes. We've had the division manager from air quality come in and talk to us about new rule making that they're going through. They use us as a sounding board so that they can get our support and our involvement and our understanding in the new rules and conditions that they work with. That's been a real boon for us. When we met with Allen Biaggi last week that was one of his requests is that he had some group like this to help work through these situations. We all know it's a lot easier to come to you when all of us are in support of a new rule. I know that I'll be working with Nevada to create this position as well as train this person and I'd like Nevada to speak to what their commitment is for Nevada.

Commissioner Iverson stated bravo for Utah. That's easy for me to say since I'm from Utah. I think your approach is excellent. I think it's an approach that we've been in need of for a long time. My comment about hiring some people at DEP I think can be satisfied by doing exactly what Utah has done and that's hiring an environmental specialist. I'm real pleased to hear your comments concerning your dedication to

this project and your dedication to solve this problem. I spent many years working with the minerals industry in this state and seeing how successful they've been in doing exactly what you've done and that's dedicating an individual to look at the environmental side, to look at training.

I really feel that in a lot of these sites where we have a lot of problems, training is a real problem. In talking to some of the folks that have been in this same position for the last five years, we've talked about training over and over again. I think that training is a big issue. We can be trained on how to run the equipment, but do we really understand why we need to keep certain things at a minimum and do we really understand the environmental issues. A lot of the guys out there running those plants are mechanics, they're technicians, they're drivers, they're equipment operators. They're not environmentalists who have to understand that you have to keep the dust down. I think as long as you as a manager here in this area, or I'd like to see it statewide, the committee function is good. We've all talked about it (inaudible). It's a big concern with our governor and that's the partner shipping between industry and government. I think as long as your environmental specialist doesn't become tied up with putting rock in the box it works as long as you can keep that person zeroed in on what that person is supposed to do and I think that's been the success of those people in the mining industries. An environmental person that's hired to do environmental work and permitting and land use planning is not involved in putting rock in the box. And you separate the two out and I think all of those people out there that you work with are rock in the box people. That's all they think about.

Mrs. Sapia stated my background is environmental. I'm considered the tree hugger in Utah and I wear that very proudly. The environment is my commitment. Granite just pays me to do my commitment. I'm real clear in attempting to help them work through their job description. What's this person's commitment? What's their support? In defense of my guys out in the field, they know better than I do what needs to happen for the environment. It's my job to give them the resources and I'm real clear about that. So I just want to make sure that Nevada realizes that they're here to give these guys resources. They know what to do.

Mr. Gianoli stated I'd just like to say that Mystere has complete authority to shut any one of these operations down in the State of Utah. If she finds noncompliance somewhere, I can assure you she'll have the person that we end up hiring here to do this job for us in Nevada will have that same authority. And we will do everything we possibly can to prevent coming before you again with any of these kinds of issues.

Chairman Close called for further comment from the public. Since there was none he called the public hearing to a close and asked if there was any discussion among the Commission.

Commissioner Dahl stated I have a question and I don't know who to address it to, and I just got this material, but if I'm reading this correctly the 70 percent and 75 percent that's added on to the fine is based on the compliance record and am I reading the compliance record correctly that in the year of 2000 there have only been three violations and that they were all on the same day for Granite? Is that correct?



Mr. Taxer answered those three violations that you're reading are the ones that are being heard at today's meeting and those are the only ones that we've received so far in the year 2000.

Commissioner Dahl asked how many construction sites on any given day does Granite Construction have in the State of Nevada would you guess?

Someone from the audience answered 50 or greater.

Commissioner Dahl asked 50 or greater? It seems to me that three violations in a year that happened on the same day when you have 50 or more sites on any given day where you're doing construction is not very much and am I correct that the add on to the fine of 70 and 75 percent is because of the number of violations and the frequency?

Mr. Taxer explained pursuant to the policy that we implement for everybody we look at their history of noncompliance within the previous five years. We count up all of the number of violations that they have received. So that's where you're getting the 70 and the 75 percent factor. You look at the number of violations, whether they were similar violations and whether there were violations within the previous year.

Commissioner Dahl stated I see a number of them here where it says "in compliance per inspection." Is that not a violation then? For instance, in '99 in Winnemucca?

Mr. Taxer answered correct and we include those inspections where they are operating in compliance pursuant to the Commission's request about a year or two ago for us to do that so that you have the full compliance history both when they are and are not in compliance.

Commissioner Dahl stated okay. Well, that's my comment. It just seems like not very much violations to me.

Commissioner Doppe stated let me see if I can look at it from a slightly different perspective. In that same five year period, throwing out the ones where there were clear inspections where they were in compliance, would it not also be fair to say that this was the 18th, the 19th, and the 20th violation in that same five year period?

Mr. Taxer answered correct.

Commissioner Iverson stated I would like to make a proposal. I have similar concerns that Mr. Demar Dahl has. I feel some sincerity in this company and what they are planning on doing and I think it's something that we've been looking for and I think as a regulatory body, whether it's this body, or any other body, that we regulate for compliance. We don't regulate to make money. We don't regulate to beat people over the head. The reason we regulate is to obtain compliance. That's the bottom line. We have different ways to get there. We can fine the heck out of people like EPA does. You're not going to

mess with them. They're going to fine you as much as they can and make your life miserable. Or you can do what you guys do and continue to try to work with people. You can also do what we do and not fine anybody hardly anything and hope for compliance. I would make a proposal rather than accepting \$15,400 that goes to wherever, I don't know where it goes, that we take \$15,400 leave it in Granite Construction, ask them to set up a special budget of \$15,400 so when their new environmental person comes in they can produce some kind of a document or a training document that would go out. Then that money would be dedicated to that rather than coming into wherever, this black hole it comes into. I don't think we need fines to run our programs. If we do, our fines all go to the counties. You know we don't get our money. So, I think that it would be nice just to say, "You're committed. We're committed. We want to fine you, but we're going to fine you in a way that will maybe help your environmental coordinator do something out there."

Mr. Biaggi stated just for clarification Mr. Iverson our fines for the air quality program go to the school district of the county that the violation occurred in. It does not go to the Division.

Commissioner Iverson stated I have a concern about that. The school districts come into the legislative budget. They prepare their budgets. They're approved, the legislature approves their budget. All these fines do is just add money to a budget that was already approved by the legislature. I think there's a lot better way to spend money than just adding it to school districts who have already been given an appropriation. You don't get additional appropriation. I don't get additional appropriation. I think there's a better way to spend money. If you're really looking for compliance, I think we could take this money and, I don't care if Eric watchdogs it and makes sure that \$15,400 is spent on environmental compliance and education and outreach for your people, I think there's a lot better way to spend your money.

Mr. Biaggi stated Mr. Iverson I think that there is a monetary fine here. There is a stigma attached to that fine. There is a record that is established with the establishment of this fine and that is applied to their long-term compliance history. With regard to these penalties going to the school district, that's an issue you'll have to take up with the Nevada legislature and not with me.

Commissioner Dahl stated Mr. Chairman I wanted to ask Mr. Iverson if he is going to make that a motion and if so I will second it.

Chairman Close stated before we do this I think we ought to think about the precedent we're starting here. You know we have people come before us every meeting and they have fines assessed against them. If we start a separate precedent now that we're giving the money back, so long as you do something good, then I feel that is not sending the right message to these people. It seems to me that the fine has been assessed. It has been assessed fairly according to the standards and the protocol that we've always used for fining people. The fine should stand. I hope that the Granite people go forward with what they have proposed to do and do it. If that's the case, then we should not have them back before us again for a long time and maybe never. That would be our goal. But to eliminate the fine because of their promise, which I think is good, I think sets a bad precedent for future situations that come before us.

Commissioner Iverson stated over the last couple of years we've been able as a Commission to look at these fines and make decisions on whether we, we haven't ever increased fines, but we have been in a position where we've eliminated fines completely from a settlement agreement or we've reduced fines significantly from the agreement. I think we do have the ability as the Commission to say, and I'm not so sure it's a precedent-setting thing, to say we don't agree with this fine therefore the fine will be zero or we would like to see a reduced fine at half-price, or whatever. I'm not so sure it is a precedent-setting type of a procedure. I know for a fact I've sat here and we've reduced fines. I think there's an opportunity, I'm not so sure it's a precedent and I'm looking at this as an opportunity. I also have the opportunity to come back on this Commission next time if Granite doesn't follow through with this and say, "bologna" and I'm going to fight like heck to make sure their fines are always paid at the maximum and we can do that for the next five years. But I think there is an opportunity if, in fact, Granite is serious about this, to provide some resources to what we think is important.

**Comm. Crawford stated I agree with the educational comments and I'm encouraged by Granite Construction's efforts to go forward here and I think once their program is implemented I doubt we'll ever see them again. I'm very encouraged by that. Irrespective of that, I think enforcement is also a form of education and with that if the Chair will allow, I would move that this Commission affirm the penalty of \$15,400 for Notice of Air Quality Violations 1441, 1442 and 1443.**

**Commissioner Johnson seconded the motion.**

**Chairman Close called for comments from the Commission.**

**Commissioner Jones stated I think we have a Commission that are trying to do two different things and I think they're both right. I think maybe there's a compromise area. Maybe we can't do it with this particular action, but I would like to see the Division look at something maybe just send out the message that we're serious about trying to get companies to comply the way it is rather than do it on each individual and have to make a decision whether Granite is and deserves the money back and Q & D does or doesn't. Maybe take a portion of each of the fines and have the State Division, in conjunction with AGC or whatever organization, put together an awards program or something on a yearly basis for those companies that comply and do a better job in enforcing environmental issues. We've got to send out some message some how if we want them to go this other direction.**

**Mr. Biaggi stated I would love to be able to do that, but State law does not allow us to function in that fashion. If we do assess a penalty, the penalty must go to the school district of the county that the violation occurred in. As much as I would like to siphon money off the top of that for an awards program, State law just doesn't allow that.**

**Commissioner Johnson stated the reason I seconded the motion is I'm fully in favor of the fine. I wish to applaud Granite for their program. Encourage them to continue. I think that's exactly where we need to go. Encourage the Division to promote this type of operation and encourage the**

liaison with the general contractors and I think that would better be addressed separately from the fine issue as a intent of this Commission to support that activity and that would come after the vote on this particular adoption of the fine.

Commissioner Iverson asked what do we gain by the fine? We gain a commitment and a \$15,400 check that goes to Carson City School District. We have absolutely no control where that money goes. That money just goes back to the coffer. Can we make a motion to drop this fine down to zero? I know we can't ask Granite to do anything, but can we drop it down to zero with the hope that Granite will put the money towards what the money needs to be put to and not putting more rock in the box?

Charles Meredith, DAG answered I don't believe that we can force them to direct that money. Staff is required to enforce the law as written and to enforce the regulations that this Commission has adopted. Therefore, their hands are tied with what they can do with in terms of enforcement on this particular issue. I should reiterate that this is a settlement offer. The parties have negotiated arms-length to prevent the staff from actually bringing a full enforcement action where the fines will be the maximum that they will be asking for. I think that's an important note to consider, that the parties have agreed at arms-length to this amount in lieu of litigation. I should also comment that the Chair has also noted that the precedent value of eliminating the enforcement stick which staff uses over operators in this kind of an industry. If you remove that stick, then the ultimate goal of enforcement and getting the attainment down and the pollution from air quality is threatened.

Commissioner Dahl stated (inaudible) I'm sorry. When we meet next time we can see how they have been able to do. But I think no matter how hard they try they're still going to have some violations. I don't think you can have a company that big with that many projects going at the same time and not, I mean it's not realistic to think they're not going to have a few violations and that's why when I look at the compliance record it just doesn't look that drastic to me.

Charles Meredith, DAG stated I would just have to say that this Board and staff cannot force them to do that by law.

Commissioner Dahl stated I understand that. It was just a gentlemen's agreement I'm talking about.

Chairman Close stated I anticipate that Granite will do exactly what it said it's going to do. I don't think they're going to come in here and bring three people and then not comply with their promises. I think they will do what they're saying they're going to do. That does not, though, alleviate the fine that has been imposed and negotiated between the parties. I think that should be imposed. I think one of the things we should be thinking about is when another of these large companies that Mark was talking about comes back before us again we can use this as an example of what we anticipate these large companies to do and they are to meet the same standards that Granite has agreed to meet. I think that would be helpful to the staff to let anybody know that's

coming back before us with a repeated violation that this is what Granite has agreed to do and that we would look for them to do similar things so that we can have a better enforcement situation. But on the other hand, we have a fine that's been negotiated. It's been agreed to. It seems unwise to me to turn the money back to Granite. I don't think they expect it back. I believe they will comply because that's what they said they will do.

Commissioner Coyner stated it's my recollection this Commission has accepted a settlement agreement from Nevada Power that included optional spending on the environment as part of the settlement agreement. So there is a precedent for a settlement agreement situation requiring certain spending. One of the options that the Division has on the outgo in the future is to require components of education within the settlement agreement as well as monetary fines. Am I correct Allen?

Mr. Biaggi answered we do have a supplemental environmental project policy that can be applied to certain situations that take money that was going to be spent as a fine and put it towards environmental projects. One of the things that cannot be used for a supplemental environmental project is something that company would have had to do anyway in order to comply with the regulations. So I think that would substantially muddy the water in this situation. What does Granite have to do in order to comply anyway? Maybe what they're doing in Utah is what they need to do to comply in Nevada. Does that apply to a supplemental environmental project? I don't know. It would get fairly gray at that point and as you'll recall we've had a couple of supplemental environmental projects that this Commission has suggested that the Division go back and rework because they were in that gray area of something that the facility would have to done anyway. So, it's out there, but it's a tough one in this case.

Commissioner Doppe stated it's kind of funny that being a construction person up here I'm probably one of the ones who are most hard lined in this case, but that comes from a history of seeing companies like Granite who can comply, and forced to comply, who do comply over time when they get serious. It also comes from a very recent history of having to come up with some real, absolutely rubber-hits-the-road regulations to make the EPA happy. I believe that the fine that's been negotiated is for past action and that doesn't go away despite how Granite feels. I applaud them for coming up with something new to try to make sure that it doesn't happen again. There is a distinction. You're talking about history on the one hand and preventing stuff on the other. I would also say that I think it behooves Granite to do whatever it takes to make sure it doesn't happen again. There are companies that are not as large as Granite, but that have as many jobs ongoing at one time in southern Nevada that don't have anywhere near the history of noncompliance in southern Nevada that Granite has statewide. So it's not an undoable thing.

Granite's internal proposal to hire a coordinator to monitor these efforts is good. I would say that just by way of example, in southern Nevada that is now a requirement on every job site. A single person on every job site in excess of, I forget the acreage, 40 acres I think, 30 acres; certainly a Costco-size site. So this proposal is a good one. But I'm here to tell you that it can go a whole lot further than this. I'm hoping that what happens is that our Division takes a look at some of these regulations that are in the process of being adopted in southern Nevada. I do believe that they are among the toughest in the country. I think that those sorts of things worked into the permits where every operator has to have a certificate of training, where every job site has to have an on-site person, on-site to make sure that violation is not taking place to begin with. Those sorts of things can be avoided and they don't need to be put in place across Nevada because all of Nevada doesn't share the same problems as southern Nevada. Some variation on that theme is being done right now in southern Nevada and I suspect, I don't know if Granite has activities in southern Nevada or not, but I think they do. So they're going to have to live up to those things in southern Nevada as it is. I'm not suggesting that they take that and apply it across the state. But it's not something that they don't know how to do. I think that they can: (a) hold themselves to a high standard and (b) we can make sure that they do. But, nonetheless, I am going to support the motion to let the fine stand as it is and then hopefully have Granite move forward and do internally what they need to do to make sure that they are not back in front of us.

Commissioner Ricci stated coming from an agency that doesn't have fining authority it makes it easier if you do have the authority in place in which to fine. Now, granted, some groups do have possibly fines built into their schedule as to just doing business. However, I echo Mr. Doppe's comment about this being for past action. This fine is for past action, not what they're going to do in the future. This also could be a springboard for other companies to see that maybe if they do this they won't be before this Commission with a hefty fine like is being imposed today.

Comm. Crawford stated I've known Mr. Gianoli for a number of years and I can guarantee you that if he says they're going to do this, they're going to do this. I think they demonstrated here today that they do intend to be very responsible in dealing with environmental matters. I respect that we have the opportunity to reduce these penalties with the system we have and we have done that on rare occasions. I don't think that's the correct way to proceed at all when these have been negotiated between staff and the company. We would be bifurcating those negotiations and I don't think that's the right way to go. In the very near future I think we can hold up Granite Construction as the way for people to proceed. Without attempting to be rude, I would call for the question.

Chairman Close called for further comments.

Commissioner Iverson stated I'm sort of baffled and maybe I'm baffled because I don't understand. The fine is for a past activity. Fining this company gains us nothing but a slap on the hand. We're going to show an example to all of the other big companies that come in here by saying, "You come work with us and when you get a fine we'll slap you in the hand, but we expect

**you to work.” You talked about what you can use the money for and there’s gray areas. There’s opportunities outside of that. For example: a newsletter, a brochure about environmental conscienceness and what you’re doing, the commitment from the company produced through all of your employees that go out to every single site and every single contractor. That buys you a lot more than giving \$15,000 to Carson City School District for what we’re interested in and that’s environmental compliance. It’s not for bettering education. I have some concerns about where this is going. Sure we’ve got a \$15,000 fine. We slap you with a \$15,000 fine, you write out a check, you go on your way, you do your thing. We give you the opportunity to use \$15,000 any way you think is possible. You give us your word. Your word is worth something. It’s worth developing an opportunity to improve your environmental environment in your company.**

**Commissioner Dahl stated I have a problem with supplemental environmental projects, which can be painting picnic tables at somebody’s wish list of something they would like to see happen some place and they call it an environmental project. They might think it’s a good project and I might think it’s a bad project. But somebody’s fine is being mitigated and used for that and I think it’s a lot better idea to leave the money with the company and let them work on the problem that they have that caused the violation and I’m going to vote against the motion.**

**Chairman Close called for the vote.**

**The motion carried.**

**Chairman Close moved to Agenda Item No. V. Settlement Agreements on Air Quality Violations. A. Rees’s Enterprises; Notice of Alleged Violation #1452.**

Mr. Taxer reported Rees’s Enterprises is a company that operates several portable crushing and screening operations throughout Nevada. On June 26 an inspection was conducted at their Battle Mountain facility. The inspection was conducted because of the observation of particulate matter from the highway. During the inspection opacity was measured coming out of their stack at the primary screen in the amount of 20 percent. The permitted opacity for that unit is 10 percent. An enforcement conference was conducted and during that time it was determined that the primary screen had inadequate controls to handle the extremely dry material beneath the overburden layer from which they were excavating. It was concurred that we would go ahead and issue a Notice of Alleged Violation for exceeding their permitted limit for opacity. In addition, they agreed to corrective action in that they would install additional water sprays to pre-water the dry material. With respect to penalty, the violation represented a major deviation from the regulations and it represented a minor potential for harm in that it was a low amount of release. The toxicity of the particulate matter was low and there was negligible environmental and public health risk due to those low emissions. Using the matrix that we have this came out to an \$800 base penalty for the one day of violation and we added a 40 percent factor for Rees’s past history of noncompliance for a total negotiated penalty in the amount of \$1,120 and we recommend ratification of the negotiated settlement.

Chairman Close called for comments from the public. Since there were none, he called the public

meeting to a close and called for a motion.

**Commissioner Doppe moved to adopt the settlement on Notice of Alleged Violation 1452.**

**Comm. Trenoweth seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item No. V. Settlement Agreements on Air Quality Violations.**

**A. Wulfenstein Construction Company; Notice of Alleged Violation #1447.**

**He then recused himself and turned this portion of the hearing over to Vice Chairman Alan Coyner.**

Mr. Taxer reported this is a company that operates a gravel and crushing screen plant and asphalt batch plant on the south end of Pahrump, Nevada. An inspection was conducted on May 5th because a plume was observed from the highway. Opacity was measured from their gravel screen operation in the amount of 57 percent and they have a 20 percent opacity limit from that emission unit. During the enforcement conference that was conducted, the facility acknowledged that they were exceeding the opacity limit. It was also noted that the facility was shut down immediately and had not operated for a long time at all at that high level of opacity. For corrective action they agreed to totally redesign their facility which is well above and beyond what we would normally require and they also agreed to install a new dust enclosure system with appropriate sprays which is something that we would typically require. For a penalty this represented a major deviation from the regs. and it also represents a minor potential for harm. Although the emissions were large, they did not occur for a very long period of time so we consider that to be on the minor end of the scale. There were also no nearby residences which would lead to a low public health risk from the emissions. With respect to their past history of noncompliance, they did receive a violation in the past that we would typically include as an adjustment factor in the penalty amount. However, because of their extensive efforts to totally redesign their facility, we decided not to include that adjustment factor and we left the penalty at the base amount of \$1,000 and we do recommend ratification of that negotiated amount.

Vice Chairman Coyner called for questions from the Commission.

Commissioner Johnson stated they exceeded 20 percent opacity; preceding you had a 10 percent. Is there consistency in the permitted, or is this the size or type of crushing plant? I mean they're similar plants and one's 10 percent and one's 20 percent.

Mr. Taxer explained the previous facility, Rees's Enterprises, is subject to a new source performance standard, which is where the 10 percent comes from. Wulfenstein Construction, on that particular unit, is not subject to a new source performance standard so they fall back to the State general opacity rule of 20 percent.

Commissioner Iverson stated I guess I have to go back to my original thoughts. You made the comment



that sort of made my ears perk up a little bit. You indicated that once they had found out the problem and once you sat down with them and issued them a violation, they completely went in and redesigned their programming and I think the words you used is “even beyond what you would have required?” I think that’s real important, even beyond what you required. These guys went way beyond what the law even required or what you did because they got a violation. But yet we turn around and fine them \$1,000. You know that the redesigning of this equipment cost much more than \$1,000. I’m real uncomfortable with where this fine issue thing is going. Why we’re fining when we’re reaching compliance. Is there a possibility for this Commission, under the Chairman, to designate a subcommittee so I don’t have to keep bringing this up? This really bothers me. We could sit down with your staff and take a look at these issues. I understand you have certain laws and certain fines and you have a committee, but when you’re getting compliance and you’re getting people who go beyond what you expect, I don’t understand why you slap them on the hand. I think we ought to be giving them \$1,000.

Vice Chairman Coyner stated Eric that’s probably not your question to answer. I’m sure we can take this up under other sections of the meeting beyond the settlement agreements. But, Allen if you’d like to comment.

Mr. Biaggi stated well Mr. Iverson hopefully you were being facetious about us paying them the \$1,000. That’s not in my budget either. I think you have to understand where environmental programs are and the teeth that are in the environmental programs. You certainly know the Commission’s direction. The teeth that we have in these programs is the ability to fine. I would question whether Wulfenstein Construction or Granite Construction or some of the other problems that we have, whether they’re in the air, water, or hazardous waste programs would be so willing to comply with these regulations and modify their facilities if the teeth in these programs were not there. Consequently, you know, that’s what we have. That’s the only thing that we have in order to achieve compliance. A \$1,000 penalty has brought these people to the table and compelled them to put on the systems that they have put on and oftentimes that’s the only thing that we have. So, that’s the reason why we negotiate these penalties. You have to remember this is not the Division coming forward and saying, “Here’s what we’re going to fine.” This has been negotiated with these companies in good faith and at arms length. They’re agreeing that in order to achieve compliance with air quality and in response to their past indiscretions, they’re putting those pollution control equipment on and that they’re willing to pay these fines that they have negotiated in good faith with the agency.

Commissioner Iverson stated you and I have a philosophical difference. I don’t believe in the year 2000 that industries will only comply with fines. I think a lot of times these industries have, in fact, complied because you have made them aware of a problem they had. I do think fines work. I know for a fact that we have reduced fines for a small mining company in Amargosa to zero and they’ve never been back here. So, how do we figure that? You know we went from \$3,000 to zero and we’ve never seen them again. You made them aware of a situation. You’re making Wulfenstein aware of a situation. He completely redesigned his thing. The fine gives you \$1,000. I’m not so sure all industry only lives on fines. I think they’re industry people out there who appreciate being notified of a situation and a problem and they fix it without a fine. And sure they’re going to come in here. What would you do if your initial

fine may have been \$2,000 or \$3,000? I'm going to walk in and say, "I'm going to negotiate it down to the best I can." I've got a real problem with the whole fine issue. We're at a point where we can take opportunities with some of these companies. I agree too, if a company doesn't do it and they don't take opportunities, you have the ability just as much as EPA. You can be one tough son-of-a-gun if you want to.

Mr. Biaggi stated I appreciate that Mr. Iverson, but I'm hearing two different things here from you. On one hand with Granite Construction, who has a long history of noncompliance, I'm hearing fines don't work. You just said earlier that the fines didn't seem to be working. I'm getting a very mixed message here. The bottom line is that we have had a history of working with companies for years. If you go through many of these evaluations of past compliance, there's time and time again of us being out there, of perhaps not fining, not issuing a violation and attempting to work with these people. So, for you to say that the Division is automatically in the fine mode every time is a mis-statement. We don't do that. We work with these companies. It's these situations that we find that there is real problems that we have to go into that fining mode. I don't agree that not all companies in the year 2000 are responsible and are environmentally aware. There's many companies out there where we have consistent problems with and that's across-the-board in all of our programs. Yet we try and work with them and we try and fine when we absolutely have to in order to achieve compliance. Our goal is achieving compliance as well. We don't like fining people. We want to have compliance with air quality, have these people be good neighbors, and not cause problems.

Vice Chairman Coyner thanked Allen and Paul for bringing it to the Commission's attention. He reiterated that the discussion probably goes outside of the realm of the settlement agreements, but are brought to light by the settlement agreements.

**Comm. Crawford moved to ratify NOAV 1447 for \$1,000 fine.**

**Commissioner Johnson seconded the motion.**

**Vice Chairman Coyner stated I appreciate your motion and second, but we haven't had public input yet on the settlement. He then called for public comment. Since there was none he declared the public comment period closed and called for the motion.**

**Comm. Crawford reaffirmed the motion.**

**Commissioner Johnson reaffirmed the second.**

**Commissioner Coyner called for the vote.**

**Commissioner Dahl asked what about a discussion among all of us?**

**Commissioner Coyner stated Commissioner Dahl is correct. I did not ask for a discussion.**

**Commissioner Dahl asked are we in a real big hurry today? I would like to spend enough time that I feel comfortable about what I'm talking about. I just got this this morning. I just rushed through it. I haven't had the opportunity to talk to people that I would like to talk to in industry who are affected by this and I don't know their issue. If we were talking about the livestock industry, I would be prepared right now without talking to other people. I suppose to comment and comment intelligently I would hope on these issues, but I would like to ask a question if I may. It is written here that WCC installed additional controls above and beyond those required by the permit. Do you believe that in light of their past history they would have done that without being fined?**

**Mr. Taxer answered I really can't speak to that issue because they don't have that much of a past history. I have met with them in the past and they do seem willing to work with us when we have an issue. I do find it curious, though, that they were emitting a 50 percent opacity plume from their unit and they did not shut that off until after we came on site and told them to shut it down. Commissioner Dahl asked did they know that they were in violation?**

**Mr. Taxer answered yes. Fifty-seven percent is a very high emission rate. Twenty percent is something that you could just barely see. Fifty-seven percent is akin to like seeing the diesel belching out of a diesel truck. You can barely see half of what is behind that plume.**

**Vice Chairman Coyner called for further discussion from the Commission. Since there was none he called for the vote.**

**The motion carried unanimously. Chairman Close abstained from the discussion and the vote.**

Vice Chairman Coyner returned control of the meeting to Chairman Close.

**Chairman Close moved to Agenda Item No. V. Settlement Agreements on Air Quality Violations. C. Sierra Nevada Feeds; Notice of Alleged Violation #1439.**

Mr. Taxer reported this is a company located in Lovelock, Nevada. They produce supplemental alfalfa feed pellets for the agricultural industry. An inspection was conducted on May 25 in order to follow-up on a complaint that was received prior to that date. During the inspection, opacity was observed from the air classifier in the amount of 76 percent and their permit limit is 20 percent from that emission unit. An enforcement conference was conducted and it was discussed at that time and determined that the emission was due to a faulty rubber seal on the unit. That seal has since been replaced and the classifier has operated back in compliance since that date. We also noted that they had received a prior warning in February of 2000 for a slight excess opacity. They were given a verbal warning at that time because the opacity was slight. In addition to that, it wasn't discussed at the meeting, but apparently there was another observation that was made in December of 1999 and it was noted that emissions were blowing across Interstate 80 from that unit and they were asked to control that emission and they voluntarily shut the unit down at that time. But during the enforcement conference it was determined that the Notice of Alleged Violation would be issued. For penalty, this was obviously a major deviation from the

regulations and it represented a moderate potential for harm because of the large volume of the release the amount of material that was blowing across Interstate 80, in fact that was on Interstate 80 and causing a public health impact that way. However, the material itself was of negligible toxicity so that made it only a moderate potential for harm. A base penalty in the amount of \$3,750 was determined and that was increased by a factor of 25 percent since they did receive a prior warning to make sure that they pay attention to what their opacity from that emission unit is and they failed to do so. The total negotiated penalty came out to \$5,000 and we are recommending ratification of that negotiated amount.

Commissioner Dahl asked was the penalty that you asked for to start with \$5,000 or was it higher than that?

Mr. Taxer answered the penalty started out at \$3,250 and adjusted to the \$5,000 and that was what I offered initially and that's what they accepted. The total maximum amount could be up to \$10,000.

Commissioner Dahl asked can you explain to me where you say with an additional 25 percent for degree of cooperation and I see this in other places. What do you mean by degree of cooperation?

Mr. Taxer explained that is something that comes out of our penalty policy that the bureau uses. What I mean by that is the company has prior knowledge that they should be complying with the regulation, we have given them a warning perhaps, as we have done in this case to tell them that and to make them fully aware that they need to comply with this regulation, yet they still go out and operate in the manner that does not comply with that regulation.

Commissioner Dahl asked you're not talking about the negotiation process?

Mr. Taxer answered no, not at all. It's reflective of the actual incident itself and how the company responded to that incident, not their attitude during the negotiations.

Commissioner Dahl asked and you have some system to determine what the degree of cooperation is? It's not just you personally deciding now they are cooperative or they are not, but you have a . . .

Mr. Taxer answered correct. There's a series of adjustments that you can make. Some of the adjustments you can decrease the penalty amount if they are being proactive. If they self-report the emission and they take immediate steps to correct that situation without us having to go out there and discover it.

Commissioner Dahl asked when this seal was replaced then that solved the problem?

Mr. Taxer answered so far it has. We've had people going out on that interstate since then haven't observed any problems and we haven't received any further complaints.

Commissioner Dahl stated I used to have one of these plants in Elko and it's hard to stay in compliance with them. You know, your cyclone can be messed up, things can change just so fast on you and you can

be in violation and then you can correct whatever's wrong and be in compliance, I mean soon. And my question is I guess, has he been out of compliance more than just this? Was it just the seal that was out that was the problem, or is he habitually out of compliance?

Mr. Biaggi stated Mr. Dahl I'm the one who actually saw it on December 6th. I was going out to a public lands meeting and there was some discussion at the public lands meeting about this facility's emissions coming over I-80. I drove out about 7:00 in the morning, well it was later than that, it was probably 9:00 in the morning, went to the public lands meeting. We noticed it over the freeway when I came through town. We noticed it coming back. So obviously it had been spewing out in that fashion all day long. We went in and asked them to shut the unit down and to effectuate repairs at that time. A similar-type activity and a warning occurred again in February. So this sounds to me as though it was a long-term problem and something that was systematic to the facility itself. It appears, though, once they replaced the seal that's resolved the problem and we haven't had those complaints or those concerns about the facility since.

Chairman Close called for further questions from the Commission. There were none. He then called for testimony from the public. Since there was none he called the public hearing to a close and called for a motion.

**Comm. Crawforth moved to affirm Notice of Air Quality Violation 1439.**

**Commissioner Johnson seconded the motion.**

**Chairman Close called for comments from the Commission.**

**Commissioner Johnson stated I'd like to make a little comment and this is in support of the Division's action in assessing these fines. First, the maximum potential for one day is \$10,000 so almost all of these fines are relatively small against the potential. Second, the term "compliance" is used often, but it's really a threat to the public health that we're talking about. That's what the noncompliance is, other than not getting a permit. In Granite's position, certainly operating a facility of size without even jumping through the hoop of getting the permit is something that we should address and was addressed. I think we are sending a signal. I wish to address the issue and am fully supportive of the policies staff have written, implemented and have been operating under. I also echo the comments that you need to work with industry. But the ability to have the fines and that this Commission upholds those fines is, in my mind, imperative to your ability to negotiate. It's simply the way these violations are issued are normally always at public complaint and then the inspector going out. You know whatever the budget cycle is that you get to most permitted facilities on an annual or biannual or longer period says there are operations of many hundreds of days of many facilities where there's no inspection or record of what's happening and surely upon the complaint of the public we need to respond. I am supportive and wish that to be in the record.**

**Commissioner Gifford stated I'd like to second those comments. I've been serving on the**

**Commission now for roughly 11 years and I have been nothing but impressed over the years with the diligence that the Division has exerted in terms of working with a whole host of people in the State to meet environmental requirements as defined. I think that we have talked about the fine system at numerous tens of meetings and those comments, suggestions, and so forth from my perspective have been incorporated in the system as it currently stands. I am completely comfortable with the procedures that you're using. I endorse them a full 100 percent, or 110 percent if that's possible. Given the other comments that have been given this morning, I wanted to make sure that got into the record as well.**

**Commissioner Iverson stated I also agree to fine when you do exactly what you've asked here. You indicated in this situation that you had given them a verbal warning. Allen went in there and I think the individuals had the opportunity to get the situation corrected before a fine was issued. I know about your fining policy also and how you negotiate the costs. I've been through that with you and with Allen and, again, I agree that the fines are important in certain situations.**

**Commissioner Dahl stated I also agree and I appreciate the work that NDEP does. I appreciate the way they've worked with me at times when I've had to have some help and I do believe that there are times for fines.**

**Chairman Close called for further comments. Since there were none he called for the vote.**

**The motion carried unanimously.**

**Chairman Close moved to Agenda Item No. V. Settlement Agreements on Air Quality Violations. D. Q & D Construction; Notice of Alleged Violation #1444.**

Commissioner Jones stated Mr. Chairman I would like to recuse myself on this. One of the members of Q & D Construction sits on my Board of Directors.

Mr. Taxer reported Q & D is in the process of excavating a 15 acre site associated with the Trex facility expansion in Fernley. An inspection was conducted on June 26 due to the observation of fugitive dust from that site. A subsequent file review that was conducted back in the office noted that a permit had not been issued for that excavated activity. Again, permits are needed for any surface area disturbance greater than 5 acres. During the enforcement conference it was discussed that an application had been submitted for the expansion activity. However, on the application they indicated a surface area disturbance of only 5 acres or less, not the 15 acres that was being disturbed. It was also determined that Q & D is the responsible party for the application and the permitting process for this expansion project. The Notice of Alleged Violation was obviously issued and Q & D did obtain a permit for their continued operations. For penalty it was a significant deviation, a major deviation from the regulatory requirement to obtain a permit. It was a minor potential for harm in that there were no emissions associated with the activity or with not getting the permit. The issue of fugitive dust violations was handled separately under a minor violation. The base penalty was \$600 per day and they were operating in violation for eight days.

In addition, we added the 25 percent factor since they knowingly submitted an application that stated that their surface area disturbance was going to be less than 5 acres as opposed to the 15 acres that was actually excavated. So the total penalty was negotiated in the amount of \$6,000 and we are recommending ratification of this negotiated amount.

Chairman Close called for questions or comments from the Commission. There were none. He then called for comment from the public. Since there was none he called the public meeting to a close and called for a motion.

**Comm. Crawford moved to ratify Notice of Air Quality Violation No. 1444.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously. Commissioner Jones abstained from the discussion and the vote.**

Chairman Close moved to **Agenda Item No. VII. Status of Environmental Commission request for the State Board of Health to designate a representative with a medical background.**

Mr. Biaggi stated you'll recall that under the fundamental review process that Governor Guinn has established, the Division of Environmental Protection and the Nevada State Health Division were evaluated for consolidation. That audit began in January of this year and was finalized in May. One of the recommendations of that audit report was to have this body request the State Board of Health provide a representative who has a medical background. Mr. Jones is currently the Board of Health representative sitting upon this body. At your meeting on June 20th in Las Vegas you directed Mr. Cowperthwaite, the Executive Secretary, to send a letter to the State Board of Health outlining that recommendation. He did that immediately after the last meeting and the Board of Health will be meeting on September 8th to consider that request. The bottom line is you have fulfilled your mission under the audit agreement. We have fulfilled our responsibilities under the audit recommendations. There is no action for you to take today. This is just a status update for your information.

Commissioner Jones stated I'd just like to say I participated in the audit process from both sides, both from this Commission and from the State Board of Health and, like Allen, I don't know exactly where this particular idea came from that it be done this way. I think it's probably helpful for the Commission in the sense when they need that kind of specific medical background. I haven't seen it in the years that I've served, but it could serve you well. I just want to take this moment to thank you. I've served here now for a number of years and I've enjoyed it. I think the lively debate and the interesting interplay between the different divisions serves the State very, very well. I think the State Health Division and the medical background that they'll bring will bring a different side to this. We've talked it over at the State Board of Health and hopefully we'll have a good candidate for you at the next State Board of Health meeting. I want to thank you for the time served and I think you've got a terrific staff. I think you get terrific input and I think you do a great job. I thank you for the time.

Chairman Close stated we've enjoyed having you serve with us and we'll miss you. He then moved to **Agenda Item No. VIII. Request for Declaratory Order by David Langlieb.**

David Cowperthwaite stated essentially Mr. Langlieb wanted to have the Commission intervene into the de-construction of the Desert Inn. The Commission doesn't have any jurisdiction in this matter. I sent him a letter saying, "I'm sorry we don't have any jurisdiction thank you very much." So I just sort of discharged that rather than proceeding with preparing an advisory opinion. So I'm referring it back to you.

Chairman Close called for public comment. There was none. He then moved to **Agenda Item No. IX. Presentation by Nevada Department of Agriculture regarding their Fuels Management Program.**

Ed Hoganson, Administrator of the Division of Measurement Standards, Department of Agriculture, reported we are governed by 10 members who were appointed by the Governor. They formulate the policy and they adopt the regulations that we work under. We have six divisions with the Department and some of the major programs that these divisions handle is the registration of livestock brands and the inspection of livestock ownership, health permit and detection of diseases in livestock, and control of predatory animals. We also register pest control operators and license plant nurseries. We inspect agricultural products and certify seed crops. We monitor water wells for pesticide residues. We have programs for invasive species including the imported fire ants and the Africanized bees.

We have two bureaus under the Division of Measurement Standards. The Weights and Measures Bureau consists of inspectors who inspect and test all of the commercially-used devices within the State. These include about 18,000 meters that are used to dispense petroleum products from internal combustion engines. We test the devices for the correctness of the device and the computation on the money values. During these inspections we obtain samples of all of the fuels that are offered for sale at these locations. We probably receive 2,500 to 2,800 samples that we turn over to our petroleum labs for analysis. If they deem there is a violation in the petroleum standards, the weights and measures inspectors take the corrective action to see that the violations are corrected. The second part of the Division is the Bureau of Petroleum Technology and that is headed up by Dr. Geddes and I'm going to turn this part of it over to him and he can explain to you about what we do as far as fuels and its affect on air quality.

Dr. Jason Geddes, Senior Petroleum Chemist for the Department of Agriculture reported the three main goals of the fuels program is to protect air quality, protect consumers, and to promote a fair market place for the fuels. In doing so, the Nevada Legislature, through Section 590 of the NRS, established that the Board of Agriculture can adopt and enforce fuel standards. Those fuel standards can be found in 590 of the Nevada Administrative Code. Our director is sitting on your Commission here. The Measurement Standards Division has inspectors throughout the state. We have inspectors in Las Vegas, Reno, and Elko who go around to every gas station in the state and collect fuel from each grade of gasoline as well as diesel, heating oil, aviation gas, motor fuel, and so forth, or other motor fuels. They take those samples and when they're there they can do a few tests on site that's generally water and sediment, checking the gasoline there. Once they've checked the meters, they collect a sample. They bring that back into the



petroleum laboratories and we test it for the physical parameters.

In the year that we just finished up, Fiscal Year 2000, about 57 percent of our samples came out of Clark County, 17 percent in Washoe County, and the remainder 26 percent was throughout the rest of the state. We're testing gasoline and diesel - not very many of the other just because they're not out there. The aviation gasoline, jet fuel, heating oil isn't a large percentage. The majority of our samples are routine samples that we're checking on an annual basis. We do also check the complaint samples whenever there is a consumer complaint. A weights and measures inspector is dispensed to the site. They collect a sample, we test it, and then we let the person who launched the complaint know the results of the tests and if things are in compliance or not. If things are not in compliance, we do follow-up tests and we correct the problem immediately. The majority of the gas in the state is passing quite well and that isn't generally replaced immediately. Our basic rule is we go in there, we take the sample. If it fails, we sample it again. If it fails again, we put a lock order on their dispenser until they correct the problem. Generally that means they pump the tank and put in a fresh supply and then we test it again . . .

Chairman Close asked what makes the gasoline not pass?

Dr. Geddes answered there's a list of parameters that are in the Nevada Administrative Code and also through ASTM and they set certain criteria for the gasoline as far as its boiling point, its vapor pressure, flash point, the sulphur content. Based on the limits that have been set by the American Society of Testing Materials and those that we've adopted through that organization, or in addition to it in the NAC, those are the limits that we've set up and if it fails those limits, that's when it's failed. If it passes those, that's when it passed.

Chairman Close stated it seems like there's about four counties here that have a very bad record. Why do they have a bad record compared to other locations?

Dr. Geddes answered I really don't have an answer to that per se. The statistics are a little off in a couple of the counties. In Humboldt County there was actually a problem where our collection containers were contaminated and it wasn't something that we had found until we had gone out. Those all showed up as sediment water failures in the laboratory. We went back out to the sites and collected them again and found out there was actually a sampling problem that we had in our system. They're reported as failures, but they weren't necessarily out there. There are problems in Carson City. In a couple of these instances the numbers can get skewed when there's a small amount of samples out there. There were a few problems down in Carson City. The samples were failing diesel flash point and a lot of the problems that we had were transition into and out of when Diesel No. 1 can be used and when Diesel No. 2 can be used. Based on the volume of fuel that they were selling, they weren't running out in time. This past year we did about 2,400 samples. We're looking to do 3,000 samples next year. Every station and every device in the state will be analyzed and we'll be at a 100 percent analysis rate. On the gas testing we do vapor pressure, distillation, sulphur and octane and in the Clark County numbers we did an octane screening in Clark County this past year and we do an octane screening every year where we randomly go out there, we grab samples and we're just verifying that people are selling the octane grade in addition to the routine

testing. The fuel oil testing is done on diesel fuel oil, heating oil, jet fuel oil and we check it for flash point, distillation, sulphur, viscosity, see how it's going to work in the engine as well as seeing what the air pollution coming out of these engines are. A lot of these specifications have been set up so that they will meet air pollution specifications. As Michael Naylor mentioned earlier, their ethanol content is set up to keep carbon monoxide levels down. We do screen that for Clark County and Washoe County to make sure that the ethanol content is in there to keep the carbon monoxide levels down.

We are active in air quality activities throughout the state beyond what we're doing with the fuels and checking the fuels and their properties. We're active in the Las Vegas Clean Cities Coalition, the Truckee Meadows Clean Cities Coalition, the Air and Waste Management Association and the Fuel Standards Environmental Coordination Committee. This is a committee that was established a few years ago in which the Department of Agriculture chairs it up. We have a quarterly meeting with the county health departments, the State agencies, Division of Environmental Protection, Division of Motor Vehicles, the State Energy Office, as well as the regulated industry. We have representatives from all of them at this meeting. We talk about fuel standards, fuel quality standards, what's out there, what's coming up and work out regulations. We have, as I mentioned, the memorandums of understanding with Clark County Health Department and the Washoe County Health Department to work with them in their oxygenate fuels program to contain air pollution and minimize it.

We are looking forward to the new fuels that are out there. The majority of our work is done on standard gasoline and diesel. However, we are getting ready to go to workshop on regulations for the alternative fuels that have been approved by the Division of Environmental Protection. We are also looking at putting up standards for hydrogen, methanol, ethanol, bio-diesel, liquefied petroleum gas and natural gas. The standards have gone through the fuel standards environmental coordination committee twice and through working with industry and working with all of the other State agencies, we've come up with a set of proposals that we're ready to go to workshop for and get public comment on. But everybody is buying into what we have at this point and it looks like we're going to have standards that everybody will agree with. That will help promote better air quality and make sure that these alternative fuel vehicles are working appropriately and that the consumer is going to have a good quality product.

The last page there is just a list of contacts. It has Mr. Hoganson and myself and all of our phone numbers and E-mail addresses. If you have any questions on fuel, fuel parameters, fuel quality, we're happy to answer them at any time. If you hear of anybody who has a complaint or thinks they're getting bad gas or wrong octane, please give us a call and we'll get right out there and test it.

Commissioner Dahl asked you say you don't test aviation fuel?

Dr. Geddes answered I'm sorry, we do test aviation fuel. There just isn't that much of it in the state. We are testing it at all of the small airports and we're doing testing at the major airports once a year.

Commissioner Dahl asked how is their compliance so far?

Dr. Geddes answered very good. We've had one incident. In the Carson City statistics you can see there was an incident where there was a problem with the fuel and it was an issue where the fuel had been in the tank for such a long time that it wasn't quite meeting the requirements and then they brought in a new shipment of fuel. We tested it, it was good, and away they went.

Commissioner Johnson asked you get to a gas station once a year?

Dr. Geddes answered correct.

Commissioner Johnson stated we're starting to see MTBE in subsurface waters and, as far as my knowledge, you had never cited as being distributed in the state. Where does this problem arise?

Dr. Geddes answered generally, the MTBE problem arises when it is in the gasoline and there is a leaking underground storage tank.

Commissioner Johnson stated I appreciate that, but functionally you're not analyzing for MTBE?

Dr. Geddes explained we are analyzing for MTBE as a fuel component and as it's put in there as a fuel component. If you see the Clark County and Washoe County regulations where they've required oxygenated fuels, they've gone with the ethanol and avoided the MTBE. So, we generally don't see it in the fuel product except for at the small levels that they put it in as an octane enhancer. We do see it in there at de minimis levels.

Commissioner Johnson asked what is that? A percent or two or?

Dr. Geddes answered we're looking at .3 percent and it's all coming out less than that at present.

Chairman Close asked when someone makes a complaint to you and you go out and inspect it, how many times do you find a violation has occurred based upon that complaint? Is it rare? Is it just somebody who is dissatisfied or do they usually have some valid reason to be contacting you?

Dr. Geddes answered it's actually quite rare. It's generally someone who has a problem with their automobile not getting enough gas mileage or the gas mileage they expected or they are assuming a place is a seedy operation and giving them a lower grade gasoline. It's very rare that we actually confirm that is a problem out there. It's just generally someone has an idea that something is wrong and we check it out.

Commissioner Iverson stated one of the things Jason brings up and I think you bring up Mr. Chairman is it's really difficult in some of these Las Vegas stations with 80 pumps. They sell so much gasoline and we go out once a year collecting gasoline. Normally if we find a problem, you talk about weights and measures people bringing it in and two or three days before it actually gets tested and some of these gas stations the gas is already sold by the time we test it. I think the idea is every gas station needs to know that there is a test. We depend tremendously on the consumer. If there is a complaint, they have someone

to call and those calls do come to us and within just a few hours we can pick up that sample. That's how we've really solved a lot of these problems is we're able to get back there so quickly. But once a year, by the time you get a sample the gas is already gone in a lot of these big gas stations. There's only two fuel labs in the state; one is in Reno and one is in Carson City. That's a lot of gasoline to test. It does have a lot to do with the new internal combustion engines that are being produced. We all need to get up to speed on the alternative fuel engines. I appreciate Jason's efforts in working with DEP so that we can be on top of this as we comply more with our mandates as far as alternative fuels because it is the way of the future. We know it has to be.

Commissioner Jones stated it's probably naive because you're talking about most of these fuels as they deal with transportation and examining it and weights and measures as well. But it seems to me one of the biggest places for potential conflict in weights and measures in particular is in the area of propane delivery because a lot of that's done by a real trust system. I mean people go up and fill up a tank, particularly in a rural area, and leave a bill on your door and that's how many gallons you got and you pay the bill. Is there anybody looking at that at the propane industry on the weights and measures as far as delivery systems and that?

Mr. Hoganson explained part of the 18,000 devices that we use for our analysis for meter inspections include probably 600 meters that are used primarily for dispensing propane. That's the delivery trucks that deliver to the homes and also to the stationary sites at the gas stations. But there is a very, very small part of propane that's used for motor fuel. The majority of it is basically heating oils and barbeques.

Commissioner Johnson stated a number of years ago there was a civil case, or one in California, where the computer chip in the pumps where it's delivered are set so that above the five gallon maximum it would supply less. Do you have any protocol to test the pumps in this state for that type of thing?

Mr. Hoganson answered part of my function is I'm a director of the Western Weights and Measures Association. That is 11 states, including California. Our discussion on this subject came to light that some ingenious people were able to design computer chips to speed up and slow down the registers so that they were accurate at 5 and 10 gallons, but not at the intermediate gallons. The inspectors that were involved in California really went on to a (inaudible) that they had it so designed that they could put a chip under a weights and measures truck and then when he came in the yard it would automatically correct the position. But, when we were aware of this situation we devised a testing schedule to combat that pre-set chip. I won't divulge the whole schedule, but it was a practice that was put into effect. Any time we had a fuel quantity complaint, we would go into this special test mode and then at every station at a random base we would pick a pump or a fuel grade and we would try the system and if we found that we had a problem we would immediately do the whole station at odd amounts, not the usual 5 and 10. We have not detected anyone who is purposely presetting any of their dispensers.

Chairman Close called for further questions from the Commission. There were one. He called for public comment. Since there was none he moved to **Agenda Item No. X. Status of Division of Environmental Protection's Programs and Policies.**

Mr. Biaggi stated the biggest issue and task that we've had before us and many of the other folks on the Commission over the last couple of months is getting our biennial budgets in. I thought I'd give you a quick overview of how the budgets look for the Division of Environmental Protection. I need to make you aware, first of all, that the Division of Environmental Protection is supported almost entirely by federal funds and fees. Only less than ½ of 1 percent of our budget is general funds. That's \$327,000 that's been in the Bureau of Water Quality Planning and that amount has not increased over the last six or seven years. We have six budget accounts within the Division. Three of those budget accounts are actually going down in terms of the amount of dollars requested for the biennium. That specifically is our administrative budget which is looking at about a \$300,000 decrease over the biennium; a decrease in our waste management bureau by about \$800,000; and about a \$700,000 decrease in our mining budget. We have three budget accounts which are showing some modest increases. That includes our Bureau of Air Quality where we're asking for a new bureau chief position. We would like to split that bureau into half because it is getting to be a very large bureau. We're asking for a relatively large increase in our water pollution control programs as a result of some new federal monies coming our way which allows us to provide grants for nonpoint source control and those grants are essentially passed through the Division and out to local governments and primarily to the agricultural community. We're also asking for a \$1,000 increase to David's budget for the operation of the State Environmental Commission.

So, the bottom line is that we are actually holding the line on our budgets for this biennium. We're not looking at any new fee increases in accordance with the Governor's wishes. We're not looking for any new fees and we're not looking at any new programs within the Division. As I mentioned, we are asking for a couple of new positions, one is in Air Quality, one is a new information services position for our computer system, a new program assistant in our Bureau of Water Pollution Control in the underground injection control program and a new accountant to help us out with our accounting functions. Additionally, we'll be asking for the services of a half-time attorney general to help us with our case load, particularly in the mining bankruptcy arena. We'll be splitting that attorney general with Mr. Ricci over in the Division of Water Resources.

Commissioner Johnson asked you mentioned that part of the federal money will be going to (inaudible) and do you anticipate from the problem the federal government has had in implementing those nonpoint source regulations some more firm policy or positions that will be coming before us?

Mr. Biaggi answered I think you may be referring to the TMDL regulations that were recently enacted by EPA. The Division voiced its extreme displeasure to EPA with regard to those regulations - the lack of accountability to the states and to the public in implementing those regulations, and, to be quite blunt, the very sneaky way they passed it through OMB and slipped it past the Congress. The nonpoint source funds are tied to that only from the fact that these funds can be used to address nonpoint source problems throughout the state, be it agriculture or our rural communities. So, from that standpoint I don't anticipate any problems between the TMDL rules and these 319 funds. The pass-on will still continue and, as I said, most of these go out to conservation districts and to the agricultural community. In fact, many of you who have been on the Commission for quite some time recall Wendell McCurry who was in charge of the water quality programs for 32 years. Wendell passed away earlier this year and we have

established a Wendell McCurry Water Quality award and that went to the Middle Carson River and to Kevin Piper for the work that agriculture has done in controlling nonpoint source runoff within that area. So we don't anticipate any problems there.

I wanted to give you a little update on the Jarbidge case. Since your last meeting, we received Judge Wagner's decision with regard to the Environmental Commission's decision with regard to the Stop Work Order that was issued in July 1998. We felt that decision needed to be appealed to the State Supreme Court so we have done that through the Attorney General's Office. I anticipate that the next step in this process will be proceeding to mediation which is required of any appeal that goes to the State Supreme Court. I think, as most of you are aware and I'm sure that Mr. Dahl is intimately aware, the Justice Department just last week asked for lifting the mediation stay in order that they may file suit against Elko County, Mr. Carpenter, Mr. Gerber, and one other person, Mr. Hugh Johnson. At the same time I believe that there was an action also filed against you, Mr. Dahl, for the actions that were taken on the 4th of July. The State of Nevada would become a party to those actions if the Justice Department decides to file an action under the Clean Water Act, whose provisions state that any time an action is filed by the federal government against a municipality the State is automatically brought in as a party to that action. That is also the reason why the State was a party to the ongoing mediation. I think where all this is all going to go remains to be seen. It's pretty much up in the air. Elko County still has the mediation agreement before it, which the Division of Environmental Protection supported.

Commissioner Dahl stated by getting past the point of deciding whether we're going to continue in mediation and whether the county is going to sign the mediation agreement, at least now we've joined the issue which is who owns the road. Had the county agreed, as the State did, to that agreement we would still at some point have to decide that issue which is very important to Elko County and to a lot of other counties because that's just one little road that doesn't matter much in itself, but the issue is important. Did the Commission not need to be consulted with the decision to appeal that Wagner decision?

Charles Meredith, DAG answered that decision was made by our office in consulting with the NDEP. It was done roughly two weeks ago. By statute, the AG's office does have the authority to do that.

Commissioner Dahl asked without consulting the Commission?

Mr. Biaggi stated I think you're bringing up a good point and it certainly didn't cross my mind to bring this before the Commission. We do have deadlines on when the issue could be brought before the State Supreme Court. But, quite frankly, it didn't even cross my mind and I'll take the responsibility for this, to bring it before this body for consultation.

Charles Meredith, DAG stated the Commission was a party of the underlying judicial review whereby Elko County had appealed its decision to Judge Wagner. It was the same side as NDEP. They were appealing this Commission's decision, therefore the decision was made when we appealed this to the Supreme Court that the SEC was joined with that. It was the logical step since they were a party at the judicial review process.

Commissioner Dahl (Inaudible)

Charles Meredith, DAG stated the client had initiated joining the petition for judicial review level at the District Court and the other client, which is NDEP, also defended that action at the judicial review process as well. So, therefore, when Judge Wagner's ruling came down, the next logical step was to appeal that to the State Supreme Court with both parties which were at the same level at the judicial level.

Mr. Biaggi stated if you'll recall as well, I have brought this issue up in a status report at each meeting and brought this up at the June meeting that there was a high likelihood that we would be appealing. But we did not bring that up for formal consideration or comment from this body.

Another case that's going before the State Supreme Court is Western Elite. Western Elite, as you'll recall, is a recycling facility in Lincoln County. They were permitted for 15,000 cubic yards maximum capacity of material on their site. They have somewhere in the neighborhood of half a million cubic yards at this time. The State Environmental Commission upheld the Division in its entirety with regard to the applicability and appropriateness of that permit. Western Elite appealed that to District Court where the District Court, once again, completely upheld the Division and the Environmental Commission. Western Elite has now appealed this to the State Supreme Court. We will be undergoing the mandatory mediation beginning August 31st. But I am very confident that we will prevail in that case, 100 percent. Western Elite has stopped taking waste. They are slowly processing the material that is on the site, but it's very slow. There are a number of pending air quality violations that will be coming before panels of this Commission for fugitive dust activities at those sites as well.

On August 10th, just a week or so ago, the State Environmental Commission upheld the Division's permit for the reinjection program for the Las Vegas Valley Water Authority. This was an appeal that was lodged by Robert Hall in southern Nevada. Mr. Hall has indicated that he will be appealing that decision. We have yet to see that, however.

We'll have a Commission meeting later this year to hear the Walker River Standards, which are still under development. Prior to that meeting there will be a tour of the Walker River and Walker Lake and then the next day we'll hear the standards. I anticipate that this will be a fairly hotly contested hearing which will be a real traditional western water quality issue pitting agricultural interests versus downstream fisheries and recreational interests. We're continuing to work with all of the parties involved to try and reach compromised solutions, but like many of these issues, it's a difficult compromise at best. So, gear up for that probably about October or November of this year.

Mr. Doppe has referenced the Clark County air quality issues and the SB 432 Committee which Senator Porter is heading up. This is an interim legislative committee evaluating the air quality program in Clark County. This committee has hired an independent consultant who has made specific recommendations indicating that the State of Nevada Division of Environmental Protection should undertake audit responsibilities of the Clark County program to include their monitoring program, their permitting program, and their development and implementation projects, implementation plans within

Clark County. To undertake those activities, DEP estimates that we'll need a staff of five just to do those audits. That's two engineers, two scientists, and one management assistant. The estimated cost to the agency for doing that would be \$460,000 the first year and about \$380,000 thereafter. We don't know where this money would come from even if it was available. So, we will just have to wait and see what the Porter Committee finally comes up with, what those recommendations are, and where they can find the money. So the bottom line is there's not a proposal right now for the Division to take over the program, but it sounds like there will be a much greater role of the State for the future in Clark County.

Commissioner Johnson asked does the County Commission buy off on that or do they have a separate proposal?

Mr. Biaggi answered right now the County Commissioners are going after a separate proposal. They're doing some structural modifications to the Clark County air program by consolidation of the Comprehensive Planning Department for air quality and the Health District. Those will be consolidated and placed under one governing board, whereas those are under two governing boards right now. There is an ongoing debate in the county whether there would be a State presence at all in that reorganized structure. So that still remains to be seen. There's a little bit of flux. The Porter Commission does have to have its recommendations out by October 18th.

The Commission heard, I think two meetings ago, SMI, which is a joist company in Fallon. We have implemented a supplemental environmental project with them and SMI is currently in the process of purchasing hazardous material suits for the Churchill County Volunteer Fire Department. So that's a supplemental environmental project that I think will work out very well and provides a lot of benefit for the entire community.

At the last meeting you heard Southern California Edison come before you with regard to the Mojave Generating Station for a variance based upon the electric shortages that are occurring in California and Nevada. I think the Commission was actually way in the forefront on this one because since that Commission meeting it's been on the national news and local news and, of course, San Diego County and all of their problems with their electricity bills. There has been a number of Class II emergencies that have been issued by the California ISO and in late July the Mojave Generating Plant was cranked up to 100 percent capacity for about a three hour period. They're still evaluating, and we're still evaluating, their data in order to make a determination whether there were opacity violations at that time. There are still power shortages that are ongoing and as long as we continue to have this hot weather there's still a potential for the need for the variance. Southern California Edison has estimated that the 20 hours that you granted at the last meeting will be sufficient to make it through this crises for the summer and hopefully there will be additional generation capacity by the time we get to next summer.

Chairman Close asked if there was any comment among the Commission members or if there were any members of the public who wished to testify. There were none.

**Meeting adjourned at 1:15 p.m.**



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Nevada State Environmental Commission  
Regulatory Hearing  
Exhibit Log

Hearing Date: August 22, 2000

Location: Nevada Commission on Tourism

#	Item	Item Description	Reference Petition #	Offered	Accepted
1	3 Page Letter with Cover Sheet	Letter from Russ Fields, Nevada Mining Association regarding Reclamation and Closure Bonding Developments in Nevada dated August 10, 2000	2001-01	Yes	Yes
2	1 Page Letter	Letter from Richie Haddock, Barrick Goldstrike Mines, Inc. in support of Petition 2001-01 dated August 14, 2000	2001-01	Yes	Yes
3	2 Page Letter	Letter from Tom Myers, Great Basin Mine Watch regarding Petition 2001-01 dated August 17, 2000	2001-01	Yes	Yes
4	2 Page Letter	Letter from Greg Sanks, Sierra Pacific regarding Comments for Public Workshop on Proposed Amendments to NAC 445B.264 and 445B.354 dated August 16, 2000	2000-11	Yes	Yes
5	3 Page Letter	Letter from Michelle Nuttal, Southern California Edison regarding Proposed Amendments to NAC 445B.354 dated August 17, 2000	2000-11	Yes	Yes
6	3 Page Letter	Letter from Russell Fields, Nevada Mining Association regarding Proposed Readiness Fund Regulations dated August 21, 2000	2001-01	Yes	Yes

	ITEM	ITEM DESCRIPTION	REFERENCE PETITION	OFFERED	ACCEPTED
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C: SEC\_WEB HEARINGS 2000 H082200.WPD