

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF September 9, 1999**

**HELD AT: Reno, Nevada**

**TYPE OF HEARING:**

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

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

<b>YES</b>	<b>AGENDA</b>
<b>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**  
**September 9, 1999 10:00 am**

The Nevada State Environmental Commission will conduct a public hearing commencing at **10:00 a.m. on Thursday, September 9, 1999**, at the Reno City Council Chambers, located at 490 South Center Street, **Reno**, Nevada.

This agenda has been posted at the Clark County Library and Grant Sawyer State Office Building in Las Vegas; the Reno City Council Chambers and the Washoe County Library in Reno; the Department of Museums, Library and Arts, and the Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on August 10, August 18, and August 26, 1999 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

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

**I. Approval of minutes from the April 9, 1999 meeting. \* ACTION**

**II. Regulatory Petitions \* ACTION**

Petitions 1999-01, 1999-02, 1999-03, 1999-05, 1999-06, and 1999-07 have been previously adopted as temporary regulations by the Environmental Commission on December 9, 1998 or April 9, 1999. These regulations expire by limitation on November 1, 1999. These temporary regulations are before the Commission for permanent adoption.

**A. Petition 1999-01 (LCB R-017-99)** permanently amends NAC 445A.121, 445A.143, 445A.144, 445A.213 of the water pollution control regulations. The regulations are proposed to be amended to change the reference for limits in drinking water standards from the U.S. Public Health Service to those adopted by the Nevada State Board of Health. NAC 445A.143, the Colorado River salinity standards, is proposed to be amended to include the term "flow weighted average." NAC 445A.213, the minimum quality criteria applicable to interstate waters, is proposed to be repealed. Definitions for "annual mean flow" and "flow weighted annual average," sections 2 and 3 of the regulation, are being added since the adoption of the temporary regulation.

**B. Petition 1999-02 (LCB R-018-99)** is a permanent regulation amending NAC 445A.232 "fees" in the water pollution program by extending the date of expiration from June 30, 1999 to June 30, 2001. The portion of NAC 445A.232 effective from July 1, 1999 to June 30, 2001 is repealed, and that portion of NAC 445A.232 effective on July 1, 2001 is retained. This petition affects mining water pollution control discharge fees. This petition amends a 1997 action where the fees were amended with three rolling escalating fee schedules between the time of adoption and the year 2001. Those mining water pollution control fees currently in effect are proposed to be retained until July 1, 2001. The intermediate fee schedule is proposed to be repealed by this action.

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**C. Petition 1999-03 (LCB R-019-99)** is a permanent amendment to NAC 445B. The regulation amends NAC 445B.319, 445B.327 and 445B.331 by increasing air quality operating permit fees for administrative amendments, Class I and II operating permits and change of location permits. The regulation adds new fees for Prevention of Significant Deterioration (PSD) permits and major revisions to PSD permits. The regulation increases the annual emission fees and annual maintenance fees for all stationary sources.

**D. Petition 1999-05 (LCB R-020-99)** makes permanent amendments to NAC 445A.228 to 445A.292. The amendments clarify wording, remove outdated language, conforms the water pollution regulations to statutes, addresses who must sign a discharge monitoring permit, clarifies establishment of effluent limits and compliance schedules and provides for minor water control discharge permit modifications. The amendments also provide for the transfer of permits to new owners. NAC 445A.105 and 445A.246 are proposed to be repealed.

**E. Petition 1999-06 (LCB R-021-99)** proposes to permanently amend NAC 444.8901, 444.8906, 445A.347, and 459.9729 by removing the Division of Emergency Management in the Nevada Department of Motor Vehicles & Public Safety from the list of agencies required to be notified of spills and releases pursuant to Nevada's water pollution control regulations. The intent of this regulation is to provide for regulatory relief regarding the disclosure of spills and releases. Other emergency reporting requirements are not affected by this amendment.

**F. Petition 1999-07 (LCB R-022-99)** proposes to permanently amend NAC 445B.001 to 445B.395, the air pollution control regulations. Amendments are proposed to NAC 445.221 to update the reference to the Code of Federal Regulations from 1997 to 1998. The amendments to 445B.300 extends the expiration of an operating permit from one year to 18 months. NAC 445B.362 and 445B.373 are proposed to be amended to correct equation errors and add the term "maximum." NAC 445B.383 is amended to correct the references from cubic feet to yards.

**G. Petition 1999-08 (R-070-99)** is a permanent regulation amending NAC 445A.055 through 445A.067, the laboratory certification program. The existing regulations are proposed to be repealed and supplanted with the standards of the National Environmental Laboratory Accreditation Program. The amended regulations provide for definitions, scope of accreditation, categories of certification, laboratory certification criteria, certification requirements, and proficiency testing requirements. The regulation adopts by reference many of the provisions that have been listed. Fees in NAC 445A.066 are retained and amended to reduce the fee for toxicity bioassays from \$ 400 to \$ 125. All other provisions from NAC 445A.055 to 445A.067 are proposed to be repealed.

**III.** The State Environmental Commission will be hearing a **variance** request to NAC 445B, the air pollution control regulations, from the U.S. Department of Energy, Albuquerque Office for the fire experiment facility at the U.S. Air Force's Tonopah Test Range in south central Nevada. The variance relates to NAC 445B.354 (opacity) and 445B.362 (particulate emissions). **Note: This item has been withdrawn from the Commission agenda for the September meeting and will be before the Commission at its next meeting.**

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

- A. Desert Sand & Gravel; Notice of Alleged Violation # 1374
- B. A&K Earth Movers, Inc. Notice of Alleged Violation # 1389
- C. Granite Construction Company; Notice of Alleged Violations # 1386
- D. Jack N. Tedford, Inc.; Notice of Alleged Violations # 1372

**V. Frehner Construction Company Compliance Update**

**VI. Toxic Release Inventory and Nevada Mining Industry**

**VII. Legislative Update for the 1999 Session**

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

**IX. General Commission or Public Comment**

- A. Discussion by Gregory Bennett \***ACTION**

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. **September 2, 1999.**

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## 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 Thursday, September 9, 1999**, at the Reno City Council Chambers, located at 490 South Center Street, **Reno**, Nevada.

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

Petitions 1999-01, 1999-02, 1999-03, 1999-05, 1999-06, and 1999-07 have been previously adopted as temporary regulations by the Environmental Commission on December 9, 1998 or April 9, 1999. These regulations expire by limitation on November 1, 1999. These temporary regulations are before the Commission for permanent adoption.

**1. Petition 1999-01 (LCB R-017-99)** permanently amends NAC 445A.121, 445A.143, 445A.144, 445A.213 of the water pollution control regulations. The regulations are proposed to be amended to change the reference for limits in drinking water standards from the U.S. Public Health Service to those adopted by the Nevada State Board of Health. NAC 445A.143, the Colorado River salinity standards, is proposed to be amended to include the term "flow weighted average." NAC 445A.213, the minimum quality criteria applicable to interstate waters, is proposed to be repealed. Definitions for "annual mean flow" and "flow weighted annual average," sections 2 and 3 of the regulation, are being added since the adoption of the temporary regulation.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

**2. Petition 1999-02 (LCB R-018-99)** is a permanent regulation amending NAC 445A.232 "fees" in the water pollution program by extending the date of expiration from June 30, 1999 to June 30, 2001. The portion of NAC 445A.232 effective from July 1, 1999 to June 30, 2001 is repealed, and that portion of NAC 445A.232 effective on July 1, 2001 is retained. This petition affects mining water pollution control discharge fees. This petition amends a 1997 action where the fees were amended with three rolling escalating fee schedules between the time of adoption and the year 2001. Those mining water pollution control fees currently in effect are proposed to be retained until July 1, 2001. The intermediate fee schedule is proposed to be repealed by this action.

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The proposed permanent regulation is anticipated to have significant affirmative short or long term economic impact on Nevada businesses. The mining industry will see a decrease in the fees paid regarding mining water pollution control permits. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee. The regulation decreases fees on the mining industry.

**3. Petition 1999-03 (LCB R-019-99)** is a permanent amendment to NAC 445B. The regulation amends NAC 445B.319, 445B.327 and 445B.331 by increasing air quality operating permit fees for administrative amendments, Class I and II operating permits and change of location permits. The regulation adds new fees for Prevention of Significant Deterioration (PSD) permits and major revisions to PSD permits. The regulation increases the annual emission fees and annual maintenance fees for all stationary sources.

The proposed permanent regulation is anticipated to have a significant economic impact on businesses in Nevada. The proposed fees will increase annual cost for all stationary sources regulated by the state by approximately \$ 1.1 million. The impact on each stationary source will vary widely depending upon the number of tons of air pollutants emitted by the sources. One stationary source will realize a substantial increase in annual fees due to the volume of their emissions. Fees for applications will also substantially increase. The fee structure will generate approximately \$ 1.9 million.

The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement of the regulation. Fees will pay for the State's air pollution control program, including staffing and operating costs.

**4. Petition 1999-05 (LCB R-020-99)** makes permanent amendments to NAC 445A.228 to 445A.292. The amendments clarify wording, remove outdated language, conforms the water pollution regulations to statutes, addresses who must sign a discharge monitoring permit, clarifies establishment of effluent limits and compliance schedules and provides for minor water control discharge permit modifications. The amendments also provide for the transfer of permits to new owners. NAC 445A.105 and 445A.246 are proposed to be repealed.

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The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The proposed regulation should make it easier for affected businesses to comply by simplifying the requirements for securing a water pollution control permit. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

**5. Petition 1999-06 (LCB R-021-99)** proposes to permanently amend NAC 444.8901, 444.8906, 445A.347, and 459.9729 by removing the Division of Emergency Management in the Nevada Department of Motor Vehicles & Public Safety from the list of agencies required to be notified of spills and releases pursuant to Nevada's water pollution control regulations. The intent of this regulation is to provide for regulatory relief regarding the disclosure of spills and releases. Other emergency reporting requirements are not affected by this amendment.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. Businesses should find the process of reporting less burdensome. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

**6. Petition 1999-07 (LCB R-022-99)** proposes to permanently amend NAC 445B.001 to 445B.395, the air pollution control regulations. Amendments are proposed to NAC 445.221 to update the reference to the Code of Federal Regulations from 1997 to 1998. The amendments to 445B.300 extends the expiration of an operating permit from one year to 18 months. NAC 445B.362 and 445B.373 are proposed to be amended to correct equation errors and add the term "maximum." NAC 445B.383 is amended to correct the references from cubic feet to yards.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. Businesses should find the process of reporting less burdensome. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. The proposed amendments will make the Nevada air pollution control regulations consistent with the federal air pollution control rules. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

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7. **Petition 1999-08 (R-070-99)** is a permanent regulation amending NAC 445A.055 through 445A.067, the laboratory certification program. The existing regulations are proposed to be repealed and supplanted with the standards of the National Environmental Laboratory Accreditation Program. The amended regulations provide for definitions, scope of accreditation, categories of certification, laboratory certification criteria, certification requirements, and proficiency testing requirements. The regulation adopts by reference many of the provisions that have been listed. Fees in NAC 445A.066 are retained and amended to reduce the fee for toxicity bioassays from \$ 400 to \$ 125. All other provisions from NAC 445A.055 to 445A.067 are proposed to be repealed.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. Businesses should find the process of water quality laboratory certifications to open competition in other states where the national standards have been adopted. Since these regulations provide for reciprocity with other states, Nevada businesses will see reduced costs in working in other states, and in securing federal contracts. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The changes will be beneficial to the public since water quality measurements that affect the public health and environment will be more trustworthy. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. The regulations will complement Safe Drinking Water Act regulations for laboratory certification. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

The State Environmental Commission will be hearing a **variance** request to NAC 445B, the air pollution control regulations, from the U.S. Department of Energy, Albuquerque Office for the fire experiment facility at the U.S. Air Force's Tonopah Test Range in south central Nevada. The variance relates to NAC 445B.354 (opacity) and 445B.362 (particulate emissions).

Pursuant to NRS 233B.0603(c) the provisions of NRS 233B.064 (2) is 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 upon the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.



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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 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 **September 2, 1999**.

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

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**STATE ENVIRONMENTAL COMMISSION**  
**Meeting of September 9, 1999**  
Reno City Council Chambers  
Reno, Nevada  
Adopted Minutes

**MEMBERS PRESENT:**

Melvin Close, Chairman  
Mike Turnipseed, Vice Chairman  
Alan Coyner  
Robert Jones  
Mark Doppe  
Roy Trenoweth  
Joseph L. Johnson  
Terry Crawford

**MEMBERS ABSENT:**

Paul Iverson  
Fred Gifford

**Staff Present:**

Deputy Attorney General Jean Mischel - Deputy Attorney General  
David Cowperthwaite - Executive Secretary  
Sheri Gregory - Recording Secretary

Chairman Close called the meeting to order and verified the meeting had been properly noticed in compliance with the Nevada Open Meeting Law.

**Agenda Item I. Approval of minutes from the April 9, 1999 meeting.**

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

**Commissioner Trenoweth seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item II. Regulatory Petitions**

He stated that these had been previously heard by the Environmental Commission and had been reviewed in detail. He asked if there were any amendments to any of the petitions that were before them for permanent rather than temporary regulations.

Allen Biaggi, Administrator of the Division of Environmental Protection answered there are a couple of changes to some of the regulatory petitions that are very minor in nature, so we would like to proceed in order with the petitions and as they come up we will inform the Commission whether or not there's a change there and then you can either dispense with any hearing of it and move on with a vote or we can explain to you the changes have more of a hearing.

Chairman Close moved to **Agenda Item II.A. Petition 1999-01 (LCB File No. R-017-99).**

**(Petition 1999-01 (LCB R-017-99)** permanently amends NAC 445A.121, 445A.143, 445A.144, 445A.213 of the water pollution control regulations. The regulations are proposed to be amended to change the reference for limits in drinking water standards from the U.S. Public Health Service to those adopted by the Nevada State Board of Health. NAC 445A.143, the Colorado River salinity standards, is proposed to be amended to include the term "flow weighted average." NAC 445A.213, the minimum quality criteria applicable to interstate waters, is proposed to be repealed. Definitions for "annual mean flow" and "flow weighted annual average," sections 2 and 3 of the regulation, are being added since the adoption of the temporary regulation. )

Adele Basham, Supervisor of the Water Quality Standards branch, stated when this petition went to the Legislative

Council Bureau they created a couple of definitions that you hadn't heard before and their definitions were not quite correct and so we amended those and you should have got a handout this morning that's different than what you had in your packet. I'd like to read those definitions into the record. On your handout the items that are underlined are the new language that we'd added in and then the language that's crossed out is language we deleted. The first definition is for an annual mean flow. It means a value calculated by (1) determining the rate of flow of water on each day during a 365 day period at or near the location at which a sample of water is taken. Number 2 . . .

Chairman Close asked if there was anybody in the audience who was there to speak on this petition or has interest in it.

Ms. Basham continued her presentation. Number 2 is summing the daily amounts determined pursuant to subsection 1 and (3) dividing the sum determined pursuant in subsection 2 by the number of days for which the flow rate was measured. And then section three's definition of flow weighted average concentration means a value calculated by: (1) multiplying the pollutant concentration present in a sample of water by the rate of flow of the water at the location and time at which the sample was taken, (2) summing the amount determined pursuant to subsection 1 for each day for which the pollutant concentration samples were taken during a 365 day period, (3) dividing the sum determined pursuant to subsection 2 by the number of days for which the pollutant concentration samples were taken and (4) dividing the amount determined pursuant to subsection 3 by the annual flow.

Chairman Close asked if there were any questions.

Comm. Turnipseed asked for an example. He explained that he was thinking if you go take a sample one day and it's 5 milligrams per liter, the next time you go it's 10 milligrams per liter, and the third time you go it's 15 milligrams per liter, how does the weighted, let's see what's the definition here, the weighted, flow weighted annual average. So, you take those and add them, divide by 365 days, so you would have 10 milligrams per liter weighted average for the entire year?

Ms. Basham answered what was added originally when the Commission adopted this was the word "flow weighted average" was added to the TDS standard for the Colorado River and that's how it reads in the Seven State Colorado River Salinity Control form. The effect, I think what you're, what is the effect of doing a flow weighted average versus just an average of all the numbers?

Comm. Turnipseed answered right. How does it become weighted?

Ms. Basham explained with TDS when the flow increases, the TDS decreases and so when you do a flow weighted average for TDS in the Colorado River you get a lower number than you would get if you did a standard average of the concentration alone. So the higher flow with the lower TDS weights it towards the lower number.

Commissioner Johnson asked could you run through, and I have a similar problem in how this new definition would effect, for instance, the Las Vegas Valley Wash numbers. Is this going to make the normal flow there the value for an exceedence less or more? Higher or lower?

Ms. Basham answered right now what was adopted is, on page 4 of the petition what was adopted was the addition of the word "flow weighted averages for total dissolved solids in the lower mainstream stations of the Colorado River." Currently, that's the only place in the regulations that appears. Others, like the Las Vegas Wash is just a concentration number. But because this flow weighted annual average was added here, LCB felt it needed a definition. So currently it isn't anywhere else in the regulations but for the lower Colorado River.

Commissioner Johnson stated it was my recollection that the exceedences in the Las Vegas Valley Wash was tagged or tied to some average, that is to be in exceedence or violation you had to exceed 110 percent of whatever one of

these average numbers was. And my question is how this definition affects how the water quality in the Wash would be evaluated. It seems problematic when we start talking of average when you haven't identified an actual harmful value in the process a target number that we're going to administrate and adapt to rather than showing some significant reason for having it.

Ms. Basham asked are you asking how the Las Vegas Wash input may affect the lower Colorado, or just the Las Vegas Wash alone?

Commissioner Johnson answered how, and I think you said that this is a term that only applies here. My recollection is that there is some tie to average flow in the Las Vegas Valley Wash. I don't know whether it's this definition or some other one.

Ms. Basham explained there's a concentration number. What you may be recalling was statements that were made in the rationale of the Las Vegas Wash standards review where we talked about the effect of flow on concentration. But, in the regulations it's purely a concentration number.

Chairman Close asked if there were any other questions and if that was the only change.

Ms. Basham answered no, there are a couple of other things with 1999-01. On the second page, section 5 talks about NAC 445A.120 to 445A.213 has been removed because that section has been removed and it was 212 was inserted. That number is not correct, that reference number. It should be, because we were remove, it should go to the end of the Water Quality Standards, which is 225. So we would like to change that.

Chairman Close asked it goes from 212 to what?

Ms. Basham answered it should go from 120 to 225. And then there's just one other very minor change that is related to the addition of the definition since we defined, we used certain terminology in the definitions. The fourth page and that should be on the back-side of that handout that you got this morning. Rather than calling it a flow weighted annual averages, we're calling it a flow weighted annual average concentrations to be consistent with the definition I read earlier. That's it.

Chairman Close called for further questions. There were none.

**Comm. Turnipseed moved for approval of Petition 1999-01.**

**Chairman Close asked as amended?**

**Comm. Turnipseed answered as amended.**

**Comm. Crawford seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item II.B. Petition 1999-02 (LCB R-018-99).**

**(Petition 1999-02 (LCB R-018-99))** is a permanent regulation amending NAC 445A.232 "fees" in the water pollution program by extending the date of expiration from June 30, 1999 to June 30, 2001. The portion of NAC 445A.232 effective from July 1, 1999 to June 30, 2001 is repealed, and that portion of NAC 445A.232 effective on July 1, 2001 is retained. This petition affects mining water pollution control discharge fees. This petition amends a 1997 action where the fees were amended with three rolling escalating fee schedules between the time of adoption and the year 2001. Those mining water pollution control fees currently in effect are proposed to be retained until

July 1, 2001. The intermediate fee schedule is proposed to be repealed by this action.)

Mr. Biaggi, Administrator of the Division of Environmental Protection, introduced David Gaskin. David will be presenting this petition and he was appointed last Friday as the chief of the Bureau of Mining Regulation and Reclamation in place of Leo Drozdoff who has moved over to our Bureau of Water Pollution Control. And I will make all these changes in staffing much clearer later on in my presentation later this morning. But I would like to publicly thank Leo for his excellent efforts with regard to Mining for his years there and I'm sure he's going to do a spectacular job in Water Pollution Control and we're very pleased to have David in that position. He's a MIT graduate in aeronautical engineering astronautics, so we literally have a rocket scientist running the Mining programs.

Dave Gaskin, Chief of the Bureau of Mining with NDEP, presented the petition. He stated this petition is in regards to the fees for Water Pollution Control permits for mines. We had a six year graduated fee increase, three two-year periods. Due to the decline in metals prices, we were able to evaluate our budget and decide that that middle two-year period could be suspended and that we would just carry forward with the original first two-year period increase. We have no amendments to make to this petition and I'd be glad to answer any questions that you may have.

Chairman Close called for questions. There were none.

**Commissioner Coyner moved for approval of Petition R-018-99 (1999-02).**

**Comm. Turnipseed seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item II.C. Petition 1999-03 (LCB R-019-99).**

**(Petition 1999-03 (LCB R-019-99)** is a permanent amendment to NAC 445B. The regulation amends NAC 445B.319, 445B.327 and 445B.331 by increasing air quality operating permit fees for administrative amendments, Class I and II operating permits and change of location permits. The regulation adds new fees for Prevention of Significant Deterioration (PSD) permits and major revisions to PSD permits. The regulation increases the annual emission fees and annual maintenance fees for all stationary sources.)

Jolaine Johnson, Deputy Administrator for the Division, presented SEC Petition 1999-03. She explained this petition is a repeat of the petition that was presented to this Commission on a temporary basis in December of '99 at the Las Vegas meeting. I've provided for you, I believe your exhibit 4, a package of information related to this fee system and would like to go through that a little bit this morning.

Generally, we're here to address a fee increase in the air pollution requirements. Today's proposal does not increase the fees above those adopted by the Commission in December. However, it is an increase over the fees that were established prior to that time. The Nevada Revised Statutes require the State Environmental Commission to provide for the issuance of operating permits and to charge appropriate fees for their issuance in an amount sufficient to pay the expenses of administering the air pollution control requirements established by statute and any regulations adopted pursuant thereto. The proposed fee structure is based upon the budgetary needs of the NDEP to pay the expenses of administering those statutory and regulatory requirements.

A little bit of history about the fees, the air pollution control fees in Nevada. For the audience interest, there are copies of this handout at the desk if you would like to take a look at that. A little bit of history, in 1994 the State Environmental Commission adopted air quality operating and emission fees in response to the need to withdraw

from the general fund. After the legislature established the rules as they read today that says that we have to charge fees for those permits to cover the cost of the program. Those fees were also in response to substantial new federal mandates, primarily the Clean Air Act Title V Operating Permit requirements. As the NDEP implemented the fee structure that was adopted in 1994 we found that we were collecting more fees than we had originally anticipated in establishing that structure and we were faced with a surplus of funding in that account. So then in March of 1996 a temporary fee structure was proposed and adopted which accounted for that surplus that was collected under the '94 fee structure and as necessary to operate the Division's air quality program. Fees were substantially reduced at that time to lows that were artificially low because we did have that surplus. So, we enjoyed, facilities in the State enjoyed, very low fees for about 2 ½ years while we were absorbing that surplus that was collected between '94 and '96.

In fiscal year '99 the reserve that we had in that Air Pollution Control account was depleted. In December of 1998 the Division proposed temporary amendments to the NAC to increase air pollution control fees as necessary to fulfill the air pollution control mandates required of the agency. During the December 1998 public hearing of the State Environmental Commission stakeholders supported the fee structure as proposed. Also during that hearing, issues and concerns were raised regarding the proposed fee structure by yourselves. The State Environmental Commission requested that those issues be addressed by the Division with proposal of the permanent regulations for air pollution control fees. And we're here today to address those issues that were raised and discussed during the December meeting.

On August 4th of '99 the Division held a workshop to address the issues raised regarding the proposed fee structure. All permit holders and other interested stakeholders were invited to participate in the workshop. The workshop was attended by 23 persons representing industries affected by the fees. Each of the issues discussed during the workshop are presented below. The first issue was permit fees based upon individual processing times. If you'll recall there was extensive discussion about how different permit applications come in in different states of quality and the Division is faced with having to help some facilities more than others in terms of getting them through that application process. The proposal at that time was to consider the concept of rather than charging a flat fee for a certain permit type to charge by the hour to track hours and then invoice the source for the permit process. Some workshop attendees supported this approach based upon fairness that is well-prepared and complete applications require less time to process than poorly prepared incomplete applications. However, most participants were opposed to invoicing by the hour and supported the average hours approach based upon the following:

First of all, tracking hours and invoice would increase the overall staff time for administration of the invoicing program, and therefore, the cost of the permitting program. Secondly, different permit writers will take different amounts of time to process the applications. The Division enjoys some permit writers that have five, ten years experience in writing permits and others, as you know, with turnover are brand new and sources were concerned that they would get the new permitter and the agency would be faced with having to stack up all those permits on one person and they would never get done. Third, the applicants would have disincentives to negotiate the terms of the draft permits in the interest of reducing Air Quality staff time. One source in particular was very concerned because they do a lot of negotiating with us when they receive a draft permit. They were concerned that this was going to, an hourly fee was going to interfere, or give them disincentive to do that and force them to accept conditions that they're really not willing to accept. And, fourth, facilities would have difficulty in budgeting for permit processing without an understanding of what the fixed cost would be.

Today's proposal on the rules maintains the Division's previous proposal to charge fixed fees for various types of permits based upon the average number of processing hours required to process the respective types. This is consistent with the stakeholder consensus taken at the meeting and some of the written comments that we'll discuss in a moment. The Division commits to making every effort to streamline our processing time for all types of permits and to work with the facilities to improve substandard applications. The appropriateness of fees will be assessed each year and proposed for modification as appropriate.

The second issue discussed at the workshops were the concept of providing discounts for permits when the facility is coming in to make changes that would result in some environmental benefit. That was recommended by Mr. Ray Bacon of the Manufacturer's Association during the December meeting.

All workshop participants opposed this concept generally on the grounds that the staff time will, that staff time is required to process those permits whether there's some media benefit or not and that if we don't charge that source for that permit at that time, then we're going to have to make up for those fees to cover the staff time in some other way. The other concern the participants indicated were how to establish the right criteria for what is an environmental benefit and if a source comes in to install equipment that will result in a water quality benefit, but a substantial decrease in air quality or an increase in air quality emissions and decrease in air quality, then how do you measure those against each other? The fee proposal before you today does not provide the suggested discount for such permit applications.

The third issue discussed was the balance between fees for service for all facilities and fees for pollutant emissions. One participant in the workshop was adamant that all air pollution control fees should be based upon emissions. That we should just wipe the structure clean and find a dollar figure that represents the amount of money that we need and charge it for the tons of pollutants that are emitted at each source. However, most participants believe that a fee structure based upon both emissions and services was appropriate. Most participants supported the current fee structure as adopted as temporary regulation by this body in December of '98. The fee proposal before you today maintains the fees as adopted on a temporary basis in December of '98.

The fourth issue raised by the Commissioners in December was the concept of a policy for establishment of fees. The policy has been drafted for your review and consideration today which generally reflects the input received during the December SEC hearing and the August workshop and subsequent written comments. Adoption of this policy by the SEC has not been included as an action item on the public meeting agenda today. However, the Division would appreciate any direction that you would like to give us in regards to this policy and the desires of the Commission to consider it at a future date for action.

So, with those issues addressed in that workshop we have come forth today with a proposal, as I said, that is consistent with that that was adopted in December. Just a little bit of background of how that fee structure was presented, we have taken Nevada's budgets, the air pollution control budgets and have presented those in Table 1. It will show you what the legislature has approved for our programs to carry out our programs for the next two years as approved by the legislature and then we've estimated the costs in the subsequent year, the following year of 2002 based upon the 2000 budget with a five percent increase. That's the best estimate that we could come up with at this point. The annual requirement for operating permit fees has then been calculated by averaging the budget over the three year period and subtracting anticipated federal funding and motor vehicle revenue for those years. So, if you take a look at Table 1 you see the first three lines are the next three years' budgets and those are totaled. We're subtracting the amount of air quality funding that was carried forward from fiscal year '99 into fiscal year 2000 and we are then determining a three year revenue need and an annual average need by dividing that by three. The annual revenue is then split out between the federal grant and DMV fees, those are funds that we anticipate coming into this program, which leaves us with a need of \$1,808,461 per year in air quality operating permit fees. So that's the basis of the collection that we then lay out in Table 2.

Consistent with that which was adopted in December by this body, the fee structure is based, first of all, we look at how many permits we anticipate processing, applications that we would anticipate to receive in each year and we have multiplied those by the number of hours on an average basis that that type of permit requires for us to process and then multiply that by a staff cost of about \$50 an hour to come out with, for a Class, a new Class I permit we anticipate 600 hours and the cost for that permit would then be \$30,000. For a significant modification, \$20,000 and a minor modification to a Class I permit would be \$5,000. Class II permits, these are sources that emit less than 100 tons per year of any pollutant, and those obviously are less cumbersome, they don't have to go through the federal requirements that Class I sources do and so we've established fees that represent the number of hours

required to process those through the Nevada operating permit program. Again, none of these fees are increased from the fees that were adopted by this Commission on a temporary basis in December.

The second fee category is the annual maintenance fee. This is a fee that is charged to all permit holders, all stationary sources and it is graduated based upon generally how the facility is classified. Class I sources are the more the more complex sources. They require at least one inspection per year and are bigger sources so they take, require more of the staff's time. Class II sources we've graduated those based upon how much their permit would allow them to permit and we'll charge a maintenance fee for those facilities as laid out there. Anything greater than 50 tons for a potential to emit would pay us \$3,000 per year. Between 25 and 50 tons, \$1,000 per year and less than 25 tons, 250 tons per year. Also, for a surface area disturbance, this is generally a construction project where the area has been disturbed during the construction process, we'll charge \$250 per year.

The third category of fees is the emissions fees and we are leaving that at \$5.60 per ton. There is one proposal for change in the rule in response to the workshops and that is that we remove the exemption for less than 25 tons. In other words, all facilities would be paying \$5.60 a ton for their emissions and I'll discuss the basis of that in just a little bit. If you looked to the right in that table what you see in the next column is a percentage of what percentage does each category of each of those fees make up of the total and then the farthest column is simply a percentage of the annual maintenance and emission fees that are made up for this facility. And those percentages are presented because it provides the basis for the policy that we'll talk about in a moment. I'd like to stop, pause here for a moment and ask if there's any questions about this proposed structure.

Chairman Close asked if there were any questions.

Commissioner Jones stated first let me apologize. I was not at the previous meeting where we initially adopted these so a couple of questions. First, I think you've created a great track record by virtue of keeping these (inaudible) funds ear-marked and returning them when, in fact, you've gathered more. So that takes a great deal of pressure off I think of all of us when making these decisions because if you create extra funds, you'd do the same thing, correct?

Ms. Johnson answered yes, and we'll do it in the future if it happens again.

Commissioner Jones commented and if you found out you had extra funds you'd adjust them, so that's great. The other one, I think there's a letter somewhere in our file about the annual amount for small companies. Previously, were we on a five year schedule where there was a annual amount that was paid for five years where we've now gone to an annual amount?

Ms. Johnson explained the previous fee structure did not have this annual maintenance fee. It had a permit fee and it had an emission's fee. The annual maintenance fee is, essentially, a new concept for all sources that have to pay for part of the program.

Commissioner Jones asked except for some of the small ones?

Ms. Johnson answered yes.

Commissioner Jones stated I think the letter was in reference to a small company and that being a little bit onerous for the small companies was my (inaudible) on that.

Ms. Johnson stated I have a letter in here and I think it's the same one that you're talking about. We'll talk about it in a . . .



Chairman Close asked we're talking about the Walker River Construction Company?

Ms. Johnson answered yes.

Commissioner Jones answered yes.

Chairman Close stated it is an exhibit. It's in our packet. It's marked as number 1.

Ms. Johnson stated I did want to briefly go through some of the comments that, through some of those letters I've provided in your package which includes the Walker River letter, other written comments that we received on this.

Commissioner Jones stated the last question, then I'll let you go ahead and do that, rather than comment on that, we'll do it in order. I appreciate your answers to the different issues and how they were handled. The one I guess I had some concern with is you mentioned discounts for environmental benefit. The way that you handled particular one. I guess I have one kind of overriding question, is that if we can establish environmental damage and put fees to that we ought to be able to establish environmental benefit. I mean it would just seem to me logically there ought to be a way if you can do one that you can do another. I don't know how big of an issue it is. I don't know how many people do that and if it's a big issue. I just think it's something we ought to take a look at. We go to great lengths to establish harm and thereby attach fees to that. So I think if we can do that we ought to be able to attach, take benefits and do the same thing if it does occur. It's just a comment. I liked your answers in most areas.

Ms. Johnson stated the Division certainly agrees with you on a conceptual basis that we need to find incentives for facilities to install environmental benefit (inaudible) process and equipment.

Commissioner Jones stated I think carrots work better than sticks in a lot of cases and if we could find a way to do that we may be able to move more companies toward that. To offset their fees and maybe we can get a net benefit in the environment from it.

Comm. Crawford congratulated Jolaine on her selection as a deputy. He then asked could you, the \$50 per hour, is that including administrative costs, if you will . . .

Ms. Johnson answered overhead.

Comm. Crawford asked the lights and the heat and all of those kinds of things or is that pretty much a salary figure, or?

Ms. Johnson explained it's to a large extent a salary and indirect cost figure which includes the things like lights and anything that goes through the administrative program that benefits . . .

Comm. Crawford asked it is an all-encompassing salary and other costs?

Ms. Johnson answered yes.

Comm. Crawford asked if the figures that Jolaine provided parroted her legislatively-approved budget.

Ms. Johnson started to answer the figures provided in Table 1 . . .

Comm. Crawford stated you've got some expenses and revenues. Is that what was adopted by the legislature for the upcoming, for the current biennial budget?

Ms. Johnson answered yes.

Comm. Crawford stated so they've approved these revenues and expenses already. It looks like it here.

Ms. Johnson explained they've approved the revenue and expenses for fiscal years 2000 and 2001, but we've added another year just to even out this process a little bit and it changes it a bit, but generally, yes.

Commissioner Doppe stated I have a question for you Jolaine and I (inaudible) I just figured out the answer to the last question and is that is with regard to the \$50 in coverage, what \$50 an hour covered and stuff like that. (inaudible) a million dollars for federal grants and DMV fees, because I just had myself that that million bucks was for stuff not directly related to monitoring that the program's, you know, doing inspections, stuff like that. Because it strikes me as though you've laid out a budget for \$1.8 million to collect fees presumably that money going to administer those programs. With that being the case, then I'd like to use the other million dollars.

Ms. Johnson asked so you're asking where does the revenue go that we get from the federal government and from the DMV?

Commissioner Doppe answered right. Because I didn't want to come to the conclusion that what was happening is you're working backwards to determine fee amounts based on hitting the budget number, that budget being determined after subtracting the million bucks and you've got this much left over therefore you divide the workload to come up with those kind of fees and I was just about convinced that that was the case and I think you've clarified that for me.

Ms. Johnson explained if you look at Table 2 you'll see that the permit fees make up about 39 percent of the total fees that we're collecting here. Actually, that's very consistent with the 37 percent of our staff time that is spent on processing permits. The other 63 percent of our staff time is spent on monitoring, ambient air quality monitoring, on planning work, on the general administration of the program, so forth. These figures generally represent the amount of work that we spend on each kind of program. The DMV money typically goes to monitoring and to the direct mobile sources work that we do.

Commissioner Doppe stated let me see if I can rephrase your answer. What you're saying is that you could probably produce another breakout similar to this for the expenditure side of the DMV side and of whatever the federal grant money is being collected and used for?

Ms. Johnson answered yes.

Commissioner Coyner stated Mr. Chairman, in response to Commissioner Jones' concern, as long we do keep a significant proportion of the fee structure in the emission side of the equation, that drives people towards environmental benefit. So I would support and commend Jolaine on keeping that balance in there.

Chairman Close asked Jolaine, in your presentation are you going to specifically address the Exhibit 1, the Walker .

..

Ms. Johnson answered yes.

Chairman Close stated okay.

Ms. Johnson stated in your package, the next section of documents is the compilation of written comments that we received since August when we held the workshops and I'd just like to touch on some of the highlights of those comments to indicate the support, the general support for the fees as proposed. The first one is the Placer Dome

U.S. Inc., second paragraph, the middle of the second paragraph indicates that, “after evaluating your explanation for the basis of the proposed fee structure we believe the proposed fee structure represents a reasonable apportionment of fees among the regulated entities in Nevada.” The next paragraph, the third paragraph down discusses that they think that it’s appropriate for the fees to be composed significantly of emissions based fees as we discussed. And then the last paragraph on that first page discusses a specific issue that we would like to address in amendments to today’s proposal. The Bureau of Air Quality, as you know, is implementing the Title V Operating Permits program and as typical we have had to start that program and get our feet under us without adequate EPA guidance on some of the requirements of that program. And so we’ve been learning to a certain extent as we go. The Division is in the process now of trying to establish a guidance document for our facilities that would indicate what kinds of monitoring and record keeping they will need to do to assure compliance with the permit conditions with the applicable requirements and that document has gone through some review by our sources and we’re negotiating with sources as to what those requirements will be. Meanwhile, some of our sources have actually been issued Title V operating permits and in those permits we have established record keeping and monitoring requirements that are more onerous than what will probably come through in the guidance that we end up adopting. So, the sources, the Nevada rule in a case that if you change your monitoring and record keeping requirements in the Class I permit that that becomes a significant revision and under the current structure of fees, that would be subject to \$20,000. We want to establish another fee in this proposal that would acknowledge that we’re doing this and that we’re coming through with this guidance and we might want to change those permits to be more consistent with the guidance that we end up with and the sources, including Placer Dome and the Nevada Mining Association have proposed a \$1,000 fee to do that. That’s what we would like to propose today and I’ll discuss that further when we get to the point where we’re talking about those amendments. Any questions about that issue?

Comm. Turnipseed asked the source document is going to provide what to industry?

Ms. Johnson answered it’s going to provide guidance to them and to us as to what kind of conditions get put in a permit for how much monitoring the source has to do on a piece of equipment. In other words, let me talk about an example. One of the big mines has recently permitted, under Title V a concrete batch plant. And in that process, the EPA pushed for strong, onerous, in a lot of our minds, onerous requirements on the source to check the opacity of that by this formal method on a weekly basis, I believe. The final guidance that we’re preparing now may establish a monthly requirement for that opacity check and so this source is sitting out there with a weekly requirement, final guidance that we want to adopt, which is reasonable requirements for this may be less onerous and they want to change that permit without going through the \$20,000 process. They will still have to go through the same process, but it won’t be as much work as a typical significant revision by any stretch.

Comm. Turnipseed asked does this apply only to Class I, or all classes?

Ms. Johnson answered all classes. Except, typically the Class II sources are not subject to that extreme of requirements on the record keeping and monitoring.

Comm. Turnipseed asked you only have three Class I, right, that’s Southern Cal Edison . . .

Ms. Johnson answered no. We have 21 Class I sources in the State.

Comm. Turnipseed stated I misread your chart then.

Ms. Johnson explained three is the number that we accept for new sources each year. That’s how many applications we would expect. So, that’s basically Placer Dome’s comment and our response to that.

Commissioner Johnson asked in this revision and guidance that you will be putting new requirements, whether it’s less or more in the guidance document, at what point and how inclusive of change is this only restricted to those

items and \$1,000 new reevaluation and look at, is this just simply something that you had in a new document or when they do that if they choose to negotiate another item, then it becomes a major revision?

Ms. Johnson answered yes.

Commissioner Johnson stated so they're only, within your guidance document a change that you have instigated. And then question comes why the \$1000 it gets now a new requirement that you're imposing in a change rather than essentially, it's a permitted process. They've gone through all the hoops that you've asked them to and now you're changing the name of the game on them. I mean, I don't see it as onerous, but philosophically, you're talking about a change that you're instigating and promoting and the company's response who is going to be asked to pay for that.

Ms. Johnson stated I have actually struggled with this concept myself in the last few days and why not zero? Why not simply process that through a revision and the answer to that is that they've come up, it's their proposal to charge a \$1000 fee for that and it will take some work on our part. That's the proposal.

DAG Mischel stated Jolaine, I'm assuming you're referring to your last piece of paper here with your modifications for today's . . .

Ms. Johnson answered I will go through that in detail after I review these . . .

DAG Mischel stated I am referring to the addendum to these regulations that you passed out this morning. And you're asking for a change to page 2, line 14 . . .

Ms. Johnson answered yes.

DAG Mischel stated and my question is, I understand the concept, but I think it could be misconstrued to the extent that a revision of an operating permit may require a revision of air quality equipment, air control, air quality control equipment. Would that be included or are you referring only to monitoring conditions in the permit?

Ms. Johnson answered the periodic monitoring recommendations is a document that we are preparing that refers only to these kinds of requirements for monitoring and record keeping for different types of units and different applicable requirements. If the facility is proposing to come in with new equipment, with changed equipment, etc., then they would be subject to the other fee structure. If it's significant, it would be \$20,000. The \$1,000 we're trying to be very narrow that it applies to these few sources that already have Title V permits, but that have not, but have more onerous requirements than we're going to establish in this guidance.

Commissioner Coyner asked Jolaine, for those \$1,000 fee charges an ongoing thing as different recommendations come down from the EPA or would it be a one-time only or . . . six months from now they may change the periodic monitoring to, you know, daily instead of weekly or something, you'd have to go through that again, or do you see it as a one-time issue?

Ms. Johnson answered we're proposing it as a one-time issue to address those sources that had their permits before we come up with this guidance. The other sources typically, if we were to relax those requirements, would probably wait until they are doing some other modification and we could address it then, or until they are renewing and we could establish the new requirements at that time.

Ms. Johnson continued. The second letter is from Round Mountain Gold Corporation. The first paragraph, third line down, indicates that, "we're maintaining low emissions fees by charging a maintenance fee for Class II and Class I sources. It seems to reflect the amount of BAQ administrative time used per facility without unfairly

causing small Class II sources to pay for the larger companies' pollution. We especially appreciate the fee exemption for producing less than 25 tons per year of actual emissions and urge BAQ to keep this exemption. This is the exception to the rule at that workshop. This is the only feedback that we've had to try to keep that exemption so that too will become a question for amendment when we get to that.

Commissioner Johnson asked of the people who attended the workshops and I would expect these to be the larger producers, did you have people that presently have the 25 ton exemption well represented? I mean these are people that probably didn't go to your hearing.

Ms. Johnson stated I don't have the answer to that. I don't have a comparison between those that attended the facility and where they fit in that realm.

Commissioner Johnson stated if there's someone in the audience that can address that, I'd like to hear it.

Ms. Johnson continued. The second paragraph of this letter indicates that we consider adopting a provision for global modifications to permits when adopting new requirements. This gets back to the previous question. DEP today is proposing simply to focus in on this guidance and not open this up to all potential changes in federal, state and requirements, regulations, etc. We would like to address those individually as they occur.

And the third paragraph requests consideration for a provision for mines in temporary closure to reduce their fees while they're on standby or until they're back in operation. As you know, the mining, many mining corporations, companies, are having extreme difficulties in this economic gold times and they want some allowance for that. We have not proposed anything specific here, but assure you and them that we will work with them to somehow put their permits in a hold basis and reduce that burden, that economic burden while they're not producing gold at an economic level.

Chairman Close asked Jolaine, does that require some type of action on our part to allow you to waive a fee that otherwise is required to be charged? If it goes over, for example, from one year to the next year, there's an annual fee . . .

Ms. Johnson answered yes.

Chairman Close asked if the reg. says that you must charge it, but this may not be fair because of the situation during this time there is no activity going on. Do we have to do something to give you that authority?

Ms. Johnson answered the Division does not have authority to waive a fee and we'll talk about that when we talk about Walker River. We do have authority I believe, though, to put a permit in some level of standby and then not charge the fee if it's not an active permit.

Chairman Close asked and so then if the permit then becomes active, you would reinstate the fee if it, and so if the mine was down for six months, it went over the three months before the due date of its renewal and three months after its renewal date, how would . . .

Ms. Johnson answered that would have to be worked out, I believe, in terms of if they are working for part of the year, do we prorate that? I don't believe we have the authority to do that. I think that if a permit is active in any part of the year, that we would have to charge the fee.

Chairman Close asked so if it was active for one day during its permit year, it would have to be the full fee?

Ms. Johnson answered I believe so.

Chairman Close stated and so, but what you were proposing though, is that up until, it is so long that it is in a dormant state, you could not charge that fee, but then if it fired back up again with one day to go, you would charge a fee to it. I understand.

Ms. Johnson stated I would have to look at the details of that to see if we have some authority to work that on a prorated...

Chairman Close stated if you need some authority from us on that, you know, I would come back and request it. It sounds like a reasonable suggestion that's been made and if you need some authority from us I think that we would consider it.

Ms. Johnson stated we'll take a look at that over the next month or so and come back to the next meeting if we need additional authority.

Comm. Turnipseed asked maybe I don't understand this per ton fee, but wouldn't that automatically then be reduced if they're in a standby? This is not on a per ton fee permitted. This is a per ton fee actual discharge, right?

Ms. Johnson answered exactly.

Comm. Turnipseed stated so that fees going to be (inaudible) . . .

Ms. Johnson explained that fee would automatically be lower because they're not operating as much. But the maintenance fee is really the issue that they're concerned about. And they don't want to give up their permit because then there's a substantial fee to reinstate it and substantial time frame to reinstate it. But I think we can put it in some kind of a standby mode.

Ms. Johnson continued. The next letter is from the Nevada Mining Association and its generally I think we've talked about all of these issues before but in the second paragraph down, about a little over half way through it indicates that the consensus amongst Nevada Mining Association member companies is that the proposed fee structure represents a reasonable apportionment of fees among the regulated community in Nevada and would allow BAQ to meet its necessary staffing and permitting objectives.

In the following paragraph, about the fourth line down, it starts in as "It's appropriate that emission-based fees make up a significant portion of the total air quality program fees consistent with the Clean Air Act's intention and that the core of the fee program should remain emission based." At the end of that paragraph they indicate, again, that the current apportionment is reasonable and would, and that the Mining Association would be opposed to any further reductions below this level and they're referring to how much the emissions based fees make up that program.

The following page at the top of, in the top paragraph, partial paragraph, they indicate maintenance fees are roughly estimated based upon, established based upon the size and complexity of the source. They think that's a reasonable approach for assessing fees. In the third paragraph down on that page the Mining Association goes into the same issue about the need for the \$1,000 fee versus \$20,000 fee for facilities that need to change when we get this monitoring guidance done. In the next paragraph at the end, they request that we make periodic assessments of the equity of the fee structure to insure that it is being implemented in a fair manner and to make revisions as might be appropriate. We will commit to do that at least once a year.

Commissioner Coyner asked is that an accurate statement in the third paragraph, first page, where it says, "During 1998 the fee program was 70 percent funded by emission fees, so we've actually moved away from an emission based system." Is that accurate? That's their words. I mean, I don't need accurate to the exact percent. I mean

accurate, are we actually moving away from emission-based, or . . .

Ms. Johnson answered yes, to a certain extent. The other thing that you need acknowledge is that the permit fees for permitting have actually gone up substantially here to take more of that burden away. And then the remainder of the fees have been split now between a maintenance and an emissions fee.

Commissioner Coyner stated okay I'm not criticizing you. I'm just making an observation, one that they're making that I wasn't aware of.

Ms. Johnson stated the other statement that Allen has reminded me of is the need to remind you that during that fee structure, those were unusually low fees overall.

Commissioner Coyner stated yeah, so it maybe biased because of the way the fees were set.

Ms. Johnson agreed.

Ms. Johnson continued. The following letter is from Independence Mining Corporation and Independence, again, expresses their concern for the economic conditions for the mining industry in general and opposes any increases in fees and encourages us to reduce expenses and fees to the extent possible. Again, we commit to do that on a regular basis.

Then we reach the Walker River Construction letter. Walker River Construction is an unusual situation in terms of our experience in that they have expressed extreme financial hardship in having to pay a \$2,000 fee for renewal of their operating permit. They are, we are currently under the process of renewing their permit and they have expressed that based upon their low production and unique activities that that's difficult for them. Again, they're the only source that has come forward concerned about these fees and suggesting reduction of these fees. They've also requested, perhaps, some various options. We've considered options including a general permit for this source; however, a general permit is designed to cover numerous sources of a similar type. In other words, that we don't have to process over and over and over again and we haven't found other sources that really fit into the same category as this kind of operation. This construction company, they do pre-cast concrete projects, essentially, and they're here today and I'm sure you'll hear from them in a moment. What the Division would like to propose is rather than reduce the fees for Class II sources for renewal, which would then put us in the position of having to waive the fee somewhere else, we would propose that we work with this source to come forth to this Commission to get a variance from the permit fee, based upon hardship. Now I'd be happy to discuss that further if you have any questions with our approach on that.

Chairman Close asked if anyone had questions.

DAG Mischel commented with regard to the variance statute, under 445B.400, there are a couple of specific findings that the Commission would have to make before granting a variance and as you, I'm sure, are aware it's fairly unique circumstances that would warrant a variance and I don't believe the Commission has ever been asked to waive fees and what Jolaine is proposing rather than deal with it through the regulation so that it adjusts the whole fee structure for a particular source, I think the variance process is available, but it would be very difficult I think to justify a fee variance under the restrictions of 445B.400. And, of course, that variance request would have to be renewed every year or a shorter period if the Commission ordered that. So, it's not impossible, but there has to be a finding not only that there's hardship, but that there's hardship without equal or greater benefits to the public. So that would all have to be worked out, you know, the facts would have to be presented adequately to support a finding like that. And, of course, although Walker River seems to be a fairly unique circumstance, there are lots of small construction companies out there that might ask for similar treatment and the uniqueness of the circumstances would have to be very well documented.

Chairman Close stated that's a good point. I mean just because someone's having a hard time financially, it may be all the way through the State it may be a problem with maybe, I don't know how we can handle each one of those individually for the purpose of a waiving or reducing the fee. Is there some other way that this can be handled based upon what we've just been told? Assuming that we want to do it. I mean, I'm not sure that we want to get involved in crafting fees for every permittee and that maybe what we'd be getting into. I would be reluctant to do that based upon their financial ability to pay. That would be a very difficult thing for us to do. I don't know if, with what Jean has told us, is what you've suggested a practical solution to the Walker River problem?

Ms. Johnson answered the only thing I'm concerned about is to give, to go in and establish another fee, again, we would have to make that up in some other category and they would have to pay for it. This is, in our experience with BAQ, this is the only source that has claimed this kind of hardship. No other sources have had that difficulty. The other thing that this source has requested is perhaps being able to pay it in installments. The current rule reads that when you submit a permit application you must submit the entire fee. It's very clear. So . .

Chairman Close stated it would be a situation that would be very difficult if we allowed a discrimination, so to speak, in favor of one company and then not allow it, when you've got to pay \$50,000, and not allow that one to be paid over a period of time. I think that would become difficult also.

Ms. Johnson stated establishing the criteria to consider hardship is very difficult. We've dealt with this in our enforcement program time and time again. It's very difficult. I will take direction from the Commission at this point. We're not proposing to change the fees today to accommodate this.

Commissioner Jones asked in looking at your chart you're talking about nine renewals in a Class II category. Do you have any idea? I mean, is this ratification in that category substantial in the size of the companies?

Ms. Johnson answered yes.

Commissioner Jones asked is there room in here for a Class III permit that would handle this other group that really has a substantial difference in their size and operations. I mean, I don't like handling things variance-wise. I think that takes you down the road that boy it becomes a nightmare. I've dealt with it. And if there's truly a problem in the structure, is it a group of companies that are smaller and this is onerous and their sizes is just so much different maybe we ought to look at it in that sense Mr. Chairman rather than trying to find the answer for a specific company.

Chairman Close stated that's a possibility. Do we have some other questions then before we start making decisions here?

Commissioner Johnson stated in following along with Commissioner Jones' comment that I guess I need some idea of distinction of Class II general permit versus and operating permit. We don't have Class I general permits, but what's the break that determines Class I, Class II and what kind of emission difference might we expect. The threshold in having to apply for a Class II is in order of magnitude difference between that and going to Class I or do you have very large differences in sizes and operations in Class II?

Ms. Johnson answered the distinction between a Class I and a Class II source is the federal rule, the federal Title V requirements which establish that a source that emits greater than 100 tons per year of a criteria pollutant or greater than 10 tons per year of any hazardous air pollutant or 25 tons per year of a combination of hazardous air pollutants. That sets that criteria. Now, is there a clear distinction? No. A Class II source, what we have is several Class II sources that are permitted at 99 tons per year particulates. The distinction then becomes the federal process versus the state process for processing that application and that's why the Class I applications are so much more expensive. But, sources very often will crank their, will take limits to keep them under the Class I threshold.



Commissioner Johnson asked what is a Class II general permit?

Ms. Johnson answered a Class II general permit is provided in the rules and actually, we could have a Class I general permit according to our current rules. We don't have those at this point. A general permit is a permit that can be written sort of generically for numerous sources. We have two basic general, three basic general permits right now. One is for sand and gravel operations that emit less than 100 tons per year. We have another one that is for surface area disturbances. That goes through a general permit process. And the third one is for remediation at contaminated groundwater sites where they're remediating hydrocarbons. We have been able to write a general permit for that kind of process. Essentially, the concept is that those conditions are just all laid out in the permit, all we have to do is add their name and then they comply with the conditions that are established there and we don't have to do a lot of assessment or rework each individual permit. Again, we considered this source, that seemed like the best option to me, was to find a way to get them a general permit. But, there aren't any other sources that really fit in that category. So, can you write a general permit for one source?

Commissioner Johnson asked there isn't a statutory or a federal requirement that would prevent us from creating a Class III, for instance, that takes somewhat smaller than or different than the normal Class II permits?

Ms. Johnson answered no, Nevada could do that. We'd have to change our SIP and a few other things. It would probably be easier to simply subcategorize Class II for fees purposes than to try to establish a Class III permit.

Commissioner Coyner asked is the accuracy of this statement correct? In the past we have always paid \$225 for the five year period in their letter, the Walker River Construction letter.

Ms. Johnson answered let me review the previous fee schedule.

Commissioner Coyner stated well that would be \$225 divided by 5. Help me Terry. It's some small number, is that true? Is it actually that small? It must be \$50 a year. So, \$2000 a year is a huge increase, I guess that's...

Ms. Johnson explained it's not \$2,000 per year. It's a five year renewal for their permit and then they pay \$250 a year for their maintenance fee under the current structure.

Commissioner Coyner stated so, it's actually \$400 a year relative to \$50 some or \$40 some, whatever that \$225 by 5 would be. And would you place Walker River Construction at the bottom end of the Class II? Are they in the less than 25 tons per year an accurate amount? I guess they were close, huh?

Ms. Johnson answered yes..

Commissioner Doppe stated Jolaine, there's 90 projected renewals and 25 projected new Class II's in the year, I believe, 115 companies a year. I guess 90 of them are in the system now, roughly, based on renewals . . .

Ms. Johnson stated yes.

Commissioner Doppe asked where does this company stack out size-wise with those other 90? Just if you can give me an approximation?

Ms. Johnson answered let me refer to staff a little bit and see if we have that information. Without having the data and I probably have it in this package, but I would say small.

Commissioner Doppe asked have any of the other, I don't see it in your packet, have any of the other Class II permittees objected to this?

Ms. Johnson answered no.

Chairman Close asked if there were any other questions.

Ms. Johnson stated we'd like to suggest that we take this issue back and try to come up with another, perhaps another renewal fee for a subcategory of Class II sources that might be the very small companies.

Commissioner Jones stated you know I think that would be helpful, but it's also going to be helping us to see what percentage of this we're talking about. I mean, I don't think any of us want to do all this for one occurrence, but if we find that of the 90 there's 40 of these companies that really lie at the level where it's a hardship on them, even if they haven't complained, they're so small, then maybe we do need to do that and then if we have to tweak another category to get you the same dollars, we'd have to examine that at the same time.

Ms. Johnson stated we'll go back and look at all of those issues.

Ms. Johnson continued. The last letter that we received in terms of written comments is from the Southern Cal Edison, Southern California Edison. As you know, Southern California Edison pays the brunt of our fees because of high emissions at this point. Generally, in the two bullets, Southern Cal Edison supports the fee structure, which is now under consideration for final approval by the SEC and it talks about approximately 1/3 of revenues we collect being collected from permitting, maintenance and emissions fees, a very rough estimate and that seems reasonable. The next bullet talks about the policy and that the policy, they recommend that the policy take the current allocation and sort of memorialize that in this policy which is generally what we've done. And that they suggest that the cost for maintenance fees, which is emissions fees, that that ratio be kept at about 50/50 is their recommendation. So that's the testimony that we received. I have prepared a policy and you have that in your packet. The policy very basically indicates that air pollution control fees would be established to meet the budgetary needs of DEP as approved by the State legislature. On a biennial basis, we're required to prepare and submit that budget. Fee revenue needs for each year shall be determined by subtracting federal motor vehicle and any other available revenue sources from the total approved expenditures.

Once we have that legislative biennial budget, the DEP will evaluate the fee structure established in NAC to determine whether it's appropriate and whether it will provide the revenue required to meet the approved expenditures for the biennium. If the evaluation of projected fees indicated that the collected revenue will be significantly higher or lower, we'll come forth with an appropriate amendment. So we'll continue that process.

Based upon staff time keeping records, the NDEP will determine the average time required to process various types of air quality operating permits presumably particularly with the Class I permits we should get better and better at that and reduce that time. The permit fees will be established by averaging the number of professional staff hours required to process a permit and multiplying those hours by an hourly staff cost. This will provide that fees for the processing of applications and issuance of operating permits generally represent the cost of processing those permits. Then the additional fees necessary to maintain the air pollution control program will be based upon annual emissions and stationary source maintenance fees. We're recommending that we be given a range of 50 to 60 percent of those remaining fee requirements be assessed to emission fees and 40 to 50 percent, or the balance of that charged to some structure of maintenance fees on a graduated basis on the size of the facility.

Again, there's no action item on your agenda to adopt this policy. I would appreciate any direction that you want to give us as to bring this back for adoption, or leave it to the agency to adopt the policy and come forth in the future with this.

Chairman Close asked for comments on the policy issue.

Commissioner Jones stated I think it's a great policy. How many other policies are inside the Department? Do you

have policy handbooks that are separate from the statutory stuff?

Ms. Johnson answered yes.

Commissioner Jones stated I think that's a great place for it. You know, I don't think we have to deal with that.

Chairman Close stated I think we could give you our general sense of approval. I mean if that's what you'd like. I think that maybe if you'd like that in a form of a motion we could generally approve the policy that you've adopted. But, as indicated, we don't have I don't think the ability to adopt the policy for you so . . . is there a motion to approve the concept of the policy that's been submitted to us?

DAG Mischel stated no motion should be taken. Just a general consensus since this is a non-action item.

Chairman Close asked is there a general consensus by saying aye?

DAG Mischel stated you don't need to vote.

Chairman Close stated you have a general consensus then of approval of this policy. I think we all appreciate the concept behind it and I think it's surely a step in the right direction. And so, what I perceive then, is that you have basically presented to us your testimony on this issue. The only thing that remains to be worked out by you is this one particular problem dealing with low emissions on Class II permits. So what I'd like to do, I guess, is rather than coming back and doing this whole thing over again, is to probably take whatever public testimony there is here to take and then we won't have to go over the whole thing again and we can just come back with that one issue when you return to us rather than revisiting this entire proposal. And, so, with that thought in mind whatever else you want to give to us go ahead and give to us and then we'll, you'll come back and give us this one modification and then we'll take action on that.

Ms. Johnson stated okay. Mr. Chairman, if I may, I'd just like to briefly go through the proposed, the addendum and the proposed changes to the LCB language that you have in your packet today.

DAG Mischel stated Mr. Chairman you need to just formally admit the four letters that were discussed as exhibits.

Chairman Close explained I was going to do that when she finished her testimony.

DAG Mischel stated oh, okay, fine.

Ms. Johnson explained the proposed changes to the LCB language. On page 2 of the proposed regulation that you have you see that the changes that are presented there are those changes that represent that structure as laid out in the table that we discussed a moment ago. These are the same numbers that you adopted as temporary regulations in December. I would propose that the first change would be on page 2 at line 14. I would like to insert after subcategory A I would like to insert subcategory I which is a provision that addresses this issue of the periodic monitoring guidance document that we're about to finalize. "I" would read, "Revision of any operating permit to make the permit consistent with the Division's periodic monitoring recommendations a fee of \$1,000."

The next change occurs at line 23 on page 2. This is almost a typo, it's a technicality in terms. At the beginning of subsection B there, it indicates significant revision of a permit under the prevention of significant deterioration program, it's a major modification and not a significant revision. We'd like to substitute that language to make it clear that it's directly correlated to the federal rule.

The next proposed change is on line 28 of page 2. As we discussed, the general consensus in the workshop was to

eliminate this variance or this exemption for anyone that emits 25 tons from that emission fee. Let me give you a little bit of background as to why we set that exemption up to begin with. Under the previous fee structure, the only fees that sources were paying on an annual basis were based upon their annual emissions fee and it was something on the order of \$3.75 a ton. It was our contention that for us to invoice and for a source to have to process a check for something on the order of \$75 was not cost effective to anyone and therefore we exempted 25 tons or less from that fee. The argument that we heard at the Commission was that now these sources are already paying a \$250 fee at least for their annual maintenance fee and that we ought to reinstate and collect that revenue for all emissions. Now I have to tell you that this is not going to make a big difference in our overall revenue because most of these sources are very small sources and we're going to see something on the order of an additional \$50 to \$70 per source by taking this exemption out of there. But based upon the consensus at the workshop, we're proposing to remove that exemption at this point. So, the proposal is that on line 28 that you delete the wording beginning with, "If a stationary source emitted less than 25 tons of all regulated pollutants combined, except carbon monoxide during the proceeding calendar year, the holder of the operating permit is exempt from the fee required by this subsection for that stationary source."

And the last change that we'd like to make is that somewhere along the line we sort of dropped out the requirements for a surface area disturbance permit. That is a maintenance fee for that. After line 25 we would like to insert a new subsection (e) for a surface area disturbance permit \$250. Again, that's the annual maintenance fee. With that we propose adoption with those amendments as you see fit.

Comm. Turnipseed stated we spent considerable time deliberating on the Walker River Construction letter. Do you know whether they would fall within this 25 per tons per year or less exemption that we're now taking away?

Ms. Johnson answered certainly under last year's emissions they would fall well under that.

Comm. Turnipseed asked and so they were going to be paying now \$2,000 plus and emission fee?

Ms. Johnson answered they're going to be paying, under the current structure they're paying \$2,000 for their five year renewal. They pay \$250 per year for maintenance of their permit plus they would be paying something on the order of \$125 if we take this exemption away.

Commissioner Johnson stated I have a question back to one of the letters from Southern California Edison because of the significant impact on the emission fee schedule of the single site. I'd like to hear what their plan is in scheduling for emission reduction programs. If they implement a reduction program that's going to significantly impact the fee structure.

Ms. Johnson stated there is a representative from the company here and he should be able to address that.

Chairman Close stated we would invite him to comment on Joe's question. Anything else? So what we've done here we have really taken Jolaine's testimony. We probably can't adopt this resolution, but we'll take testimony from the audience right now, but we'll have to keep this in mind when she comes back to our next meeting so we won't have to go back and review this petition again. Any other questions of Jolaine?

Comm. Turnipseed stated (inaudible) but I thought we were going to adopt it as written and then revisit the small operator amendment later.

Chairman Close asked is there any proposal or just to pull it off the table and come back and do it again?

Ms. Johnson answered I ask that we not pull it off the table.

Chairman Close stated okay. I misunderstood you because I thought you were going to pull it off.

Ms. Johnson stated if you do that we revert back to the previous fee schedule and it will cause serious hardship.

Chairman Close stated okay. I misunderstood what you said because I thought you wanted to pull it off and come back and bring the whole thing back to us and so all my comments are to be ignored.

Ms. Johnson stated I would propose that we go forth. We'll sort of hold the fee that's due in abeyance and work with the source and come back with a specific provision later.

Chairman Close stated okay. I misunderstood what you said Jolaine.

Ms. Johnson stated okay, sorry.

Chairman Close stated if there's no objection we'll admit the exhibits which she has proposed to us which include I guess the packet of let's see Placer Dome . . .

DAG Mischel stated Placer Dome, Round Mountain Gold Corporation, Nevada Mining Association . . .

Commissioner Johnson stated it's all included in Exhibit 4.

Chairman Close stated it's all included. Is that number 4?

David Cowperthwaite, Executive Secretary, answered yes that's number 4.

Chairman Close stated okay, we'll admit Exhibit No. 4. Also we have another letter from Walker River Construction Company which is marked as Exhibit No. 1 which is somewhat different but also very similar to the one in Jolaine's packet. If there's no objection we'll admit number 1 also. If there are no other questions of Jolaine we'll let her testimony be concluded for the time being and we'll ask if there's any comments from the audience.

Paul Scheidig, Director of Regulatory and Environmental Affairs for the Nevada Mining Association, stated you've read our letter and Jolaine's capsulized it for you fairly well and her presentation was excellent relative to the complexities and nature of this particular rule making that's in front of you this morning. We certainly urge that you adopt it today. If you need to make other modifications later, those can be done appropriately especially for just one facility. I think that the industry and the Division needs to have these rules in place. We support the fee structure as proposed. We're very pleased with the fact that the \$1,000 for the periodic monitoring is also included in this package as a new proposal this morning. The Division has done very well in working with small, large and in-between facilities. I attended all of the workshops and found small and large facilities voicing very strenuous opinions at times and the Division dealing with them professionally and appropriately. I think the package they put forward today is excellent and one that reflects those that the industry can live with and deal with especially the industry that I represent where Jolaine mentioned that we're not exactly in the best of economic times yet this is a reasonable proposal and it needs to be passed today.

As another short aside, not relative to this proposal, I'd also like to publicly acknowledge and congratulate the Division on its selection of the new bureau chief, Dr. Colleen Cripps and also the bureau chief for air quality and the bureau chief for mining, Dave Gaskin. Both of those people have worked long and hard with the Division, deserve these promotions, are very professional and we're glad to see the new faces and new leadership under Administrator Biaggi anyway come up and we're looking forward to working with them and we think they've made some excellent choices and hopefully that statement coming from industry is not the kiss of death. But, we congratulate them on their new appointments. Any questions?

There were no questions.

Michelle Nuttal, Southern California Edison Company, stated I also wanted to express my support for the fee structure that's been proposed today. These fees did represent a significant increase in fees for our facility, approximately \$150,000 a year in increased fees. But we also feel that it's an excellent package that takes into consideration the needs of the different kinds of businesses in the State. And we appreciate the bureau working with us closely as well as how other sources have worked with us as well to come up with the current fee structure and I would echo the sentiment that I think it should be adopted today and if there's specific issues that need to be revisited, appropriate to do that in the future. We also support the smaller fee for periodic monitoring changes in the permit that will likely affect us as well and it's reasonable to have a smaller fee for an administrative amendment of that type and I understand there were some questions about how our future plans might affect the emission fees? I'd be happy to answer any questions.

Commissioner Johnson asked do you have plans to mitigate the emissions and if so, what's the schedule?

Ms. Nuttal answered in December of '98 actually Southern California Edison issued a press release that indicated that we would be either, we would be installing controls at the facility or shutting it down depending on the future market for electricity and how that impacts our facility. It's difficult to say right now. In our proposal those changes we would start doing engineering shortly and they would be installed prior to 2008 maybe substantially sooner. It really, really depends. It will impact the emission fees substantially because what it means is that the significant fees that we're paying now are going to have to be redistributed because even though it's a very popular thing to say, "polluter pays" unfortunately, when emissions are reduced it doesn't change the amount of staffing that's required at the air bureau, so when that happens then the fees are going to be changed. And so that would be in the next few years at some point. So, I can't say with any more specificity when. Hopefully our facility will still be operating and hopefully we'll still be paying fees. That's all I can say.

Chairman Close asked if there were any other questions. There were none.

Ray Bacon, Nevada Manufacturer's Association, stated we're not opposed to the fee structure that's been proposed. I was unable to attend this last workshop because I was at the other end, I was at your end of the State for this last (inaudible). I guess the only question that we have and Jolaine eluded to it herself, on this periodic monitoring, where the Division is making a change is being either required by the feds. or whatever, I'm not sure that there should be a fee structure on that at all. So, the \$1,000 fee structure on that, you know, if the change is emanating from government, why should the industry be paying for that? Now I understand there's administrative expenses involved in that, but I still have a little bit of heartburn with that one.

The secondary thing that I would like to address though is a couple of things that we addressed in the meeting in December. Number 1 from the standpoint of this group I think one of the things that will have to take place, which Michelle eluded to in her comments, is that you take a look, assuming that Mojave goes through and it goes through their massive emissions reduction, which we anticipate that they will do, or closes the facility, that will redistribute the fee structure substantially without changing the staffing. At this stage of the game I think everybody on this panel recognizes that the reality of the situation is mobile sources are far and away are right now a bigger chunk of the problem than stationary sources and yet stationary sources fundamentally pay the fee. So, as we suggested at the December meeting, we think that the SEC needs to take action to send a recommendation to the legislature, not in a crises mode as it would have been in December, but over a timely period during this interim session to say, "We're going to have to address the issue of mobile emissions fees so that the mobile emissions are picking up a reasonable portion of the actual emissions that we're dealing with." That money would then be distributed. My recommendation would be to distribute it back to whoever the agency is that's involved so that while this organization would be the one that would be making the recommendation there would be a mobile emissions fee that would go back to the Clark County Health Department for their portion of the thing, to Washoe County Health

Department for their portion of the thing, and to the balance of the State for others. That's where the major source of emissions is coming from. If you take a look, while fuel changes have reduced emissions and continue to reduce emissions, now they're causing water pollution, so Mike gets something to do. But, the other side of that coin is if you take a look at the overall emissions reduction across the board, I think you'll find your stationary sources have typically stepped up to huge emission reductions in compared to the reductions that have taken place from mobile sources. So, we think that that is a responsibility of this organization to send a recommendation through or jointly work with the Department to make a recommendation that says, "Somehow you've got to address the equity between stationary sources and mobile sources." And I know that's not going to be popular, but the reality is that's the right thing to do and sometimes we have got to do the right thing.

The other thing I would like to address is the issue of the policy. You're a quasi judicial body and while I will respectfully disagree with your recommendation that this is a good policy. I think the policy is fine as far as it goes, but I think there's a couple of categories that clearly need to be addressed in the policy so that from an industry standpoint there is a single place where you can go to say, "What can I expect?" That's part of the whole issue of adding certainty and some of the issues that I would say should be included in the policy would be variance from fees, if you're going to address the variance issue. The secondary thing that I think is important and should be important for the construction industry, the mining industry and potentially some of the manufacturing industries, is what are you going to do about seasonal operations and what are you going to do about operations that cease and restart? Especially in the mining industry, I think it is very likely that we're going to have some cease and restart things and they probably should be included in the policy as to how we're going to handle those things. And the other area that I would like to see addressed, or another area that I would like to see addressed in the policy is what, if you take a look at the front page of the thing, it's to meet the budgetary requirements of NDEP. As we get into the major expense that we're going to get into with the regional haze compliance, assuming that that thing eventually gets done, I'm not convinced that that should necessarily be paid directly by stationary sources. In fact, we're ready to go to the legislature to say, "If we're going to have to go into compliance with regional haze and go through all the hoops to create a new SIP, that those positions probably should be general fund funded and not specific permit funding issues." And that will be a sticky issue because at this stage of the game NDEP has fundamentally been user fee funded. But, regional haze represents a whole different ball game that we're getting into. We're not getting into health issues, we're now getting into visibility issues and unless we're going to start hitting Roy with a permit fee for every time he has a fire in his territory and get the feds. to pay theirs then . . . Roy just had a heart attack, he'll recover here in a few minutes. But those are the issues that we're going to have to address and they are far and away beyond the constraints of what should be done with permit fees when we start talking about visibility because fires are a substantial chunk of that issue. And then the last one that I would think is that somewhere along the line we need to either as part of this policy or as part of a separate policy get into what Joe was discussing and I think others mentioned it too. Somehow we should be able to have some sort of a discount program for somebody that does something that has a total environmental impact that is, you know, reducing emissions. There should be some benefit for those people and that should be clearly spelled out in some sort of a policy so that people can go to one place and say, "Aha! If we invest in this thing which is going to reduce our air emissions and reduce our water emissions, this is what we can expect, beyond just fee reductions." That's not going to be an easy one to do, so whether it's part of the air policy or whether it's part of an overall Department policy. But somewhere there should be support for that. It's the right thing to do and every once in a while we've got to do those right things. I think that fairly well covers my comments. Thank you very much. Questions?

Chairman Close asked if there were any questions. There were none.

Sharon Ferris, Walker River Construction, stated I'm here as you know from the letter that we have introduced as far as the hardship case. We personally feel that these fees should be based on the amount that these companies use. We are a very small isolated company. We're in a rural area. We primarily, one of our main product is pre-cast and we do a lot of like feed bunks and head gates for the farmers for the local areas and we feel that based on our revenues by them increasing these fees, we cannot increase our volume, our dollar amount to the customer, we

cannot forward that on to meet what these revenues, it definitely will present a very large hardship in our company. And we appreciate the Environmental Department working with us. We have worked very closely with a couple of the people and I need to clarify, I understand that you've adopted this policy, but then you are going to, I need to clarify that, I guess with Jolaine.

Chairman Close stated we have not adopted the policy yet, but likely we will, not the policy, but the petition. We will adopt it, but then the staff will work with you to see if they can come up with some other modification of what we anticipate adopting today to take care of the issue that you have raised.

Ms. Ferris asked staff, meaning Jolaine, the Environmental Department?

Chairman Close answered yes.

Ms. Ferris stated I just needed to clarify that. All right and Mr. Chisum is another gentleman here that, he can bring some more insight and some more volume and other areas other companies that are in the same situation that we are and if there's any questions?

Comm. Turnipseed asked if we make a cutoff for small companies and base it on employees, how many people do you employ?

Ms. Ferris answered we have six employees.

Comm. Turnipseed asked on your letterhead it says that you produce ready mix concrete?

Ms. Ferris answered yes sir.

Comm. Turnipseed asked if I were somewhere in the Yerington, Smith, or Wellington area, what would I get charged per yard delivered?

Ms. Ferris answered on a five sack you would be charged \$50 a yard. And, Mr. Turnipseed, the prices, Mr. Cabral has not raised this prices. I've been with him seven years and they have been this way for the last seven years.

Comm. Turnipseed stated I see that.

Ms. Ferris explained and that is mainly because we, our deliveries are local, the Wellington, Smith Valley, Yerington, and we do a lot of pre-cast and it's only on batch orders only. So, let's say you're a local person in Smith Valley that wants 40 yards of concrete, then we would deliver per your order.

Comm. Turnipseed asked what do you charge for a septic tank?

Ms. Ferris answered a 1,000 gallon septic tank is, depending on where it is being delivered, but let's say delivered to Yerington, the local areas would be \$550 and then there's 1,250 and 1,500 gallon and there's an \$80 difference between those sizes.

Comm. Turnipseed asked what was the \$550 then?

Ms. Ferris answered \$550 is for 1,000 gallon and then it would be \$630 for the . . .

Comm. Turnipseed stated that's close enough. I was just curious. I was just curious how many septic tanks you'd have to sell to pay this fee.



Ms. Ferris stated you'd have to sell a lot of septic tanks.

Commissioner Coyner stated in Mr. Cabral's letter he indicates the hours of operation are 66.19 hours, is that?

Ms. Ferris stated that's per year.

Commissioner Coyner asked you only operate your plants 66 hours a year?

Ms. Ferris answered this is based on when we we our actual emissions fee then we base it on the actual, the volume of the concrete that we actually purchase from Nevada Cement which is what we actually use and that's based on our actual usage and last year that was the hours of operation. That was last year's basis for '98.

Commissioner Coyner asked was that 66 hours unloading cement into your plant? Sixty-six hours a year is not very many hours.

Ms. Ferris answered no it isn't and that's why we're . . . it's actually it's 66.19 hours of our batching. Am I correct Mr. Cabral? Yes. It's measured by . . .

Commissioner Coyner stated I should be asking the guy who wrote the letter. I can see that. Sixty-six, your plant certainly operates more than 66 hours a year.

Ms. Ferris explained the plant operates from 5:00 in the morning until, well, we have operations from 5:00 until 7:00; however, like I explained we only batch per order so we might have concrete, most people deliver, you know, want concrete in the morning, but a couple of times we'll have somebody that has a helper and they want to have concrete at 4:00 in the afternoon. That's very rare, but most of the time it's like in the morning. But we use the concrete to make our pre-cast too, so . . .

Commissioner Coyner asked do you operate the plant year 'round?

Ms. Ferris answered yes sir, we do.

Commissioner Coyner stated so, it's more fair to say you're a year-around business with six employees and would you answer me if I asked you how many yards of concrete a year you sell?

Ms. Ferris answered yes sir, I can give you that figure.

Commissioner Coyner stated in approximate.

Ms. Ferris answered well for example, I have the one schedule here for '94 if that will, it was a little high at that time. The yardage was, at that time the yardage was 8,220 yards. That was in '94, but our business since then has really dropped considerably since then.

Commissioner Coyner stated but it's a full year-round operation, it's a going concern . . .

Ms. Ferris stated yes it is.

Commissioner Coyner stated and you're in operation Monday through Friday or Monday through Saturday.

Ms. Ferris stated Monday through half-days on Saturdays.

Commissioner Coyner stated when I saw the 66 hours that sounded like every once in a while, every couple of months they pour a septic tank or something and that's not what this is characterized as.

Ms. Ferris answered no.

Chairman Close asked if there were any other questions. There were none. He thanked Ms. Ferris.

Claude Chisum, Yerington Ready Mix, stated that he had been there 50 years. Started out with a two-sack mixer and two wheelbarrows and for the last 40 years I've had trucks, fortunate to have that. Done quite well over there. Some say I should hang it up but I've got another 25, 30 years to go yet. Anyhow, brings some smiles to your faces I hope because I set over here, I can't hear what's going on and I just watch your faces and I'd say this is an awful dry meeting you're running.

Some information, we do do a, my son is in the curb and gutter business and he pours about 40,000 feet of curb and gutter per year in the Reno, Sparks, Carson City, Lake Tahoe, all northern Nevada area. So, we get in contact with the ready-mix companies in here due to the fact we got a very large bills from them. They, typically those bills is about \$72 a yard. Joe's is at \$50 I hear here, and \$54 is typical for a five-sack mix in Yerington. There's four ready mix companies there. These ready mix companies here according to my calculations and just things that leak out of the company bosses, it comes through my son and that sort of thing, they were probably going about 150,000 tons of cement from Nevada cement, from their cement sources per year. I would estimate the capital in being material and those over there was from 50 and probably grown more near 100 tons per year. You get down to Yerington area over there, Joe and over here would be going about 2,000 tons of powder this is I'm talking about I hope you remember, and I am doing about 750 tons a year. My end thing is there, our information is that we've got it here that Reno/Sparks pays, and local, pays \$25 fee for what you're asking us to pay \$3,000 fee. And Nevada Cement is in Lyon County and it also pays a \$2,000 fee, I mean a \$25 fee. So, proportionately although it's different governmental agencies, we're all one government so we need to take a look at that.

I would think that it's excessive in one of the other subjects and write this down is that I wasn't informed that there was going to be this hearing and I understand there's been a couple of hearings prior to this and I never knew anything about it until Mr. Cabral told me. And I guess Hawthorne Ready Mix is the same way. Incidentally, he couldn't come I'm sure because he and his wife operate that over there and if they did they'd have to close down the company. My estimation, Tonopah being the same way. What we're doing out there in the country is we are providing a service to the people in those isolated areas. It's very essential to what little growth we have. And so that's kind of picture of what we're doing over there. Any question I'd be . . .

Commissioner Coyner stated thank you Claude for coming up and talking to us. I appreciate it. Did I catch that right? Did you actually have four plants in Yerington? Four ready mix plants?

Mr. Chisum answered there's four plants. There's two in Smith Valley and two in Yerington.

Commissioner Coyner stated that surprises me.

Mr. Chisum stated and to justify all of this Mr. Cabral goes out and does other work and most of his income I'm sure comes from the outside and as does ours. I'm a general contractor also. So there's other things, a ready mix company wouldn't be a right thing to do in Yerington or in that area over there. But the reason I did a ready mix company over there, I was doing 3,500 sacks a year with a shovel and I knew that my personnel was going to run out so I had to get a truck. Well, that involved a ready mix plant and then there was this that and the other and well afford the power plants and I did some things and it paid off. But, it's kind of a unique area and I think that you're going to find that through all of the area, like Lovelock, they don't have people over there. We buy concrete over there and it's typically a \$70 price out in those isolated areas and Hawthorne is \$84 and just do to the fact that the

numbers doesn't stack up. But \$3,000 is a little excessive, I've got to agree with that.

Chairman Close asked if anyone else wished to testify in this matter. No one did. He continued with a question for Ms. Johnson - Jolaine I was interested that when he indicated that for the same in Clark and Washoe County the fee for what we're charging there is \$25 compared to our \$2,000. Is that an accurate analysis?

Ms. Johnson answered it is if you're looking only at the permit fees. Washoe County, and I don't have exactly their structure here, but I believe that the way they charge their fees is they charge each source \$25 a year. They renew their permits every year. But then Washoe County charges \$60 per ton for emissions. So, the issue is we're at the question of how to balance those fees again. Washoe County collects most of their fees through emission fees, rather than assessing the fees to the sources for the efforts that the agency puts forth individually.

Commissioner Coyner stated another comment that Claude made disturbed me a little bit, Jolaine, that he said that he hadn't received notice. I'm sure and just for the record all the permittees receive notice of the hearings and the proposed regulations?

Ms. Johnson answered yes. We use our database for those sources that have permits. I'd like to talk to him if he didn't receive notice. We need to figure out where that glitch is in the database.

Commissioner Johnson stated yeah, but he's not the permittee. He's purchasing from the permittee, is that true or not?

Ms. Johnson asked are your ready mix plants permitted?

Mr. Chisum answered yes, we're a permitted site.

Commissioner Johnson asked that's permitted air quality? Air permit?

Ms. Johnson answered right.

Chairman Close called for any further comments or questions from the Commission or the public. No comments or questions were forthcoming.

**Comm. Turnipseed moved for adoption of Petition 1999-03, as amended, with the provision that they come back to us then for some kind of breakdown for a small operator or at least a list of distributed sizes of plants based on emissions or employees or whatever. Maybe they don't have the data for employees, but maybe we make a break for real small operators, it would seem to me to be much easier to make a break on number of employees versus, you know, how many acres they occupy or how many tons per year they pour, or whatever.**

**Comm. Crawford stated Mr. Chairman I would second that if we, can we provide the Department, or the Division with the authority to hold those small permits, whatever their judgement is, in abeyance until we get this resolved?**

**Chairman Close stated I'm not sure we can do that. Maybe we ought to talk to our attorney over here.**

**DAG Mischel stated there is no request on the agenda to do that. That should be either done administratively by this Division on a very temporary basis and then if a variance or a rule making change is warranted, that would come back to the Commission.**

**Allen Biaggi, Administrator of the Division, stated Jolaine has already committed to the fact that we will hold in abeyance the Walker River Construction fees until this can be worked out one way or another and we can do that administratively.**

**Commissioner Doppe stated I have a question on the motion. Can you clarify what you meant when you said that you want them to bring back whatever it was that you wanted them to bring back?**

**Comm. Turnipseed answered well, if we're going to add an additional breakout of the Class II emissions, my suggestion was that we do that on the number of employees versus the number of yards or whatever.**

**Commissioner Doppe stated I guess my question is that I didn't know that we had decided to do that yet. I thought that what we were going to do is have them come back to us with a recommendation as to whether some sort of breakout was or wasn't necessary, put it before us at that point and then we get into it. Because I have all kinds of comments on that very issue that I'm reserving for that discussion rather than take up time with it today. But I just want to make sure that we're not agreeing to do something that I thought we were just agreeing with this.**

**Comm. Turnipseed stated okay, strike that from the motion. I move that we adopt this as amended.**

**Comm. Crawford second the motion.**

**DAG Mischel stated there was a second. I think we go back to the original second.**

**Commissioner Johnson stated I have some comments and I agree that we should be just addressing the amendments that are proposed and secondly, I have an objection to the deletion of the small emissions as 25 tons and I personally would like to see that exemption retained. Although, it might be appropriate to consider that along with this other issue that we're putting forward on the issue of a separate class on how the fee structure for that class so I will vote for the amendment. Just serving notice that I will come back and address this particular subject again when we have a small emitter classification.**

**Chairman Close stated I think one way to make sure to do that is when we set up the agenda that issue is on the agenda for discussion as well as the item of the small emission matter.**

**Commissioner Johnson stated yes and I would vote for the motion on that.**

**DAG Mischel asked Commissioner Crawford if he had accepted the amended motion.**

**Comm. Crawford stated yes.**

**Chairman Close stated and so my understanding then is that they will come back on those issues and we'll discuss it again, but at this point we're going to, the motion is to adopt this petition. On the motion, all in favor?**

**The motion carried unanimously.**

**Chairman Close called for a lunch break at 12:00 a.m. and reconvened the meeting at 1:00 p.m.**

**He then proceeded with Agenda Item II.D. Petition 1999-05 (LCB R-020-99).**

**(Petition 1999-05 (LCB R-020-99)** makes permanent amendments to NAC 445A.228 to 445A.292. The amendments clarify wording, remove outdated language, conforms the water pollution regulations to statutes, addresses who must sign a discharge monitoring permit, clarifies establishment of effluent limits and compliance schedules and provides for minor water control discharge permit modifications. The amendments also provide for the transfer of permits to new owners. NAC 445A.105 and 445A.246 are proposed to be repealed.)

Leo Drozdoff, Mining office Bureau Chief for the NDEP, stated 1999-05 is a review of temporary regs. that were adopted at the December 9th hearing. I would characterize these regs. as, essentially, a cleanup. Many minor corrections taking out outdated information or putting into place items that needed to be in there based on our federal delegation requirements. We reviewed the comments that were received at the December 9th hearing, well there really weren't any and we're only proposing one slight change and this is based on an E-mail that we received from Barrick Goldstrike. If you would refer to page 10 which is section 8 and it references 445A.243. The bold type, the very first words are, "In terms of weight except quantitative limitations . . ." that stems from a federal reg. It's actually 40 CFR 122.45(f) and it was pointed out to us in that federal reg. the term instead of "weight" that is used is "mass." And so, we would like to make that change. That's essentially what we have for you today. I'd be glad to go through them in greater detail or answer specific questions you may have.

Chairman Close stated my understanding is we've already gone through this one time as a temporary reg., so we're now adopting it as a permanent reg. with the one change which you are suggesting.

Mr. Drozdoff stated that's right.

Chairman Close called for other questions from the Commission and then opened it up to the period of public comment. Since there were no further questions he closed the period of public comment.

**Commissioner Doppe moved for adoption of Petition 1999-05 as amended.**

**Comm. Crawford seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item II.B. Petition 1999-06 (LCB R-021-99).**

(Petition 1999-06 **(LCB R-021-99)** proposes to permanently amend NAC 444.8901, 444.8906, 445A.347, and 459.9729 by removing the Division of Emergency Management in the Nevada Department of Motor Vehicles & Public Safety from the list of agencies required to be notified of spills and releases pursuant to Nevada's water pollution control regulations. The intent of this regulation is to provide for regulatory relief regarding the disclosure of spills and releases. Other emergency reporting requirements are not affected by this amendment.)

Tim Murphy, Bureau of Corrective Actions, stated I'm here to discuss Petition 1999-06. This was initially presented as a temporary amendment. The only change from that temporary amendment is the inclusion of section 1, 2 and 4 and they identify also the Division of Emergency Management. One and four are the used anti-freeze regulations and four are the certification regulations. All three of those in addition to number 3 include DEM. That is the only change from the temporary amendment. If there are any questions, I'd be happy to answer those now.

Comm. Turnipseed asked Section 4 on which page?

Mr. Murphy explained Page 1 has section 1 and section 2. Those are the used anti-freeze regulations and within those you'll note that DEM is also identified there as one of the listed agencies to be notified as to reporting of spills. That is in addition to section 3, which is the Water Pollution Control Act and then section 4 is certification. Anyone that's certified in the State of Nevada and acting in their duties as a CEM have to report to the Division of any reported spills. Those are the only changes.

Commissioner Doppe asked Section 4(b), is that a typo, that first word, where it says, "I responsible . . ."

Mr. Murphy answered yes. It looks like it would be a typo.

Commissioner Doppe stated it should have said (inaudible) be or is responsible or something.

Mr. Murphy stated "Will be responsible for the work of other persons he employs or supervises."

Chairman Close called for other questions from the Commission and then opened it up to the period of public comment. Since there were no further questions he closed the period of public comment.

**Comm. Turnipseed moved to adopt Petition 1999-06.**

**Chairman Close asked as amended?**

**Comm. Turnipseed stated as amended.**

**Commissioner Crawford seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item II.B. Petition 1999-07 (LCB R-022-99).**

**(Petition 1999-07 (LCB R-022-99)** proposes to permanently amend NAC 445B.001 to 445B.395, the air pollution control regulations. Amendments are proposed to NAC 445.221 to update the reference to the Code of Federal Regulations from 1997 to 1998. The amendments to 445B.300 extends the expiration of an operating permit from one year to 18 months. NAC 445B.362 and 445B.373 are proposed to be amended to correct equation errors and add the term "maximum." NAC 445B.383 is amended to correct the references from cubic feet to yards.)

Allen Biaggi, Administrator of the Division of Environmental Protection, stated some of our air pollution staff have been tied up at lunch so I would like to hold on this one for the time being. Moving down to **Item G Petition 1999-08**, the Division is requesting that because of issues related to the Legislative Counsel Bureau's revisions and their drafting of this permanent regulation, that we pull it at this time so that we can go back and work with LCB a little bit more on the language. Similarly, on **Item III below that with regard to a variance of NAC 445B the U.S. Air Force's Tonopah Test Range** issue, that has requested to be pulled by the U.S. Department of Energy. The air quality people that are delayed deal with the next item so I would suggest that we move onto Item V, which is an update of Frehner Construction Company compliance updates and those air pollution people are here and can give you the overview of compliance status.

Chairman Close moved to **Agenda Item V. Frehner Construction Company Compliance Update.**

Nevan Kane, Environmental Scientist III with the Bureau of Air Quality, stated at the two previous Commission hearings, the Commission had requested that the Bureau of Air Quality give them an update on Frehner

Construction Company's compliance with their air quality permit. As you're aware, Frehner has had a poor compliance record with their air quality permit for the many sites in the State where they do gravel screening and asphalt production. And this is summarized in, my presentation is summarized in section 5 of your packet. Before I go on I want to make a substitution. I want to substitute a table that I have in my hand with all of the tables that are in that section of your packet. Basically, this is due to, we basically gathered up-to-date information as recent as yesterday so we were able to update this table and it's more complete information so I want to go ahead and submit that to the Commission.

The handouts were distributed.

Mr. Kane continued. My presentation, the presentation will be presented by myself and my colleague, David Gahr. As you know, Frehner has had a poor compliance history. The last two notices of alleged violations that were issued about this time last year not only had monetary penalties associated with them, but there were also compliance orders that were issued with those NOAVs. We developed these compliance orders in the hopes that because it appeared that monetary penalties didn't seem to be having an effect, we thought we'd have these compliance orders which specified exactly what they had to do at these two violations to begin with to bring them back into compliance and basically it was a matter of trying to bring them into compliance as quickly as possible. I'm going to review their compliance with their first compliance order and then David Gahr will talk about the compliance order that he authored.

Compliance Order 98-06 was issued in October of last year due to excess emissions of lime at their Yerington asphalt plant. That compliance order ordered Frehner to develop changes in their lime off-loading procedures, changes to their lime delivery contracts, and required Frehner to train all of their employees involved with the handling of lime to be trained in the safety of handling lime and in how air quality permits work so that they could be aware of that and come into compliance. In addition to that the Bureau of Air Quality did numerous surprise inspections at several Frehner sites throughout the State. I'm happy to report that they were in compliance with all of the conditions of their permits at all those inspections. In addition, they are also in compliance with Compliance Order 98-06. They have fulfilled the requirements to train their employees in the health risks associated with lime, air regulations and so forth. So, I'm happy to report that in those two efforts they're in compliance. I'd like to now, unless there's any questions . . .

Chairman Close asked if there were any questions. There were none.

David Gahr, Environmental Scientist III, Nevada Division of Environmental Protection, Bureau of Air Quality stated Compliance Order 98-12 was issued in October 1998 in response to violations noted during a Bureau of Air Quality inspection at Lund and Hiko Nevada where controls, emission controls that were required by the permit, the operating permit, were observed to be not installed. The compliance order 98-12 required Frehner Construction to conduct a self-audit to assure that whatever requirements for emission controls that were required by the permit, they would be installed before the startup of the equipment on a change of location authority. The audit was actually conducted by a checklist format and that checklist was submitted to myself and the Bureau of Air Quality for review and an approval letter was sent to Frehner Construction which authorized them to actually begin operations at that particular temporary location.

I could refer you to the table, the amended table, which gives some data that we've been collecting, as Nevan said through yesterday to show compliance with the order 98-12. The table actually begins with COLA No. 1644. There were several that are listed on here, several COLAs that were issued before we could implement the compliance order. It was issued in October but we actually didn't formalize it and implement it until March 1999. Since that time, Frehner Construction has been very diligent in conducting the pre-startup audits, the self-audits. We believe that they've made a very sincere effort to try to come into compliance. They are continuing that effort and we're, based on our inspections that we've done, there are eight since the actual issuance of the compliance

order and we have not observed violations which is indicating, doesn't necessarily indicate positive compliance, but at least it doesn't indicate lack of compliance. There are also listed on the table approximately change of location authorizations that have not started up yet. There's no audit date listed there. A minor difficulty that I attribute to just program startup problems is the fact that the Elko office actually conducted the pre-startup audit, but failed to submit the results to NDEP, Bureau of Air Quality. We plan to, we've actually made the request that copies of those audits be sent to us for approval. The sites have begun operation, but it's just an oversight.

So, in conclusion, we believe that Frehner Construction is making a serious and sincere effort to be in compliance and remain in compliance. They've done a lot of work and put in a lot of time to satisfy these two compliance orders. Any questions on the information in the table or?

Chairman Close asked if there were any questions. There were none. He thanked Mr. Gahr and called for comments from the audience.

Jim Matthews, Frehner Construction, stated I'd like to say it's very refreshing to be able to address the Commission without having my head in the chopping block today. But I'd like to say that we were able to accomplish all of these forward movements on the compliance order, but it wasn't without the help of Air Quality and all the departments involved. They made it quite bearable I should say. So, I'd just like to give them some recognition for helping us and working with us continuously and making us able to accomplish this.

Chairman Close thanked Mr. Matthews and moved to **Agenda Item II.F. Petition 1999-07 (LCB R-022-99)**.

**(Petition 1999-07 (LCB R-022-99)** proposes to permanently amend NAC 445B.001 to 445B.395, the air pollution control regulations. Amendments are proposed to NAC 445.221 to update the reference to the Code of Federal Regulations from 1997 to 1998. The amendments to 445B.300 extends the expiration of an operating permit from one year to 18 months. NAC 445B.362 and 445B.373 are proposed to be amended to correct equation errors and add the term "maximum." NAC 445B.383 is amended to correct the references from cubic feet to yards.)

Jolaine Johnson, Deputy Administrator for the Division of Environmental Protection, stated 1999-07 is a repeat of a petition that the Commission adopted in April of 1999. Generally, the language that we're proposing, we do have some proposed amendments to the LCB language, but that language will make it consistent with the language that was adopted by the Commission in April. There were some mistakes in the drafting of that language. Generally, this proposal for amended regulation changes some dates and some costs for items that are referenced as reference documents. I won't go into those details. Those are basically just administrative corrections in making our rules consistent with the federal rules and the federal costs for documents. The substantive changes in this proposal start on page 11. Essentially, the purpose of this regulation was to change the time frame after which a source receives and operating permit. In the past, that source had 12 months to commence operation of their project or the permit would expire. This proposal extends that time frame to 18 months and it allows the Division, provided that it's justified, to extend that time frame and therefore extend the expiration of the permit to allow the source to build at a later date. Generally, this provision is generally in response to the Nevada Mining Association's request. It's very timely for them because many of these sources are struggling with the economic times and they get permits and they may want to wait a little longer to wait for the economics to change before they construct their projects. That's essentially what we're doing. We have passed out to you some proposed changes or amendments to the language that is written there. Again, these changes would make this rule consistent with what you did adopt in April. The first change comes on page 11, line 14. After the words, "18 months after initiated." we need to insert the language, "the director may extend the date on which the construction may be commenced upon a showing that the extension is justified." And then we need to start a new paragraph 17. Paragraph 17 will now talk about a project that may be constructed in phases.

The next changes come on page 11, lines 19 to 20. After the words, "the director may extend the . . ." we would



like to delete the phrase, “expiration date of the operating permit or the revision of the operating permit” and we would like to insert the language, “date for the commencement of the initial phase of construction.” We’re not trying to get authority to extend the expiration date, these permits are good for five years. Simply, what we want to do is allow them to construct at a later date and not have a permit automatically expire.

The third change comes on page 11, line 21. After the word, “justified.” we would like to insert “the extension provision does not apply to the commencement of construction approved for the phases of the project subsequent to the initial phases.” Again, this language would make this consistent with the language you adopted in April. It is also consistent with the request submitted by the Nevada Mining Association prior to that April meeting. It also makes that language consistent with the federal PSD rules. I’d be happy to answer any questions regarding these changes.

Chairman Close called for other questions from the Commission and then opened it up to the period of public comment. Since there were no further questions he closed the period of public comment.

**Comm. Turnipseed moved to adopt Petition 1999-07.**

**Commissioner Doppe seconded the motion.**

**Commissioner Jones asked this includes some of the exhibit changes?**

**Chairman Close asked as amended?**

**Comm. Turnipseed stated as amended.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item IV. Settlement Agreements on Air Quality Violations**  
**A. Desert Sand & Gravel; Notice of Alleged Violation #1359**

Eric Taxer, Supervisor of the Compliance Branch for the Bureau of Air Quality, Division of Environmental Protection, reported that Desert Sand and Gravel is a small company that operates an aggregate screening plant in Pahrump. On March 4th an inspection was conducted at the facility in response to a complaint that was received for fugitive dust. The inspection documented the operation of the plant but did not observe much dust being generated from the facility. However, a follow-up check with our permitting office noted that the plant was operating without a permit. An enforcement conference was held on March 25th. The facility owner stated that he was operating the screening plant on a trial basis and was unaware of a need for a permit. However, we have information from our permitting branch that on February 26th a phone conversation from Cheryl Bryant of our permitting branch and the facility owner had occurred where Cheryl, or Ms. Bryant, had informed him of the need for a permit and told him under no uncertain terms that he was not to run any material through the plant without first getting a permit.

The corrective action was then determined that the facility owner would apply for a permit, which he has done and the permit has been issued. In addition, the penalty was negotiated in the amount of \$2,500. It reflects a minor potential for harm due to the low emissions that were observed from the facility and a major deviation from the requirement. Your packet outlines additional information, or additional factors that were considered in adjusting that permit. One of the factors is noted as a 5 percent adjustment factor and actually that’s a typo. It’s a 50 percent adjustment factor to consider the fact that the facility owner had received information from us directing him not to operate it and he continued to go ahead and operate the facility. And it also reflects his past noncompliance history. NDEP recommends ratification of the negotiated settlement.

Chairman Close called for questions from the Commission.

Comm. Turnipseed asked how could he claim he didn't know he needed a permit when he'd already received permits apparently in '94 and two in '95, while he had been fined at least twice in '95 and again in '97?

Mr. Taxer answered you know after a two hour enforcement conference I still don't know the answer.

Chairman Close called for further questions from the Commission and then opened it up to the period of public comment. Since there were no further questions he closed the period of public comment.

**Commissioner Doppe moved to accept the settlement for Notice of Alleged Violation No. 1374.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

**B. A & K Earth Movers, Inc.; Notice of Alleged Violation 1389.**

Mr. Taxer reported A & K is a facility that operates crushing and screening plants, I'm sorry a crushing and screening plant in an area south of Fallon. On April 27th a regularly scheduled inspection was conducted at the facility. During the inspection, emissions were observed from the double-deck screen unit. The permit for the facility states that the opacity from that unit shall not exceed 10 percent. The inspector at the facility observed opacity up to 80 percent coming from the facility using the EPA reference methods. The follow-up inspection was conducted the following day and the problem had been corrected by installing additional water sprays on the unit. So, at the enforcement conference the discussion was focused on determining what caused the problem and determining whether or not there was a violation, which of course there was and a violation was issued for violating the permit limit. A penalty in the amount of \$6,000 was negotiated to reflect the moderate potential for harm from the high volume of release and the significant deviation from the regulatory requirement. Additional factors of economic benefit and past noncompliance were also considered in developing that penalty and DEP recommends that, recommends ratification of the negotiated settlement.

Commissioner Coyner asked Eric did I understand you to say that they didn't have the water sprays on at all? I mean, they weren't installed, or in here it says, “. . . by adjusting the water sprays.”

Mr. Taxer answered they had water sprays installed. What happens is the conveyor from the unit was coming over and dropping the material off into the screening plant. The water sprays were on the bottom of that conveyor so it was hitting the material as it was already dropping off, but the material that was observed to be violating the permit limit was coming off from the top of the conveyor so they installed additional water sprays to hit that top portion to control that dust.

Chairman Close called for questions from the Commission and then opened it up to the period of public comment. Since there were no further questions he closed the period of public comment.

**Comm. Turnipseed moved to accept the fine on Notice of Alleged Violation 1389.**

**Comm. Crawford seconded the motion.**

**The motion carried unanimously.**

**C. Granite Construction Company; Notice of Alleged Violation 1386.**

Mr. Taxer stated before I begin on this one I would like to note that a representative from Granite was here earlier today and he asked me to let the Commission know that he was here but had to leave this afternoon to attend another meeting. Granite is a large construction company that operates several highway project asphalt crushing, aggregate crushing sites throughout Nevada. On May 24th an inspection was conducted at their facility located in Hawthorne. That was an unscheduled inspection precipitated by the observation of a large plume of white material from their facility. Upon inspecting the facility, it was determined that the material was coming from the lime silo. The baghouse for the silo was not functioning due to poor maintenance. Several of the bags had fallen off. Several of the bags had been torn. The bolts to the motor had sheared which prevented the bags from being pulsated to clean them off which caused additional buildup of material on those bags. An enforcement conference was held on July 9th. During that conference, it was noted that a previous inspection had occurred on April 13th. During that inspection, slight emissions were noted coming from the silo and Granite had received an oral warning from the NDEP inspector at that site to correct that problem. Because of the oral warning that had been given to Granite, the NOAV was issued for the incident observed on May 24th.

Granite was required to submit a corrective action plan by August 20th. The corrective action plan was to develop a method to insure air pollution control equipment was being maintained at all of their facilities throughout Nevada. This corrective action plan has not yet been submitted and NDEP will be following up on that to make sure that it is submitted and make sure that they are in compliance with that portion of the order. In addition, a penalty in the amount of \$9,670 was negotiated for the violation to reflect the moderate potential for harm from the high emissions that were observed and to reflect the major deviation from the requirement. It included an economic benefit of \$1,750 for the labor and repair costs that were saved from not maintaining the baghouse. And the degree of cooperation for being told ahead of time to correct the problem with the silo and then still having problems a month later in addition to their past history of noncompliance created an additional fine adjustment factor of 80 percent in adjusting the penalty. NDEP recommends ratification then of the negotiated settlement for this facility.

Chairman Close called for questions from the Commission.

Commissioner Coyner stated you said that the corrective action plan was due August 20th and that's now passed.

Mr. Taxer stated yes.

Commissioner Coyner stated so, essentially they're in some sort of violation there as well.

Mr. Taxer stated exactly.

Commissioner Coyner asked and has the \$9,670 been paid? It says pending back here.

Mr. Taxer answered no. The \$9,670 is what is to be determined at today's meeting.

Commissioner Johnson asked again, following on the corrective action plan has not been received, I have a little difficulty with this in the sense that this is part of a compliance order, is it not?

Mr. Taxer answered not a compliance order, but it was the ordered portion of a Notice of Alleged Violation.

Commissioner Johnson stated I don't know. I'm concerned again that we have these major operations and considering that we're really fining them for one day of operation and not an entire economic benefit that may be gained by having not conformed for weeks, until there was a complaint, an inspection that catches them. That sometimes more economics just gives them more that they can try and hide. I have concern that this plant still operates and they haven't complied with the corrective action plan or submitted one. I suppose the question (inaudible) 10,000 maximum volume, so you're already hitting basically the maximum. Does the Commission have

power to hold their, suspend their operating permit?

DAG Mischel stated that would have to be done after a public hearing. Not today, you would set it for a hearing. One option, you could reject the settlement offer and set it for hearing. You could amend the settlement offer, although Granite's not here to give them a different due date for the corrective action plan so that it's contingent. Your settlement acceptance is contingent upon the submission of that plan. The concern is if you accept the settlement as proposed with noncompliance built in, it would be difficult to enforce. So you're going to have to change the August 20th date somehow.

Commissioner Johnson continued. It would be appropriate if we just didn't accept this plan or the recommendation at this time and reschedule it with notice that there maybe, this would give them one time to bring it into compliance and to reinforce that it's our wish that they do that. When it comes time, we'll do that.

Chairman Close called for further questions.

Commissioner Jones stated just for purposes of disclosure, I don't know if it (inaudible) but as the Executive Director for a construction trading organization I'm familiar with the management company, management of both this Tedford and A & K, so I don't think it involves my voting, but I'd leave it to your discretion.

DAG Mischel asked you're not paid by either of the companies?

Commissioner Jones stated no. Two of them are members of my association, so in essence in a roundabout way they could be perceived that way.

DAG Mischel asked are you paid by member dues as part of the trade association?

Commissioner Jones stated correct.

DAG Mischel stated as long as you disclose that and you can be unbiased this would not directly affect your relationship.

Commissioner Jones stated it doesn't but I just think it's appropriate for me to disclose it.

Chairman Close called for further questions from the Commission and then opened it up to the period of public comment. Since there were no further questions he closed the period of public comment.

**Commissioner Johnson moved that the Commission not accept the order 1386 and that the hearing be rescheduled for the next Commission meeting.**

**Comm. Crawforth seconded the motion.**

**The motion carried unanimously.**

#### **D. Jack N. Tedford, Inc.; Notice of Alleged Violation 1372**

Mr. Taxer reported Tedford is another crushing, screening asphalt plant owner that has multiple sites in northern Nevada. The issue before us is for a site located in Fallon. On February 24th an inspection was conducted at their Fallon facility. Again, it was an unscheduled inspection brought on by the observation of a white plume coming from their facility. It was determined upon inspection that the seams at the lime silo had not been sealed, or were not adequately sealed. There wasn't an air pollution control device installed on the silo and high pressure was being

used to off-load the lime into the silo at the time. Two enforcement conferences were held March 16th and March 19th to discuss this issue. During that time it was confirmed that the lime marination system at the facility was not included in the permit that had been issued to Tedford. NOAV 1372 was then issued to Tedford for operating without a permit for the lime marination system. As part of their corrective action plan, they're required to submit a permit application which they have done and it is currently being reviewed by our permitting office. They are also required not to off-load lime unless the site operator is present to monitor the off-load pressure to make sure that it does not emanate, that lime does not come out of the seams of the silo since the problem was based on too high of a pressure during the off-load process. With respect to whether or not an air pollution control device would be required is being evaluated through the permitting process and we'll be able to determine whether or not they can model out with our without an air pollution control device at that time. A penalty in the amount of \$3,600 was then negotiated for this violation to reflect the moderate potential for harm and the major deviation from the requirements. It was not determined that there was an economic benefit from this violation and there were no fine adjustment factor since this is Tedford's first violation and they've had previous inspections where they were in compliance. NDEP therefore recommends that the Commission ratify the negotiated settlement for this facility.

Chairman Close called for questions from the Commission.

Commissioner Coyner stated it says they said they had a silo on site since April 30, 1990, which was not permitted, yet in 1995 they were in compliance, 1997 they were in compliance. So, how does that work out?

Mr. Taxer explained the inspections at that time did not catch the fact that the silo was not part of the permit and we did not take issue with it at that time. And because of that, we do not feel it's appropriate to penalize them for that.

Commissioner Coyner stated I can understand that, I just, we've heard of these lime silos repeatedly. It seems to be a common theme on some of these FOAVs is lime silos. So, I guess my comment would be if I was out there doing the inspection, I would keep my eyes out for lime silos. In '95 and '97 they didn't see it, so . . .

Mr. Taxer stated the other thing, too, is that some of those facilities, for example NOAV 1363, that's for their Hazen facility, where it's separate from the Fallon facility and the two inspections the March inspection in '95 and the April '97 inspection. It could have been at one of the other pit facilities that are operated under the same general permit.

Comm. Turnipseed asked is lime required in the production of asphalt as well as concrete?

Mr. Taxer answered apparently NDOT has been requiring a certain amount of lime content as part of their mix process.

Comm. Turnipseed asked for asphalt?

Commissioner Jones asked has the evolution of inspection on site changed over the years? It used to be you had to have one permit for the entire operation, whereas now you're looking at different components of that operation? I think somebody was talking to me about that. I'm just verifying with you, I don't know.

Mr. Taxer answered I think in the past there used to be different permit sheets for each unit of equipment and those have all been incorporated into one permit for the facility. That might be one issue you're talking about. There's another issue of the general permit versus the site-specific permit that I think might be another aspect that you might be referring to?

Commissioner Jones answered I just think it's over an evolution of time. We've changed the way we examine the sites and maybe (inaudible) but the way it was done too.

Chairman Close called for further questions from the Commission and then opened it up to the period of public comment.

Ray Bacon, Nevada Manufacturers, stated I'd just like to re-emphasize what Mr. Jones said, that we kind of have evolved what we used to do for construction operations, and I've heard this from several of the operators, is we allowed a site permit and that included all the equipment on the thing and now we're getting specific for the pieces of equipment that are on the site very, very much like we do in the manufacturing environment. So, we've kind of changed the rules on these operators and I'm not totally sure that we've done a good job of educating the people that the rules changed as the rules did change. So . . . I'm not totally off base am I on that?

Chairman Close called for further comment from the public. Since there were no further questions he closed the period of public comment.

**Comm. Crawford moved to ratify settlement agreement of air quality violation 1372.**

**Comm. Turnipseed seconded the motion..**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item No. VI. Toxic Release Inventory and Nevada Mining Industry.**

Paul Scheidig, Nevada Mining Association, stated we're pleased that at the last minute I know the secretary at least put us on the agenda and gave us an opportunity to maybe give you just a short, real quick, synopsis of what the mining industry reported on July 1, 1999 of this year and a little maybe background, I might add, about the toxic release inventory program that we've been recently sort of inserted into. I did have a handout that I left on my desk this morning in my haste to get here which we will mail to you that gives you a little more background and detail with regards to some of the issues and substance of this important topic to our industry and to all of you around the table and other citizens of Nevada. It's important because (1) in 1997 EPA promulgated rules, as many of you are probably aware, that included seven new industries, mining being one of them under the community right-to-know, or the emergency planning community right-to-know act, which includes the toxic release inventory program.

And so on an annual basis every year manufacturers in the past have always reported about TRI their numbers as far as how many chemicals they had on site, chemicals, metals, and other things on the TRI list and how much of that they release to air, land, and water on an annual basis. The last time that the only the manufacturers reported was in 1997 and Nevada ranked 44th in this great union of ours. We have the privilege now of being number 1 in 1998 because of mining and it's not because mining is such a toxic problematic industry, but because of the rigors of the system. We're not necessarily changed from manufacturing to sort of take into account that the differences and for the uniqueness of these other industries that were added and mining certainly was among those in terms of its uniqueness and the complexities of trying to fit a reporting system geared for manufacturers into a reporting system geared for mining that moves millions of tons of dirt on an annual basis. In 1999, July 1st, we reported, if my number is correct anyway, somewhere in the neighborhood of 1.2 billion pounds of TRI related chemicals released to the environment. In 1997 manufacturers released 4 million pounds, or approximately, give or take a few hundred thousand.

And so you can see the significance of adding the mining industry, it has really put Nevada on the map on this very sensitive topic. And it is sensitive in the sense that, you know, the community right-to-know act was geared to try to give citizens in primarily urban areas, but not necessarily limited to urban areas, but citizens near and around factories, manufacturing, and other facilities, a sense of what is being released, what is being handled at those facilities and what is being released to the environment and that is a very solid respectable goal and objective and nobody should, and certainly the mining industry doesn't negate the fact that the community right-to-know act

works, it's worked well over the past and it's a reasonable, good reporting system if, in fact, the reporting system is reasonable. And that's where I think we draw the line differently and we wanted to at least let you know some of those differences. The fact that we had reported so much is mainly because we do, in the process of making gold, silver, and other metal products in Nevada, copper, you know you go through a manufacturing, processing and otherwise use of materials around your mine site and as a result, since Nevada is very rich in various chemicals, they are ubiquitous in our environment such as arsenic, cadmium, selenium, lead, mercury, silver, those are all TRI-related metals and compounds, or items and since it's quite ubiquitous in this State, the fact that we move millions of tons of earth means that we're going to move millions of tons, and obviously, billions of tons of these other elements or items as well.

And so when you take a look at what we actually manufacture, process, and otherwise use under this system, it's only a small fraction of that, what we would have to report under TRI, similar to what manufacturers do relative to the rest of our operation. But, in the manufacturing process and otherwise use of in the gold mining process we trigger at least the thresholds for TRI for things like arsenic, cadmium, silver, lead, mercury, etc. And once you trigger those thresholds then you have to count every element of that kind of metal or chemical on your site no matter where it resides. So, 95 to 98 percent, depending on the type of operation, of that 1.2 billion resides in waste rock piles. So, really this in many respects is the acronym is misstated for mining. It should be toxic relocation inventory, not release inventory because all we're doing is moving it from one spot and putting it in another. We haven't changed the chemical composition or anything else.

The other thing that is very interesting with regards to our industry that manufacturers and other industries have the ability under TRI to use is what they call the de minimis level and that is if you have particular elements in your operation that do not exceed 1 percent on certain chemicals and those cancer causing chemicals would be 1/10th of 1 percent, then you don't have to count those. Well, most of, we did an analysis in the early stages of the rule making that EPA did and demonstrated that most of the waste rock piles, if not all of them, in Nevada almost all of them have thresholds that are well below the de minimis levels. Yet, the de minimis level was exempted, or I shouldn't say exempted, was not applicable for us to be able to use in this context. So, relative to manufacturing and mining, we're having to paint a picture that's certainly dirty, bad, ugly, whatever acronym or description you want to put on it, you know, we're not looking good these days.

We've done quite a bit of work in terms of getting this message around to many of you around the table already in government as well as the Governor's office, local community leaders, the counties, and a host of other people to try to at least let them have a short insight into why this, why we're reporting such huge amounts and the fact that this doesn't mean that Nevada has become, you know, a real wasteland. We're not a wasteland and we don't have a bunch of toxics that are really released to the environment. They're part of our real environment and we all have to recognize that and understand that we're going to be probably slapped in the future and probably chastised and maybe even asked to do more in the regulatory arena because of the fact that our numbers are so huge and there's no way we can get away from those huge numbers. If we were just stuck to and we would not, we don't certainly object to just reporting what we do in the manufacturing side of the gold processing element of our business, but we do have objections and we think it's sort of inappropriate that we've had to report all of this other stuff, if you will, that really is just a relocation and not a release and it doesn't expose anybody any more to anything than what they're already exposed to if you walked out in your own backyard. Again, we're doing quite a bit still on the communication front. We've had numerous meetings within our industry to comply with this law. We spent hundreds of thousands of dollars as an industry to comply with this law which at this time is not an easy thing to swallow as well. I think the average mine spent somewhere in the neighborhood of between \$50,000 and \$75,000 just to do the analysis, just to write the report and many of them spent much more than that and it's a very serious issue that we just appreciate the opportunity to let you know that we know it's a serious issue. We think it's a little misleading, we think it's a lot misleading, but we hope that if you have questions in the future or even today, I'd be happy to answer some of those, but we'd be happy to come back and answer any other questions that you might confront in your process of trying to regulate this date in the environmental front.

Chairman Close thanked Mr. Scheidig for his comments and moved to **Agenda Item IX. General Commission or Public Comment.**

**A. Discussion by Gregory Bennett**

Mr. Biaggi stated I don't see Mr. Bennett here. He showed up earlier today and I don't know where he went. Leo, did you talk to him by any chance?

Mr. Drozdoff's answer was inaudible.

Chairman Close moved to **Agenda Item VII. Legislative Update for the 1999 Session.**

Mr. Biaggi stated with your permission I'd like to combine items, this item with the next item which is an updated Division Policy Programs and Procedures and I'm probably not going to get through this before they, looks like they're leaving already, so . . . In your packet under Item V, Section 8, it looks about three or four pages in is a little overview of the legislative summary for the Division of Environmental Protection for the last session. I'm not going to go through the entire summary, but I would like to point out a couple of bills which I think are going to result in action that will ultimately come before this Commission or will otherwise potentially have an impact. The first off in Air Quality is Senate Bill 511 and this is a bill which broadened those entities eligible to tap into the inspection and maintenance fund for air quality that is operated by the Department of Motor Vehicles. SB 511 modifies the I & M fund to allow the Division of Forestry, the Division of State Parks and the Tahoe Regional Planning Agency to tap into that fund. Historically, only three entities were re-utilizing that fund, the Division of Environmental Protection, which we use exclusively to fund our air quality program, which Jolaine talked about this morning; the Division, now the Department of Agriculture has used it; and then the Division, or the Department of Motor Vehicles. So there's a fairly significant expansion of the use of this fund. There's a large reserve in the fund right now and we estimate that that reserve will be used up by these other agencies within the next two years. On the brighter side, this did have a sunset provision placed into it so that these agencies can only tap into the I & M fund for this biennium, for this two-year period and then it will go away and we'll be back to the other three entities.

Right below that is SB 432, which originally dealt with heavy-duty vehicle emission inspections in southern Nevada. This bill changed substantially throughout the session and it ended up as a legislative subcommittee which was authorized \$500,000 to study this problem and another \$100,000 authorized to begin to establish a diesel emission program in Clark County. This is not an issue that's going to go away. We'll see some more about this in the next couple of years.

Going down to the next bill, in Brownfields SB 363 focused on the removal of contamination from affected sites and it's essentially a bill to reduce or eliminate the liabilities on contaminated properties and encourage redevelopment of contaminated properties. This was a very unique bill in the legislature in that absolutely no one spoke in disagreement of this bill throughout the session. I'm not sure I've ever seen that before. It passed very easily, but there will be a substantial body of regulations which will come before, perhaps as soon as the next meeting of the State Environmental Commission.

Chairman Close asked can you kind of explain to me, maybe the others know about it, but what did this deal with? What, was there a specific piece of property that was contaminated that this . . . ?

Mr. Biaggi answered yes. It was Senator Titus that introduced the bill and I believe that she introduced it on behalf of the City of Las Vegas and it came out of the former Minami Tower site which was in downtown Las Vegas. A Japanese developer who proposed to develop a very large skyscraper in downtown Las Vegas. I think there were four gasoline stations on that site, substantial soil contamination, substantial groundwater contamination. That developer backed out of the project after he built a very large basement in anticipation of the foundation and after a



number of years of negotiations, starts, stops, millions of dollars out of our State petroleum fund, that's now the site of the new federal building in Las Vegas. So, I think that was really the impetus to get this piece of legislation forward, but there is a federal component to it which we have used in Las Vegas and we've done similar things to this in Nevada for quite some time by reducing liabilities in one manner or another. So, we were supporters of it. Doug Zimmerman of our Bureau of Corrective Actions worked very hard to modify the language to better fit our circumstances, but I think it's something that we're going to be working with in a regulatory fashion for the next couple of meetings.

Commissioner Jones asked is it going to be effective retroactively back to the property once we promulgate regulations and deal with that?

Mr. Biaggi answered no, it will just be current properties and they'll have to enter into formal agreements with the Division on the reduction of liabilities.

Commissioner Jones asked we expected to create regulations that are going to satisfy the finance portions of, because I mean that really is the, that's the issue, I mean I don't how there going to feel satisfied in this but . . .

Mr. Biaggi answered that's the key. They had submitted a bill without our knowing it that was almost, in concept it was identical to SB 363. It was an assembly bill I believe. So, we got the financial interest to buy into SB 363, it was modified to address their concerns. And, again, there was a large degree of consensus on this piece of legislation. So, they've got buy-in on this.

Commissioner Johnson stated just an additional comment to that that it isn't an absolute buy-in or a blanket get out of jail free kind of thing, but they did have significant input and in a great degree satisfied the financial areas.

Commissioner Jones stated just so they'll fund them, I mean don't (inaudible).

Commissioner Johnson stated this is the portion that they were given and necessarily so. I think the environmental community bought in also on this bill, not for financial profit. It was a very important bill.

Mr. Biaggi continued. Finally, under hazardous materials, there were, eight of the nine bills that were submitted in response to the Sierra Chemical explosion in Sparks passed, which to some degree or another modifies our Chemical Accident Prevention Program to coordinate our activities with other state agencies and local governments in the oversight of explosives manufacturing. To my knowledge there is only two facilities in the State that fall into the criteria and one is Buckley Powder outside of Winnemucca, the other is the Sierra Chemical facility in Sparks, when and if it is reconstructed. So, that is another area where we may see some additional regulations come about over the next year or so.

In general, it was a very good session for us from a budgetary standpoint we came out and faired very well, got essentially everything that we asked for and wanted and from a legislative standpoint it worked out very well for us as well. We didn't have a large legislative agenda; what we did have passed, and I'm happy to report that we weren't hurt by any legislation, didn't lose any authority or any of our programs.

Chairman Close asked if there were any questions. There were none.

Mr. Biaggi moved on to **Agenda Item VIII. Status of Division of Environmental Protection's Programs and Policies.**

Moving on, I guess Mr. Bennett isn't here yet, but moving onto the next agenda item, which is policies and procedures and other issues with the Division. I'm going to run through this very quickly primarily because I want

Tom Porta to come up with a Power Point presentation and brief you on what I consider to be the largest water quality issue facing the State of Nevada within the next five to ten years and that's with regard to Total Maximum Daily Loadings, or TMDLs. So, Tom will give you an update of that as soon as I'm done, it'll take 10 to 15 minutes. What I want to relate to you very quickly is some staffing changes that have occurred in the Division over the last few months. And I feel very badly that I introduced Dave Gaskin this morning and I neglected to note that Jolaine Johnson has been appointed as the Deputy Administrator for the Division. I thought we had had a Commission meeting since that occurred and that hasn't been the case, time flies when you're having fun I guess. But, Jolaine took my place as the deputy administrator for air, water and mining for the Division. When did that occur Jolaine?

Ms. Johnson answered July.

Mr. Biaggi stated so it's been a couple of months now, so I'm very happy to have Jolaine on board and she's already doing an outstanding job helping me out and, you know, sort of bird-dogging things for the Division in that regard. We had a retirement that was a real milestone for us. Jim Williams, who was the chief of the Bureau of Water Pollution Control, and I don't know that Jim has appeared before the State Environmental Commission any time in the recent past, but Jim was a 30 year plus employee of the Division and was a real asset to us and we were very sorry to see him leave and with him his historical memory of the agency and water pollution control activities. In the bright spot, as I said this morning, Leo Drozdoff has taken his place, moving over from the Bureau of Mining Regulation and Reclamation and Leo came out of that program and is going back into head it up now and will do an outstanding job for us as he did in the mining program. That left two bureau chief openings for us and that was in the Bureau of Air Quality and the Bureau of Mining Regulation and Reclamation. Last Friday we appointed Colleen Cripps as the chief of the Bureau of Air Quality. Colleen went to the burn meeting along with Roy and Mike. And then as I also mentioned earlier, Dave Gaskin has been appointed the bureau chief for Mining Regulation and Reclamation. The other staff change, or status report that I wanted to give you was Wendell McCurry. Wendell's cancer has returned to some degree. He hasn't been into the office on a work basis for quite some time, although he does stop in and see us every now and then. He is undergoing chemotherapy as well as some other treatments and so we're wishing him the best and his spirits are good and we did give him last month a water pollution control award recognizing his 30 years and his efforts in water pollution control. That's an ongoing award that will be made every year to leaders in water pollution control and it will be called the Wendell McCurry award. So, it's sort of an acknowledgment of his good work over the last few years.

A couple of other updates, Leo will be, or has been working on modifying our water pollution control fees. These fees have not been raised for about a decade and we're quickly running into some financial concerns with the money. The legislature has approved at least the authority for us to raise those fees. We now have to get out and sell it to our regulated community and work out, just like we did with air quality, a funding structure that makes sense for everyone. We've learned a lot through the air quality process. We will develop a policy just like Jolaine did for the structure of water pollution control fees and I'm hoping that we will bring this before you at the next meeting later this fall or early winter. Anything else you'd like to add on that Leo?

Mr. Drozdoff answered no.

Mr. Biaggi stated it's a big job and . . . The Division is undergoing a strategic plan and this is something that I've felt that we've needed to do for quite some time to sort of chart our future for the next two, three, five years. We structured this to be a bottom-up type arrangement where we're asking for the input of our staff to tell us how we can be more efficient, work a little better, because obviously the resources are not going to be there for us in the future. We also want to know how they can improve their job satisfaction, for us as the managers of DEP, we want them to tell us how we can do our jobs better to make their jobs better. So, we're hoping to wrap this process up by the end of this calendar year and we will certainly look to this entity, to this Commission, for input on that strategic plan. It's primarily a document internal to us. It doesn't have a directive at the State level, legislative level, it's

purely internally driven. And, again, it's a bottom-up type process.

A couple of program issues to touch on very briefly. Obviously we've had a lot of wildfires in the State of Nevada this year. I believe that over 1.5 million acres of land has burned just this summer and those burned areas have dramatic implications to our air quality and our water quality. We've been very active with the Bureau of Land Management and other federal land management agencies and private land owners to address these issues and Colleen Cripps and Jim Smitherman from our water programs have been addressing that for the Division and will continue to do that in the immediate future.

I've talked about perchlorate in the past and this is an issue for Las Vegas and the Henderson area in the Las Vegas wash. I'm happy to report we've entered into a comprehensive consent agreement with Kerr McGee Chemical Corporation and they are undergoing additional efforts to identify sources of perchlorate in the groundwater and surface water and have already initiated recovery operations both at their plant site and along the Pittman lateral, which is a few hundred yards off of the Las Vegas wash. Within the past two or three months we've also identified a substantial discharge of perchlorate-contaminated water that is surface discharging into the Las Vegas wash. The surface discharge contains about one-half of the loading of perchlorate into the Colorado River system right now. So, Kerr McGee is in the process of intercepting and treating that seep as well. So, we are seeing some good movement on the perchlorate front in southern Nevada.

Very quickly, with regard to ongoing cases before the State Environmental Commission, you've probably read, at least here in northern Nevada that Elko County has appealed to District Court the Jarbidge decision that this body made back in last September, I believe. We have, the State has 30 days to respond to that challenge and we will be doing so within the next few weeks. In addition, there has been some saber rattling from the federal government to Elko County with regard to securing approximately \$300,000 in damages that were done by Elko County in the Jarbidge River. There has been a temporary stay on some of the deadlines for Elko County before the Justice Department files a lawsuit and it's a very contentious issue and it's an issue that goes well beyond the water pollution control issues. As Terry knows, the bull trout is involved in that and whether or not it should be listed. It involves land ownership and it involves the activities of the federal government in the State of Nevada in general. So, we're going to continue to work on that and keep a very close eye on it.

A panel heard Cyanochem, which is a facility in Moundhouse just outside of Dayton a couple of months ago and there was a \$6,000 penalty leveled during that panel hearing. Cyanochem has yet to pay that fine. We have asked them to respond to us why that hasn't been paid and apparently they are in some amount of financial concern and they couldn't pay it in a lump sum. Through the Attorney General's office we have worked with them to do graduated payments over the next 12 to 18 months. So, hopefully we will see that come to a resolution and they have not commenced operation since that fine was levied.

Western Elite was another site that is of concern and was the subject of a number of days of penalty panel, very, very painful days, actually. This is a site that is taking solid waste in Lincoln County and turning it into "compost." We have great concerns there. The Commission ordered that facility by October 13th to reduce the amount of waste on the site from 200,000 cubic yards, which is the amount of material on the site when the Commission ruled down to 15,000 cubic yards. Recent inspections and aerial surveys indicate that they have not stopped taking waste at the site and there now exists about 400,000 cubic yards at the site. We went to court in Pahrump, no Pioche, last Friday and we are attempting to get some sort of a restraining order against Western Elite from taking further waste at that site. We attempted settlement negotiations with them as well and those failed rather miserably. So, with that I'd be happy to answer any questions you may have on any of those issues.

Chairman Close asked what is the status of the Las Vegas Wash and the dam that the 25 or 30 people are working on in Clark County? Did they get it resolved?

Mr. Biaggi answered the flood control structures are still ongoing. I believe the contracts will soon be let for them and actual construction will probably begin within the next three to six months. There's a shift that's sort of going on that I'm hearing in the wind that rather than constructing two or three very large structures, maybe they would refocus their efforts and construct 10 to 12 smaller structures in recognition of how well some of those smaller structures that were in held up during the July 8th flood. So, there maybe some change in focus going on, but hopefully construction will begin this calendar year on those structures. He then introduced Tom Porta.

Tom Porta, Bureau of Water Quality Planning, stated I'm going to drop this screen down here so those of you may want to scoot your chairs around here. It would be easier to see. Adele and I put this program together because it concerns a serious issue with regard to water quality and we've been talking to as many groups as we can anybody actually that will listen to us about what's happening with some of the water quality regulations. Specifically, with concern to what's called TMDLs and I'll get into a little bit about the definition here in a minute and but I think it's important that I kind of give you a background on the Clean Water Act so we can get an understanding of where we've been and where we're going. So, with that, the Act was essentially adopted back in the early '70s, '72 and congress had two issues: one was an objective to restore and maintain our nation's waters back to their physical and biological integrity and secondly, there was a goal to make all of our waters, wherever possible, fishable and swimmable. So, to meet that goal, they knew that there were basically types of pollution: point source, that's pretty self-explanatory, that's all types of pollution coming from pipes or ditches. But, interestingly enough, agricultural return ditches are specifically excluded as a point source. All other forms of pollution coming from runoff is called nonpoint source. And the Act defines point source but does not define nonpoint source. Interesting note there. So, to correct this the initial thought was we've got a lot of municipal wastewater treatment plants dumping untreated sewage or very little treated sewage into waters which was causing the problems. So, congress adopted the NPDES permit program, that stands for National Pollutant Discharge Elimination System and it was to permit these facilities to put requirements on them such that they would reduce their emissions and hopefully improve the water quality in our nation's waters. And it specifically was only for point source discharges and primarily aimed at sewer treatment plants and other wastewater industrial facilities.

There was considerable funding for the NPDES permit program in the form of construction grants and State revolving loan programs. It's estimated since 1972, \$550 billion has been expended to control point source pollution. Also, in the Act congress required, in addition to the permit program, that the states evaluate their waters and determine whether they're, whether they were meeting water quality standards or not. And if they were not meeting water quality standards, to list the waters as impaired. And if they were impaired, to establish what's called a TMDL or Total Maximum Daily Load and I'll get into the definition of that in just a minute. So, by the mid '80s we had the NPDES permit program, we had TMDLs and a lot of the surface waters in our nation were being cleaned up and restored and were working quite effectively. However, many surface waters were still impaired and the NPDES permit program and TMDLs were simply not enough. Point source pollution had been controlled as best as possible, but it wasn't the only source that needed to be controlled. So, in '87 congress amended the Clean Water Act to include nonpoint source pollution control program and it's set up primarily of voluntary programs with grants to fund projects and it's referred to as 319 to fund projects for nonpoint source pollution control to clean up our nation's waters. These projects can go in many directions. They can be everything from granting a farmer or rancher money to build fences to keep his cattle out of the stream and keep it from destroying the repairing area around a stream to actual projects to prevent head-cutting such as in the Wash a grade-control structure. So, the projects and funds can go to many different things as long as they show improvement to water quality from nonpoint source. So, that program started in '87. We have still again NPDES permits, we have TMDLs, but by the mid 1990s still approximately 21,000 waters are impaired nationally and primarily that's from nonpoint source pollution and environmental groups, actually before the '90s began suing because we were not meeting the goal that I mentioned earlier of retaining our, or bringing our waters back to their physical and biological state and a lot of waters were still not able to be fished or swimmable in. So, environmental groups were taking exception with that and suing and they were using the TMDL regulations as the basis of their lawsuits.

So, what is this TMDL? Well, actually it's the maximum amount of a pollutant that can be added to a water body without violating the water quality standards. Examples of pollutants are nitrogen, phosphorous, various metals such as arsenic and other forms. We determine how many pounds can actually be added to a stream without violating the water quality standard. Because streams have a assimilative capacity to handle certain amounts of pollutants and we have to determine how many in pounds per day of that pollutant can be added without violating a water quality standard and that's called the TMDL and they're only required for impaired water bodies. A little graphic here on where pollution comes from. We have industrial sources, these are primarily our point source discharges. We have urban runoff from storm water systems. We have agricultural runoff from fields, return ditches and so forth and we also have natural causes. Background, arsenic is prevalent in the west and it's a real issue that we need to deal with. We have two major waterways, the Carson River and the Walker River which are impaired in Nevada and have no point source discharge, it's all coming from nonpoint source pollution. And you can see here some species are a little more susceptible to pollution than others.

The breakdown of the TMDL, we have point sources and nonpoint sources. Point sources include industrial plants, including mining discharge, sewer treatment plants. On the nonpoint source side, we're looking at urban runoff from various cities and land use practices. It can be agricultural, B.L.M., Forest Service practices, civil culture. So, what did we do? I told you we had to determine the number. We assess the water body and we come up with a number for a particular pollutant in pounds per day that can be added to the stream without violating the water quality standard. As an example here we used 500 lbs. We have to divide that up into three areas: point sources, a safety factor, and nonpoint sources. Typically, we can determine by a difference what the nonpoint source contribution is, add the safety factor in and then what's left over is what we give the point sources. So, in this particular case, we only had 150 lbs. left over for point sources, we would divide that among Plant A and Plant B and the rest goes to the nonpoint source contribution. I mentioned the environmental groups were contesting the TMDLs and saying they were not effective enough. Currently, there are 45 lawsuits affecting 32 states. We are not one of them, fortunately, yet and we're keeping our fingers crossed. Some of the court orders that are coming out of these lawsuits are very stringent. Idaho has to adopt 962 TMDLs in 8 years and I really seriously doubt if they can meet that commitment because to develop a TMDL is very resource intensive.

So, what did EPA do to hopefully try to curb some of these lawsuits? Well, they under the Federal Advisory Committee Act, or FACA as many of you have probably heard, they formed a group to look at TMDLs and the TMDL program. There are 20 members in this group. They included representatives from agriculture, industry, state representatives, local government and so forth and they reviewed them from 1996 to 1998. And, they actually, what this pretty diverse group came up with over 150 consensus recommendations to EPA on what should be done with the TMDL regulations. They just came out. They were published in August of this year and there's some major revisions that could affect Nevada. One they have redefined the definition of TMDL. I showed you before it was just a number a pound per day that we have to come up with. Well now there are 10 elements to a TMDL which include an implementation plan. A guarantee of how we're going to meet that number. And they have made major changes to what and how we list waters as impaired. They've actually expanded the list.

Let's talk for just a little bit about the listing of waters. Traditionally we've listed waters by pollutants and you think, you know, compounds such as mercury and nitrogen and things like that. That is still to be listed and impaired, as well as temperature and agricultural waste discharge. If they're impaired for any compounds in this area, we need to list them and we have to establish a TMDL. What concerns us is this next listing requirement is by pollution. Pollution is considered anything that is man-caused or man-made and this includes diversion structures or dams. If we have, and we do have, as many of us know in the west, all of our major streams are dammed in some form or manner and by EPA's definition here, we will have to list the water impaired because fish cannot propagate if it's a designated beneficial use for fish. And if it has a dam on it, if the fish can't spawn, we must list the water as impaired for pollution. The problem with that is we will have to list every major waterway we have in Nevada and we don't think that's appropriate. You know, talking to my wife when I talk to her about pollution, we automatically think like, you know, dioxin or some chemical when really here in this case we're talking about a

dam. And we don't think that's quite appropriate and fair to categorize Nevada's waters as polluted just because it has a dam on it. We're going to make comments to this situation, but, and also it has affect on flow and flow may come not from the aspect of habitat per se, but temperature and affecting that. If we find that because of a diversion situation we have a low flow situation, the water which is causing the water temperature to rise and we've designated it for fish, that the flow and the water would have to be listed as impaired. Interestingly enough, for these types of listings, we will not have to develop a TMDL. The other ones we will and this is part of EPA's public right-to-know of what's impaired and what's not. So they're saying our water is impaired, but you don't have to do anything about it. I mentioned there's like 10 key elements to the TMDL, these are some of the higher points. Obviously, we have to identify the pollutant. Now, that seems really easy, but if we're looking at say a biological indicator, bugs in the stream, if there aren't a certain diversity of bugs in the stream we may not know what pollutant is causing that problem and we'll have to identify it and asses it. And then we have to determine the load and when you're talking about nonpoint source pollution, this is very difficult and very complex, not to mention costly, because nonpoint source typically comes from a very large area and is hard to quantify and it's typically a wet weather event. In other words, when we have a rainstorm, we mentioned the fires earlier, when we have rain events, we expect to see high sediment loadings to the Humboldt this year because of that and to get out there and logistically monitor that during that event and the timing is very difficult. We have to include a safety margin as before. In addition now, we also have to conclude, or include in the TMDL number an allowance for growth and this could particularly impact the Las Vegas area because the streams can only handle so much and if we can't allocate an amount for growth, we're going to be in some trouble. And then lastly, and the biggest part of this TMDL is the implementation plan. How are we going to put projects on the ground to insure that the TMDL number will be met?

Commissioner Jones asked how is it going to be anticipated to be paid for?

Mr. Porta answered I'm just getting to that. Exactly. TMDL implementation plan. Again, we have to identify control measures that we're going to put in place to bring the waters back into compliance, then we'll have to monitor their effectiveness and EPA's requiring as a part of the implementation plan, what is called reasonable assurance that these projects will go forth and that includes a funding assurance. Now, I brought up, in Lake Tahoe many of you have heard of the EIP. They've identified \$900 million in projects, over half of which I believe are pollution control projects to reverse the trend of the declining water clarity. You know, we're talking about \$500 million for Lake Tahoe to control nonpoint source pollution and I gave you the other figure earlier of \$550 billion to control point source pollution, I feel that's a drop in the bucket that's needed to control point source pollution.

A couple of minor things, the listing right now. We have to list our waters and assess them every two years. EPA is looking, because of the new regulations, possibly push them back as far as five years on the listing. Once we put a water on the list, we'll have 15 years to establish a TMDL. Now that may seem like a long time, but again, because of the complexity of TMDLs and the resources needed, 15 years isn't that long of a time.

And lastly, if EPA feels that our list is not sufficient, we aren't listing all of our waters as impaired, they can modify our list and develop a TMDL and we got a question for them, if they develop the TMDL, do they have to do the implementation plan with the funding as well?

So, what impacts does this all have on us? Well, first of all, the listing is an obvious thing. That is key because from the listing is where we have to go with the TMDL. Again, I mentioned nonpoint source pollution, that's what the NPS stands for is very complex and costly. This is going to have significant impacts to agriculture because, again, we're talking about nonpoint source pollution. A lot of it comes from not just storm water runoff from our urban cities, but agricultural runoff and they've done a lot with laser leveling and so forth to prevent pollution, but it's not 100 percent preventable. And then I think it's going to limit the amount of local involvement. We are going to have to prescribe measures in certain areas to do things and this will decrease the ability of the local to determine his own destiny, if you will, with what types of projects he wants to try and put in place. We will be dictating,

unfortunately, to him what he may have to do. And then for point sources for discharges to impaired waters, there can be no additional increases in the facility or increases in the discharge until the water is meeting water quality standards.

So, what does it look like in Nevada? We assess about 10 percent of our waters in Nevada. That's about 1,700 miles, but of that 10 percent, it doesn't sound like a lot, we do the major rivers, the Carson, the Walker, the Humboldt, Las Vegas wash, the main stems. And this is pretty consistent nationwide. Anywhere from, I don't know, 5 to 15 percent is typical for assessment in a state of their waters. Of the 10 percent that we assess, 53 percent of our waters in Nevada are meeting our water quality standards. Forty percent are only partially meeting, that means we only have maybe one parameter and one segment which is out, or not meeting water quality standards. And the last factor there, we have 7 percent of our assessed waters which are not meeting water quality standards. And this isn't too bad, because in the west, if you look at Idaho, Utah, Arizona, California, their numbers are between 8 and 12 percent. And this maybe one reason why we haven't really come up on the radar screen of the various environmental groups for lawsuit.

All of our basins are impacted in at least one area for one pollutant that's impaired for. And right now the Snake River tributaries, that's up in northern Elko County, the Walker, or excuse me, the Bruno and the Owahee are starting to show trends that we may have a problem up there again with nonpoint source pollution. I should mention, in the Las Vegas wash, the TMDL program worked significantly well. The inner bay of Lake Mead was impaired, we established TMDLs through the NPDES permits and I can report to you today that the water is meeting water quality standards in the inner bay and we've seen great improvements in the water quality in the wash. We feel once they get the grade control structures in in the wash it'll be even better water quality.

So what's the major pollutants in Nevada? Eighty-three percent are impaired for phosphorous or nitrogen, that stands for total phosphorous total nitrogen and approximately 33 percent of our impaired waters are suspended solids. So, what's our challenge that we're doing? We want to insist and encourage local groups, that's why I've been giving this talk to get them empowered and fired up about looking at their water sheds and trying to do the right thing, being proactive with BMPs and that stands for Best Management Practices and these are some of the projects I mentioned before that we do: fencing off of livestock, protecting uplands areas from excessive runoff. We've got to have cost effective monitoring which we need to engage the local people again to help us do this and we have to be patient because sometimes with nonpoint source pollution we may put a project on the ground, we may not see the effects for many years of that project. It takes that long. And lastly, and the most, the biggest challenge, obviously, is funding for these projects to do it.

So, what are we going to do in Water Quality Planning? Well, obviously, we're going to provide comments on the TMDL regs. We're going to try to increase our public outreach with best management practices in assisting locals with projects to help improve water quality. We're going to take a real serious look at our beneficial uses for our waters and making sure that they are reasonable and are appropriate for the water and also, for what the people and the stakeholders in that water shed want. For instance, in Lake Tahoe they want the clarity. That means you don't add nutrients. We can't have phosphorous and nitrogen because that reduces the clarity. However, down in Lake Mead they want the nutrients because they want healthy fish and that degrades the clarity. So, it depends on what the stakeholders want for the beneficial use, getting their inputs and making sure we have the appropriate beneficial use for our waters and that we have a reasonable beneficial use and water quality standards. And lastly, again, to involve the stakeholders when we do develop a TMDL in the process so they're kept in the loop.

And lastly, I just have a couple pictures here of the Humboldt which we did an aerial survey of about a month ago. And this is a fairly good looking situation. We have a lot of meandering in the stream and the most important thing is here we've got repairing area. We've got grasses and trees along the shore banks which help prevent runoff from these fields right here. It's not 100 percent, but it's a lot better than where the area is denuded around the stream bank. Then we have other areas. This is downtown Elko and that is the Humboldt River. I don't think you could build a road any straighter. But the good news is there's a lot of repairing area. There's about 10 meters each side

here with willows and grasses and the sub-straight in there is actually pretty good. So that's not a bad situation. So it can be done. And the last picture I have is a situation that we don't like to see and this is where you can see that there's little or no vegetation along the stream. The stream has been somewhat channelized and we have to correct areas like this because what happens here is we start getting bank erosion. If you don't have the vegetation in place along the banks, the banks erode and that adds sediment, it adds background things such as arsenic and other types of pollutants to the stream. So this is a challenge we've got to try to overcome to help us get our waters back into compliance. And I think that's the last slide. I'd be happy to answer any questions.

Comm. Crawforth asked when you measure TMDL, let's go back to the, your example of 500, is that some measurement total that's going into the body of water or is it a measurement at a point? A deter minis or something?

Mr. Porta answered right. We list our rivers in segments and if we show a segment of a river say from Elko to Winnemucca is impaired, it's not meeting its water quality standards, then we will determine for that segment what the maximum amount of pounds that can be added along that whole segment to meet the water quality standards.

Comm. Crawforth asked so it's not a measurement at the end of that segment; it's a measurement of the amount that goes into that segment?

Mr. Porta answered exactly and where we measure for compliance is at the end of that segment. That's our control point.

Commissioner Jones asked when you talked about the percentages of our waterways in Nevada were you still using the criteria that the feds. put in including dams?

Mr. Porta answered no.

Commissioner Jones asked and the other things that you were going to try to have eliminated?

Mr. Porta answered right. When that goes in those percentages will go up significantly as will other states if they stick with it. And I just think it's so unfair that we have this stigma and particularly in the west because it has a dam that it's impaired by pollution and the public perception of that is not good, you know. If I told somebody that water is impaired by pollution they're going to think, "Oh my gosh it's some chemical or something." But when I tell them a dam it doesn't register with people. So, it's an issue EPA is definitely going to hear on from many states particularly in the west.

Commissioner Jones stated well my cost question then, you said you would get to that and I understand you talked about having to have a fiscal plan and how to do it, but you still haven't talked about who are the stakeholders involved, and in most cases if we have to bring these things into compliance are going to be, I mean how is it going to be paid for?

Mr. Porta answered well that's, you know, that's the \$64 question. That's what we keep telling back to EPA.

Commissioner Jones stated and we always get it backwards. We always come up with what we need to do and plan and nobody knows how to pay for it and then we end up in this dilemma.

Mr. Porta answered right. Well I, you know, I've commented to EPA that, "Look you know we can adopt all the tracking mechanisms, all the TMDL regulations, but when it comes down to improving water quality, it's money." You need the money to help the people to get the projects on the ground to correct the problem. That's the bottom line. I mean we can do all these regs. and show a pretty picture or a bad picture, but we need the money and where



that comes from if congress, you know appropriated and actually what they do what they typically do is they take one money from like, some money from like Leo's SRF program and they'll put it over into my program under nonpoint source. They just did that with I think \$100 million. They took it from the SRF program and put it in 319 nonpoint source. And \$100 million amongst 50 states is nothing.

Commissioner Jones stated not when you start with the figure of \$550 billion spent already in (inaudible).

Mr. Porta stated yeah. Or \$500 million just to do Lake Tahoe. Yeah. So . . .

Commissioner Johnson stated well of course you have point source, but in the application to what reality is going to be like the Truckee River is probably the first one that you're going to really face with the total dissolved solids problem which already are nitrogen loading, which is the funding at the sewer plant, this effects everything else when you start building implementation plans and, you know, the actually this is lawsuit driven, but the statutory language is in the original Clean Water Act. I mean there's very little new in this program other than the interpretation and response supports in implementing the program because the funding originally, I mean, it's easy to do point source because you (inaudible) it. But what are you going to do with storm drainage in Reno? And that's going to be the (inaudible) I mean money and you can expect that your clients and we who live here in the community will be paying for both of them I think. (Inaudible)

Mr. Porta thanked the Commission.

Chairman Close thanked Tom.

Mr. Porta stated maybe I'll come back with some better news next time.

Chairman Close called for David Cowperthwaite.

David Cowperthwaite, Executive Secretary to the State Environmental Commission, stated on your agenda is the last item on the agenda is the public comment portion and there is an item there for Mr. Gregory Bennett. I happened to look over there and see a stack of paper there and I got curious and I am curious some times and I found a note there from Mr. Bennett and he states, "Please give my apologies to the Commission. The item to be discussed is not on the agenda as per my request. Again, I express my apologies. Please place this item on the next meeting agenda. This is a public issue. Thank you very much. Gregory Bennett." He's also given me a Form No. 3 which is an appeal to the Commission on this matter here. This is sort of an odd matter here in which there has been no decision by the Division in this matter. So, the issue at hand is whether the Commission has jurisdiction. At this point in your package is a listing of the items. I very carefully detailed a number of exhibits and exhibit these items to bring it before you and stuff. Jean would you like to have a quick discussion on this?

DAG Mischel stated I just intend to respond to his appeal form by telling him that there's no appealable issue before the Commission.

Chairman Close stated I think we can, though, continue his matter until our next meeting and then . . .

DAG Mischel stated if he'd like to be placed on the agenda for general discussion we can do that.

Chairman Close stated if he wants to appeal it after we make a decision and he wants to appeal it, he can appeal it at that point in time. It's premature to appeal it now because we've made no decision. We're not going to hear his matter now and we're going to continue it for him.

Mr. Cowperthwaite stated okay. So we will continue, then my instructions are to bring it forth at the next meeting then.

**Chairman Close adjourned the meeting at 2:45 p.m.**

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Nevada State Environmental Commission  
Regulatory Hearing  
Exhibit Log

Hearing Date: September 9, 1999

Location: Reno City Council Chambers

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	1 Page Letter	Letter from Walker River Construction of Wellington, Nevada received 8-27-1999 regarding air quality fees	1999-03	Yes
2	1 Page Letter	Letter from the Nevada Mining Association regarding giving the Environmental Commission a presentation on TRI, dated June 16, 1999.		Yes
3	2 pages	Proposed Amendments by BWQP for petition 1999-01	1999-01	Yes
4	18 Pages	A 7 page summary report dated September 9, 1999 regarding air quality fees prepared by the Bureau of Air Quality. Business comments regarding air fees from Placer Dome U.S., Round Mountain Gold Corp, Nevada Mining Assn, Independence Mining Co., Walker River Construction (see exhibit 1 as listed above) and Southern Cal Edison; 2 page policy by the Division of Environmental Protection title "Policy on the Establishment of Air Quality Operating Fees, September 1999; and 1 page of proposed amendments to 1999-03.	1999-03	Yes
5	1 Page Amendment	Proposed Amendments by BAQ for Petition 1999-07 (R-022-99)	1999-07	Yes