NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF September 18, 2001

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
September 18, 2001

The Nevada State Environmental Commission will conduct a public hearing commencing at **10:00 a.m. on Tuesday, September 18, 2001**, **at the City of Las Vegas Council Chambers, 400 East Stewart Ave., Las Vegas, Nevada.**

This agenda has been posted at the Clark County Library and the Las Vegas City Council Chambers in Las Vegas, the Washoe County Library and the Division of Wildlife in Reno, the Department of Cultural Affairs and the Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on August 20, August 29 and September 6, 2001 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

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

I. Approval of minutes from the May 10, 2001 meeting. * ACTION

II. Regulatory Petitions * ACTION

Petitions 2001-02, 2001-03, 2001-04, 2001-05, 2001-06, and 2001-07 were previously adopted as temporary regulations by the Environmental Commission on December 5, 2000 or on May 10, 2001. These regulations expire November 1, 2001 and are before the Commission for permanent adoption.

A. Petition 2001-02 (LCB R-037-01) permanently amends NAC 444.842 to 444.960, the hazardous waste regulations. The amended regulations update the State's adoption of federal regulations by reference by amending NAC 444.8427, 444.84275, 444.850 and 444.9452 to refer to the federal regulations as they existed on July 1, 2001 and modify 444.8632 to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270 and Part 279 as those parts existed on July 1, 2001.

B. Petition 2001-03 (LCB R-038-01) permanently amends NAC 444A.005 to 444A.470 to extend programs for separating, at the source, recyclable material from other solid waste to include public buildings in counties with populations greater than 100,000. The amended regulations add for public buildings the minimum standards which were previously established for the source separation of recyclables at residential premises. Definitions for public building, paper and paper product are added. NAC 444A.120 was amended to add public buildings and 444A.130 was amended to provide for a municipality to make available a source separation of recyclable materials at public buildings.

C. Petition 2001-04 (LCB R-039-01) permanently amends NAC 444A. The proposed permanent regulation prescribes the paper and paper product recycling procedures for state agencies. The regulation provides criteria for exemption from the recycling requirements, provides for clearly labeled containers, establishes reporting criteria by state agencies and requires a building recycling plan to be submitted to the Division of Environmental Protection.

D. Petition 2001-05 (LCB R-040-01) permanently amends NAC 445B.001 to 445B.395, the state air pollution control permitting program. The proposed permanent regulation amends NAC 445B by creating and defining a new classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity sources. NAC 445B.320, dealing with operating permit changes is amended to include additional language to require a detailed description of how increases and decreases will comply with the permit.

E. Petition 2001-06 (LCB R-041-01) permanently amends NAC 459.952 to 459.95528, the chemical accident prevention program. The regulation adds new provisions to incorporate explosives manufacturing into the program, to add construction permit requirements for new chemical and explosive facilities, and other minor technical amendments to the regulations to reflect statutory amendments to the list of regulated chemicals. Facilities that manufacture explosives or ammonium nitrate/fuel oil for sale will be subject to the requirements of the program. A fee structure to regulate explosive facilities is established.

F. Petition 2001-07 (LCB R-042-01) permanently amends NAC 445A.810 to 445A.925, the underground injection control (UIC) program. The amended regulations provide that "other Sensitive Groundwater Areas" can be determined to meet compliance with the proposed regulations. The regulations revise outdated Nevada Revised Statute references, expand minor permit modification criteria and logistics, expand criteria for a temporary permit, outline methods to establish permit limits in the absence of specific standards, and repeal the prohibition of injection of treated effluent. New definitions for cesspool, Class V Rule, delineation, drywell, groundwater protection area, improved sinkhole, other sensitive groundwater area, motor vehicle waste disposal well, point of injection, sanitary waste, septic system, source water assessment and protection program, and subsurface fluid distribution system are defined. Restrictions are imposed on Motor Vehicle Waste Disposal wells. Fees for renewals in NAC 445A.872 are reduced, repealed and incorporated into the existing annual fee. This fee category is expanded to included major modifications.

G. Petition 2001-08 (LCB R-089-01) permanently amends NAC 519A.350, reclamation of land subject to mining operations or exploration projects. The amended regulations provide minor changes regarding surety bonding by allowing up to 75% of the required surety to be satisfied by the corporate guarantee, based upon periodic review by the administrator. The amendments also require that the financial information submitted comply with U.S. Generally Accepted Accounting Principles and that the financial statements submitted be audited.

H. Petition 2002-01 (LCB R-096-01) permanently amends NAC 445A.070 to 445A.348, the water pollution control program by amending 445A.100 the definition for "point source" by adding language that defines earth moving equipment, and 445A.309, the definition for "diffuse source" to incorporate runoff in various subsections of the definition. In addition, the definition for "diffuse source" clarifies provisions regarding urban area runoff and earth moving activities. The regulation will assist regulated communities in determining when water pollution control permits are necessary.

III. Settlement Agreements on Air Quality Violations * ACTION

A. Road & Highway Builders; Notice of Alleged Violations #1563 & 1564
B. Eagle-Picher Minerals Inc. ; Notice of Alleged Violations #1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1513, 1562 (Clark Plant): 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1519, 1521, 1523, 1525, 1549 1551, 1553, 1555 (Colado Plant).

IV. Status of Division of Environmental Protection's Programs and Policies
V. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary, David Cowperthwaite 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.ndep.state.nv.us/admin/envir01.htm**.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify the 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, ext. 3117, by 5:00 p.m. **September 14, 2001.**

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **10:00 a.m. on Tuesday, September 18, 2001**, **at the City of Las Vegas Council Chambers, 400 East Stewart Ave., Las Vegas, Nevada.**

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

Petitions 2001-02, 2001-03, 2001-04, 2001-05, 2001-06, and 2001-07 were previously adopted as temporary regulations by the Environmental Commission on December 5, 2000 or on May 10, 2001. These regulations expire November 1, 2001 and are before the Commission for permanent adoption.

1. Petition 2001-02 (LCB R-037-01) permanently amends NAC 444.842 to 444.960, the hazardous waste regulations. The amended regulations update the State's adoption of federal regulations by reference by amending NAC 444.8427, 444.84275, 444.850 and 444.9452 to refer to the federal regulations as they existed on July 1, 2001 and modify 444.8632 to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270 and Part 279 as those parts existed on July 1, 2001.

There will be no adverse economic impact upon the regulated business community. Conversely, the amended regulations should make it easier for affected businesses to comply by simplifying the regulations. The amended regulations will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the amendments overlap or duplicate. This regulation is no more restrictive or stringent than the federal requirements. The amended regulations do not provide a new fee and does not amend existing fees.

2. Petition 2001-03 (LCB R-038-01) permanently amends NAC 444A.005 to 444A.470 to extend programs for separating, at the source, recyclable material from other solid waste to include public buildings in counties with populations greater than 100,000. The amended regulations add for public buildings the minimum standards which were previously established for the source separation of recyclables at residential premises. Definitions for public building, paper and paper product are added. NAC 444A.120 was amended to add public buildings and 444A.130 was amended to provide for a municipality to make available a source separation of recyclable materials at public buildings.

The regulated business community may encounter some startup costs to provide a collection service at public buildings. There may be a modest beneficial long term economic effect on recycling businesses because of the potential to increase the amount of recyclable commodities diverted from disposal. The proposed permanent regulation will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the

amendments overlap or duplicate. This regulation is no more restrictive or stringent than the federal requirements. There is no federal regulation that requires recycling collection services be provided to public buildings. The amendment does not provide a new fee and nor does it amend existing fees.

3. Petition 2001-04 (LCB R-039-01) permanently amends NAC 444A. The proposed permanent regulation prescribes the paper and paper product recycling procedures for state agencies. The regulation provides criteria for exemption from the recycling requirements, provides for clearly labeled containers, establishes reporting criteria by state agencies and requires a building recycling plan to be submitted to the Division of Environmental Protection.

The regulated business community may encounter some startup costs to provide a collection service at public buildings. There may be a modest beneficial long term economic effect on recycling businesses because of the potential to increase the amount of recyclable commodities diverted from disposal. The proposed amendments will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the amendments overlap or duplicate. This regulation is no more restrictive or stringent than the federal requirements. There is no federal regulation that requires recycling collection services be provided to public buildings. The amendment does not provide a new fee and nor does it amend existing fees.

4. Petition 2001-05 (LCB R-040-01) permanently amends NAC 445B.001 to 445B.395, the state air pollution control permitting program. The proposed permanent regulation amends NAC 445B by creating and defining a new classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity sources. NAC 445B.320, dealing with operating permit changes is amended to include additional language to require a detailed description of how increases and decreases will comply with the permit.

The regulated business community will see a positive beneficial effect by the reduction in the time and effort with regard to Class III permit applications and reduced fees for application, revision, renewal and annual maintenance fees. The proposed permanent amendments will have no adverse economic impact upon the public. There will be no additional cost to the Division of Environmental Protection for enforcement of these amendments. There are no other State regulations which the amendments overlap or duplicate. This regulation is no more restrictive or stringent than the federal requirements. The amendment does provide a new fee that reduces the amount currently paid by small quantity sources. The Division of Environmental Protection does not anticipate increased revenues from the new Class III permits, but rather an overall reduction in fees from affected businesses.

5. Petition 2001-06 (LCB R-041-01) permanently amends NAC 459.952 to 459.95528, the chemical accident prevention program. The regulation adds new provisions to incorporate explosives manufacturing into the program, to add construction permit requirements for new chemical and explosive facilities, and other minor technical amendments to the regulations to reflect statutory amendments to the list of regulated chemicals. Facilities that manufacture explosives or ammonium nitrate/fuel oil for sale will be subject to the requirements of the program. A fee structure to regulate explosive facilities is established.

Previously unregulated businesses will now be subject to regulation under the program. The program amendments will have an associated cost for regulated businesses, with the basic benefit being the reduced risk of catastrophic accidents and improved facility operation and efficiency. The cost of compliance will require new fees for permits This regulation is not anticipated to have an adverse economic impact upon the public. The Nevada Division of Industrial Relations shares jurisdiction through delegation of the federal Process Safety Management regulations. The Division of Environmental Protection has a Memorandum of Understanding to coordinate activities where statutory overlap occurs. This regulation is no more restrictive or stringent than the federal requirements. The fees will cover the cost of a contractor to deal with the explosives manufacturers and increased staff costs for permitting. The amount of fees to be collected is undetermined, with fees for permitting based upon an hourly rate charged for processing the applications.

6. Petition 2001-07 (LCB R-043-01) permanently amends NAC 445A.810 to 445A.925, the underground injection control (UIC) program. The amended regulations provide that "other Sensitive Groundwater Areas" can be determined to meet compliance with the proposed regulations. The regulations revise outdated Nevada Revised Statute references, expand minor permit modification criteria and logistics, expand criteria for a temporary permit, outline methods to establish permit limits in the absence of specific standards, and repeal the prohibition of injection of treated effluent. New definitions for cesspool, Class V Rule, delineation, drywell, groundwater protection area, improved sinkhole, other sensitive groundwater area, motor vehicle waste disposal well, point of injection, sanitary waste, septic system, source water assessment and protection program, and subsurface fluid distribution system are defined. Restrictions are imposed on Motor Vehicle Waste Disposal wells. Fees for renewals in NAC 445A.872 are reduced, repealed and incorporated into the existing annual fee. This fee category is expanded to included major modifications.

The proposed permanent regulation is not anticipated to have any significant adverse short or long-term economic impact on Nevada businesses. Businesses with motor vehicle waste disposal wells may see an increase in operation and maintenance costs associated with sampling and monitoring of wells. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The Division of Environmental Protection is developing a mechanism using $ 820,000 of funding from the Drinking Water State Revolving Fund over a five-year period to implement the new regulations associated with the federal Class V well rule. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The proposed regulations are amended to reflect federal UIC

regulations for Class V Rule, as publish on December 7, 1999 to impose additional restrictions on injection wells. The regulations are no more stringent than federal regulations. There is no additional direct cost to the agency for enforcement. Implementation of this regulation is done in cooperation with the U.S. Geological Survey. This regulation reduces the renewal fee and incorporates major modifications into the annual and revised renewal fee structure.

7. Petition 2001-08 (LCB R-089-01) permanently amends NAC 519A.350, reclamation of land subject to mining operations or exploration projects. The amended regulations provide minor changes regarding surety bonding by allowing up to 75% of the required surety to be satisfied by the corporate guarantee, based upon periodic review by the administrator. The amendments also require that the financial information submitted comply with U.S. Generally Accepted Accounting Principles and that the financial statements submitted be audited.

The proposed permanent regulation is not anticipated to have any significant adverse short or long-term economic impact on Nevada businesses; however, it may necessitate a small number of mine owners replace their corporate guarantee with an alternate form of surety. 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. It is estimated that an additional cost for financial consultant review services will be $36,000.00 per year. The amended regulations do not provide a new fee nor amend existing fees.

8. Petition 2002-01 (LCB R-096-01) permanently amends NAC 445A.070 to 445A.348, the water pollution control program by amending 445A.100 the definition for “point source” by adding language that defines earth moving equipment, and 445A.309, the definition for “diffuse source” to incorporate runoff in various subsections of the definition. In addition, the definition for “diffuse source” clarifies provisions regarding urban area runoff and earth moving activities. The regulation will assist regulated communities in determining when water pollution control permits are necessary.

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. The amended regulations do not provide a new fee nor amend existing fees.

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

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

Persons wishing to comment on the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notices have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The
proposed regulations are on the Internet at **http:/www.leg.state.nv.us.** In addition, the State Environmental Commission maintains an Internet site. It is at **http://www.ndep.state.nv.us/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 12, 2001.

This public notice has been posted at the following locations: Clark County Public Library and City of Las Vegas Council Chambers in Las Vegas; Washoe County Library and Division of Wildlife in Reno; the Division of Environmental Protection and the Department of Cultural Affairs (formerly Dept. of Museums, Library and Arts) in Carson City.

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September 18, 2001
Las Vegas City Council Chambers
Regulatory Exhibits

#	Item	Item Description	Reference Petition #	Offered	Accepted
1	19 Page Amendment	Proposed amendments to R041-01 by NDEP-BWM-CAPP for sections 1-24	2001-06	YES	YES
2	5 Page Amendment	Proposed amendments to R041-01 by NDEP-BWM-CAPP for sections 35-49	2001-06	YES	YES
3	1 Page Letter	Letter dated 9-17-2001 by Nevada Mining Association supporting petitions 2001-02 and 2001-08	2001-02 2001-08	YES	YES
4	3 Page Amendment	Proposed Amendments to R040-01 by NDEP-BAQ for Sections 2, 3, 14 and 15.	2001-05	YES	YES
5	9 Page Presentation	Chemical Accident Prevention Program presentation slideshow overheads for petition 2001-06	2001-06	YES	YES

STATE ENVIRONMENTAL COMMISSION
Meeting of September 18, 2001
City of Las Vegas Council Chambers
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:
Melvin Close, Chairman
Alan Coyner, Vice Chairman
Terry Crawforth
Demar Dahl
Mark Doppe
Paul Iverson
Joseph L. Johnson
Hugh Ricci
Joey A. Villaflor

MEMBERS ABSENT:
Tim Crowley
Steve Robinson

Staff Present:
Deputy Attorney General Susan Gray - Deputy Attorney General
David Cowperthwaite - Executive Secretary
Sheri Gregory - Recording Secretary

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

Agenda Item I. Approval of minutes from the May 10, 2001 meeting.

Commissioner Johnson moved for adoption of the minutes.

Commissioner Iverson seconded the motion.

The motion carried unanimously.

Chairman Closed moved to **Agenda Item II. A. Petition 2001-02.**

(Petition 2001-02 (LCB R-037-01) permanently amends NAC 444.842 to 444.960, the hazardous waste regulations. The amended regulations update the State's adoption of federal regulations by reference by amending NAC 444.8427, 444.84275, 444.850 and 444.9452 to refer to the federal regulations as they existed on July 1,

2001 and modify 444.8632 to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A and B, Parts 260 to 270 and Part 279 as those parts existed on July 1, 2001.)

Jim Trent introduced himself as working in the Hazardous Waste Branch of the Bureau of Waste Management. He stated with this petition, 2000-02, the Bureau of Waste Management is proposing to update our adoption by reference of federal hazardous waste regulations. Two workshops to solicit public comment on the proposed regulations were held on August 8 and 9, 2001 in Las Vegas and Carson City. A total of 12 people attended the workshops. The proposed regulations and minutes from the workshops were posted on the NDEP website and available for review and comment via the Internet.

As you are aware, Nevada adopts by reference federal hazardous waste regulations. Since changes are continually made at the federal level it is necessary to periodically update our reference to federal regulations in the NAC so as to remain authorized to enforce these regulations in lieu of the US EPA. The Commission originally approved this petition on December 5, 2000, as a temporary regulation, which incorporated federal rules adopted from July 7, 1999 to July 1, 2000. The petition is now being submitted as a permanent regulation, revised and updated to adopt the federal hazardous waste changes made between July 1, 2000 and July 1, 2001.

There are a total of five new federal rules and one state-initiated change. One of these is simply a technical correction to an existing rule; another is the listing of two new hazardous wastes from the chlorinated aliphatics industry, which is not present in the State of Nevada. Three of the rules are slightly more significant. They include the temporary deferral of Land Disposal Restriction standards for PCBs in contaminated soil in order to provide EPA more time to study the issue of appropriate standards. The Mixed Waste Rule, which reduces duplicative regulation by exempting from RCRA regulation, the storage, treatment, transportation and disposal of low-level mixed waste, which is hazardous and radioactive waste, provided it is managed in accordance with Nuclear Regulatory Commission regulations and other applicable federal or state regulations. Lastly, the Hazardous Waste Identification Rule is a burden reduction measure. It excludes from RCRA regulation wastes, which were listed solely for an ignitibility, reactivity and/or corrosivity characteristic once they no longer exhibit a characteristic.

There is one State-initiated change proposed at NAC 444.8632.2(e). This change deletes a portion of the CFR 261.2(c)(3) regarding secondary materials reclaimed by the mineral processing industry. The portion to be deleted was previously adopted by reference by Nevada but later set aside by a U.S. Court of Appeals decision. EPA has not published a correction, thus necessitating our need to draft a specific provision to address this.

Chairman Close called for questions from the Commission and from the public. Since there were none he called the public hearing to a close and called for a motion.

Commissioner Doppe moved to approve Petition 2001-02.
Commissioner Johnson seconded the motion.
The motion carried unanimously.

Chairman Close moved to **Agenda Item II. B. Petition 2001-03.**

(Petition 2001-03 (LCB R-038-01) permanently amends NAC 444A.005 to 444A.470 to extend programs for separating, at the source, recyclable material from other solid waste to include public buildings in counties with populations greater than 100,000. The amended regulations add for public buildings the minimum standards, which were previously established for the source separation of recyclables at residential premises. Definitions for public building, paper and paper product are added. NAC 444A.120 was amended to add public buildings and 444A.130 was amended to provide for a municipality to make available a source separation of recyclable materials at public buildings.)

Les Gould introduced himself as the supervisor for the Solid Waste Branch in the Bureau of Waste Management of the Nevada Division of Environmental Protection. He stated today I'm presenting two distinct, but related petitions concerning recycling of solid waste. These petitions were heard and adopted as temporary regulations during the Commission's May hearing in Reno. Petition No. 2000-03 is presented today with nearly identical content to that of the temporary regulation. It is intended to implement a portion of Assembly Bill 564 passed in the 1999 legislature, which aims to make recycling available in public buildings. AB 564 directed the SEC to adopt minimum standards for the separation at the source of recyclable materials generated at public buildings. Such standards already exist for residential recycling services in counties with populations greater than 100,000. This petition proposes similar standards for public buildings by inserting the words, "and public buildings" in Nevada Administrative Code, Section 444A.120.

Commissioner Doppe stated this petition for the permanent regulation was returned by the LCB. Does it mirror or closely mirror what we had approved in May?

Mr. Gould answered that's correct.

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

Commissioner Johnson moved for adoption of Petition 2001-03.
Commissioner Doppe seconded the motion.
The motion carried unanimously.

Chairman Close moved to **Agenda Item II. C. Petition 2001-04.**

(Petition 2001-04 (LCB R-039-01) permanently amends NAC 444A. The proposed permanent regulation prescribes the paper and paper product recycling procedures for state agencies. The regulation provides criteria for exemption from the recycling requirements, provides for clearly labeled containers, establishes reporting criteria by state agencies and requires a building recycling plan to be submitted to the Division of Environmental Protection.)

Les Gould stated Petition No. 2001-04 is to adopt procedures as mandated by Nevada Revised Statute 232.007 for recycling by state government. While the previous petition laid recycling program responsibility on the municipal government, this petition places the responsibility on a specific class of waste generator; that is state agencies to recycle paper and paper products. The two regulations, the previous petition and this one, are complimentary in that one provides a collection service, while the other insures that there will be something to collect.

To date, the petition has been changed since its adoption as a temporary regulation. The temporary regulation provided that State agencies would submit written plans to the Division for recycling at the State agency buildings. The Legislative Counsel Bureau, in its review, determined that this did not satisfy the intent of the statute which did not give the Division authority to require plans from other agencies, but called for the adoption of regulations which prescribed the procedure for the disposition of paper and paper products to be recycled. This petition has been revised accordingly. It now directs State agencies to provide for the separation, collection, and recycling of waste paper at their facilities by determining the type of waste paper they generate and the local availability of paper recycling services by establishing a system for paper recycling which may include the use of recycling containers and arrangements for paper removal and collection, and by providing information to agency to personnel on how to recycle and encouraging personnel to support it with their participation.

Finally, instead of requiring agency-recycling plans, the Division is designated as a technical resource available through other agencies to assist with setting up recycling programs within the framework of the regulation. To promote implementation, the Division will survey selected State agencies to improve our understanding of recycling in State government and of any barriers to increasing it. We will send notices to the agency heads to inform them of the requirement and offer NDEP technical assistance. The combination of this regulation with the previous petition should cause an increase in the quantity of paper recovered in Nevada.

Chairman Close stated in paragraph 4 is a method whereby an agency can opt out of the program, but the language seems so broad. I don't know if it helps or hinders. If a state agency determines that the cost to cause the recycling of paper and paper products generated by the agency at one of its facilities, then it's unreasonable. I don't know what that would mean. And would place an undue burden on the operations of the agency, I'm not sure what that means. At the same time it's so broad and at the same time so all inclusive, I don't know how an agency would come to the conclusion that the price is unreasonable and that there's an undue burden on the agency.

Mr. Gould stated there's some room for discretion in making that kind of a judgment.

Chairman Close stated I'm not saying that it's not proper to do so, but it may be so broad that you can't really determine when you should be able to opt out of the program.

Mr. Gould stated this is another issue that was raised by LCB in their review. I believe this language is borrowed directly from the statute which requires that agencies which determine that they can do paper recycling are required in lieu of that to obtain a waiver from the head of the Budget division. Originally we had suggested some guidelines for that in our proposal in the first

petition, guidelines, according to which the Budget division would not have to look at each of these requests for a waiver. However, again, LCB said that we didn't have the authority to do that and that's something that really has to be taken to the Budget division and it's up to them to determine whether or not the burden is too great or it's unreasonable.

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

Commissioner Doppe stated my opposition to this measure last time we heard it as a temporary petition, was not because, obviously I was against recycling at the State offices, but because I was against the concept of one State agency having to issue written guidelines in the form of a Administrative Code, actually, and beyond the other State agency has to respond with a written plan, get it approved, all of this stuff to do things which struck me as though ought to be occurring a bit more spontaneously and probably just because we should recycle because we ought to. And it seems as though that the measure has been rewritten to some degree to make it a little bit more like that. A little less draconian, if you will, and a little bit more offering the services of the Department as a technical advisory. And based on that I would change my position from last time and I should go ahead and support this and make a motion to approve this petition as it is written.

Commissioner Johnson seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item II. D. Petition 2001-05.**

(Petition 2001-05 (LCB R-040-01) permanently amends NAC 445B.001 to 445B.395, the state air pollution control permitting program. The proposed permanent regulation amends NAC 445B by creating and defining a new classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity sources. NAC 445B.320, dealing with operating permit changes is amended to include additional language to require a detailed description of how increases and decreases will comply with the permit.)

Colleen Cripps introduced herself as the chief of the Bureau of Air Quality for the Nevada Division of Environmental Protection. She stated at the last hearing you adopted as permanent a number of changes to NAC 445B necessary for final federal approval of our Part 70 or Title V Air Quality Permitting program. At that time you also adopted as temporary a small source permitting program. As you recall, in that program for facilities that qualify as a Class III source this program will significantly reduce the cost of permits to those sources and also they will be able to get their permit in about half the time that it currently takes as a Class II source.

Today I'm here to ask that you adopt those temporary regulations as permanent with three minor modifications and also that you

adopt one additional change to the Part 70 language that's now being required by EPA as well. Overall there are four changes. I think David has handed out to you a copy of the changes that I'm requesting to the petition that you have in your packet. They are highlighted on the document that you just received. The first one would be in Section 2, under subsection (a). We would like to change the "and" to an "or." This is necessary in order to ensure that this language is consistent with the language that you adopted as temporary regulations at the last hearing.

The second change is in Section 3, subsection 2(c)(2). We're proposing to change the term "those control systems" to "the emission units." This is to allow some consistency between subsection 1 and subsection 2 to ensure that it's clear what we're referring to.

The third change is in Section 14. If you look on the copy that you just received that would be lines 28, 29, and 30. This is the new section that EPA is requiring us to include. It's a reporting requirement that somehow was missed in the last reviews of our Part 70 program. We did have one comment during the public hearing and that's from the Nevada Mining Association. They requested the language that you see highlighted which would more clearly delineate what this reporting is required to be for which would be for emission trading that's made pursuant to some other State regulations. This language has been reviewed by EPA and is acceptable to them as well and actually more closely mirrors the Part 70 federal program.

The final change is in Section 15. It's some clarifying language so that the regulation is clearer as to what we're looking for. So we're changing the term "request" to "a complete application."

The Class III program and the new Part 70 revision were public noticed and a hearing was held on the 4th of September. The only comment that we received was from NMA requesting the modification that we included in the language that you have before you.

Chairman Close called for questions from the Commission.

Commissioner Johnson stated in the temporary regulation that we adopted in May, I had a question about why carbon monoxide was exempt from a Class III source, but the carbon monoxide if it's less than the penalty still comes under a different permitting cycle?

Ms. Cripps explained if it were less than 5 total tons of all of those pollutants, it would be a Class III source. If it were more than that, they would have to get a Class II permit.

Commissioner Johnson asked for carbon monoxide? I think in lines 9 and 10 it doesn't list carbon monoxide.
Ms. Cripps stated you're absolutely right and that's something that we didn't catch when we were reviewing the LCB language. So we would need to delete carbon monoxide from this petition.

Commissioner Johnson stated I think in the temporary regulation that we adopted it was deleted. There were some comments

in the minutes. The real intent of what was said there was that it was difficult to measure and they didn't want to deal with it. But, it would still be permitted though. It just wouldn't be under this small permit?

Ms. Cripps stated that's correct.

Chairman Close called for further questions.

Commissioner Doppe asked could you say that again? It would still be permitted but . . .

Commissioner Johnson answered no; I believe it wouldn't qualify for the small permit holder in the Class III. It would still be under Class II even though it was under the 5 tons.

Ms. Cripps stated right, and if there are those kinds of emissions, the odds are that it's not going to be less than 5 tons. Commissioner Doppe stated so the reason that it's not listed here is because it doesn't matter what quantity of CO that you put out and if you're putting it out, you've got to be a Class II.

Ms. Cripps stated right.

Chairman Close called for further questions. There were none. He called for public comment. Since there was none, he called the public meeting to a close and called for a motion.

Commissioner Doppe moved to adopt permanent regulation 2001-05.

Commissioner Johnson seconded the motion.

The motion carried unanimously.

David Cowperthwaite asked if Exhibit No. 4 was included in the motion.

Chairman Close stated as presented with Exhibit No. 4.

Mr. Cowperthwaite asked if there was also to be an additional change regarding carbon monoxide.

Commissioner Doppe answered no.

Chairman Close answered no.

Chairman Close moved to **Agenda Item II. E. Petition 2001-06.**

(Petition 2001-06 (LCB R-041-01) permanently amends NAC 459.952 to 459.95528, the chemical accident prevention program. The regulation adds new provisions to incorporate explosives manufacturing into the program, to add construction permit requirements for new chemical and explosive facilities, and other minor technical amendments to the regulations to reflect statutory amendments to the list of regulated chemicals. Facilities that manufacture explosives or ammonium nitrate/fuel oil for sale will be subject to the requirements of the program. A fee structure to regulate explosive facilities is established.)

Allen Biaggi introduced himself as Administrator of the Division of Environmental Protection. He stated this petition is the long item for your day today and will probably take some amount of time to work through it. What I would ask is that we move this petition to the end prior to the settlement agreements and move forward with Petition Nos. F and G and that will allow some of our staff to be able to depart back to their homes in Carson City and get back to work.

Chairman Close stated if there's no objection we will postpone 2001-06 to a later point in our agenda. He then moved to **Agenda Item II. F. Petition 2001-07.**

(Petition 2001-07 (LCB R-042-01) permanently amends NAC 445A.810 to 445A.925, the underground injection control (UIC) program. The amended regulations provide that "other Sensitive Groundwater Areas" can be determined to meet compliance with the proposed regulations. The regulations revise outdated Nevada Revised Statute references, expand minor permit modification criteria and logistics, expand criteria for a temporary permit, outline methods to establish permit limits in the absence of specific standards, and repeal the prohibition of injection of treated effluent. New definitions for cesspool, Class V Rule, delineation, drywell, groundwater protection area, improved sinkhole, other sensitive groundwater area, motor vehicle waste disposal well, point of injection, sanitary waste, septic system, source water assessment and protection program, and subsurface fluid distribution system are defined. Restrictions are imposed on Motor Vehicle Waste Disposal wells. Fees for renewals in NAC 445A.872 are reduced, repealed and incorporated into the existing annual fee. This fee category is expanded to included major modifications.)

Val King introduced herself as working for the Division of Environmental Protection in the Underground Injection Control program, or the UIC program, within the Bureau of Water Pollution Control. She stated what Mr. Cowperthwaite is handing out is our recently modified regulations from LCB. First of all, I want to apologize that this version of the regulations wasn't in your packet that you received. However, we just received them late last week from LCB. So this is the best we could do. I apologize.

What the UIC program does is it's responsible for the regulation of any type of fluids into a well. Nevada has primacy over our UIC program and what that means is that we implement and enforce the program at the State level even though it's a federal program. To maintain our primacy we have to ensure that our regulations are as stringent as the federal regulations. Recently, EPA modified the federal UIC regulations and they coined it "the Class V Rule." So, the State of Nevada had to, in turn, fold

those modifications into our regulations. We had several public hearings throughout the State and the common thread throughout the workshops was that the regulated community did, in fact, want the State to maintain primacy and not have it regulated at the federal level. So, at the May Environmental Commission hearing, we brought our regulations before you and you approved them as temporary regulations. Unfortunately, LCB could not review them prior to that meeting because the legislature was in session. So, after you adopted the temporary regulations, we turned them over to LCB and they made some modifications as well. They weren't substantive modifications. They were more along the lines of semantics and rearranging some of the regulations so that they would flow better or read more clearly. It was just LCB-style changes. EPA, as well as our Division, agreed with the changes that LCB made and the changes did not impact the intent of our regulations, which you had approved as temporary regulations.

Chairman Close asked and the document that we're looking at now, the handout, how many changes were made by LCB and were there any substantive changes that we should be aware of?

Ms. King answered there was nothing substantive. They added a few definitions for clarification, definitions that we had just referred to a citation saying that the CFR, they pulled that definition out and threw it into our regulations. For instance, on the first page, Section No. 3, they added a community water system. Previously that was just in the temporary regulations that you approved in a section under groundwater protection areas. We referred to that particular definition by reference and the LCB folks went ahead and just wrote the definition out in our regulations. Again, in the permitting process that we proposed they shuffled things around a little bit, but nothing was changed so that the intent of the regulation, which you adopted, was hampered.

Commissioner Iverson asked can you explain what a motor vehicle waste disposal well is?

Ms. King explained basically, a motor vehicle waste disposal well is a shallow injection well, or basically a floor drain, if you will, that just dead-ends in the ground or possibly in the leach field and it's got a high potential to receive potentially hazardous waste material or discharges.

Commissioner Iverson stated we're talking primarily motor oil, antifreeze, gear oil . . .

Ms. King answered yes, solvents and various other organic constituents that are associated with vehicular repair.

Commissioner Iverson stated so we're really just talking a sump.

Ms. King stated it could be in the form of a sump. But there are various mechanisms. It can just be like you said, a floor drain in a shop that dead-ends in the ground or proceeds to a leach field type of scenario.

Commissioner Iverson stated so we're looking at a leach field that has oil, antifreeze, solvents, all going down it.

Ms. King stated yes.

Commissioner Iverson asked Ms. King to explain about the injection of treated effluent water.

Ms. King explained we currently have a prohibition on the injection of treated effluent in our regulations. Please keep in mind that our regulations were adopted in 1987. What happened is with this Class V Rule that EPA promulgated a couple of years ago, they expanded the definition of an injection well to include leach fields. Leach fields are associated with septics in many instances, so if we prohibited the injection of treated effluent into a well, we're essentially making septics illegal in Nevada. We can't do that. We didn't want to contradict our regulations, so we need to remove that prohibition.

Commissioner Iverson stated in talking to Allen it appears that there was an organization that wanted to use a new technology and do a little bit more as far as cleaning the effluents and then actually injecting it into an aquifer. That's a lot different to me than a leach line.

Ms. King stated absolutely.

Commissioner Iverson asked where are we talking about injecting effluent water into an aquifer?

Ms. King answered at this point we're not looking at anything in the near future. By lifting the prohibition we definitely open the door to future possibilities being the most arid state in Nevada. We don't feel uncomfortable doing that. It doesn't give anyone a free license to inject treated effluent from a wastewater treatment plant. We have in our regulations that groundwater cannot be degraded and with the extreme increase of technology since 1987 when we had the probation in our regulations, by lifting that all we do is provide a means to conduct research and further study this option. It doesn't give anyone a free license to go out and do that. It has to be permitted. It'll go through the public notice and it will be controversial. So I think we're fairly well covered here.

Commissioner Iverson asked through your public notice and prior to allowing anyone to do that you would have an opportunity for the public to comment on it?

Ms. King answered absolutely. Every permit does and it would be under a permit scenario.

Commissioner Iverson stated as long as we and the Division of Environmental Protection feels secure and feels confidence in that we can inject effluent water into an aquifer and maintain it in that aquifer so that we don't get it into a drinking water. I know we can inject it deep, but I also think there's deep fresh water in this valley too. I don't know whether there's going to be any public comment on this particular item, but I definitely wanted to find out. I guess I'm still concerned about motor vehicle waste disposal wells. I worked in a gas station for about 20 years in Las Vegas and I didn't realize that those were considered wells that we threw everything in the world down into, and then they go out to a sump. There's some pretty nasty stuff that goes down in those things. I leave it in your hands. I guess you guys know more about it than I do.

Ms. King stated let me assure you that we're taking a very conservative approach.

Chairman Close stated looking at Section 18 it provides that the owner of an existing motor vehicle waste disposal well that was in the operation or under construction on April 5, 2000 shall close the well, obtain a permit, and comply with Sections 19 through 22. I look at 19 through 22 and it appears as though they have potentially until 2006 to close these things off. Am I reading that correctly?

Ms. King explained what is in those sections is if we apply for an extension from EPA to complete our other sensitive groundwater area, which needs to be in place prior to the permitting of these, then there is an extension possible and that's within those sections.

Chairman Close stated I'm looking now at Section 19(a), but to go until January of 2006? That would be 5 years from now and as I just indicated oil and other pollutants continue just being dumped on the ground. That seems like a long time. I don't think if I just had a barrel of contaminant that I could go out and just dump it on the ground. But if I have a pipe that leads it to some underground location, I can continue doing it. That seems rather like a lengthy period of time before something has to happen.

Ms. King explained what we did here was mirror the federal regulations. We will implement a stronger program, but in our regulations we wanted to give ourselves flexibility. So we just mirrored the federal regulations, the Class V Rule with their dates in our regulations and it doesn't mean that we're going to allow that to happen.

Chairman Close asked so then you intend to more rigorously pursue the cleaning up of these motor vehicle waste disposal wells? Would that be correct?

Ms. King answered we have an inventory to identify all of them. At this time we are addressing wells that we have found and there are not very many wells that we are finding in Nevada. However, we've already addressed the few that we've identified and we either have resolved the issue or we're working with them now. So we're taking a proactive step here.

Chairman Close asked how do they cure the problem? What do they do to solve what was just an easy solution to take care of the disposal needs?

Ms. King answered the experience we've had so far is that it's easier just to close the well and there's sampling that occurs and if there is a contamination issue, then our Corrective Actions Bureau will be getting involved and taking the lead from there. We want to ensure from the UIC prospective with these regulations that we stop the source of discharge.

Commissioner Johnson stated I had concern in the temporary regulations, as you well know. I think the question was asked if I have one of these wells now whether I can dump my antifreeze or oil down that well. I can't do that right?

Ms. King answered no, you cannot.

Commissioner Johnson stated I think that needs to be in the record that only a discharge of cleaned up product that can go in that well.

Ms. King stated yes and associated with these regulations are the criteria that the injectate would have to meet prior to injection.

Commissioner Johnson stated right and testimony in May indicated that in your inventory you had only a few, less than 30, identified in the 15 counties, not counting Washoe and Clark County. Who is doing the inventory in Washoe and Clark and has that number significantly increased?

Ms. King stated the UIC program is responsible for completing that inventory. We're utilizing an independent contractor to help us out. The number has increased, but not by far. We're still working on obtaining the last two counties. They're by far the greatest as far as a municipal entity. So, they are larger and it's taking more time to complete those inventories. But I think the bulk of these are going to be found in the rural areas of Nevada which so far is what it's looking like.

Commissioner Johnson stated and there was a provision for the voluntary response to the questionnaire that there would be some site visits and inspection on the ones who claim not to have facilities. How many of those have been accomplished and what's the result?

Ms. King explained at this time that's going to be a follow-up phase with our inventory. We've probably inspected a handful, I would say maybe 5 or 6, that said that they did not have injection wells at this time. The final phase of our inventory is to go back and do some quality control and take another look at the inventory forms and their locations and determine who would get a follow-up visit from us.

Commissioner Johnson asked in the counties that you have completed, how many potential wells did you send out questionnaires to?

Ms. King answered in Washoe we sent out about 4,000 questionnaires. That was one of the larger ones. Some of the smaller ones we sent out between 500 and 1,000 questionnaires. We can get into how we did that as far as identifying the potential facilities; however, we feel that it's as comprehensive of an approach as we can take.

Commissioner Johnson stated I think the comprehensive questionnaire is to be applauded. I don't think 5 or 6 actual site visits out of that number of questionnaires is appropriate, however.

Ms. King stated we're going to do the quality control inspections after we've gotten the initial questionnaires that responded "yes" taken care of. We're going to go back and clean it all up.

Commissioner Johnson asked in your budget, how many man-hours or man-days do you have allocated to that?

Ms. King answered most of the budget is allocated for inspections, so we've got it covered. We have the budget in place and it's federal dollars that we're using for this.

Commissioner Johnson asked how many days? How many hours, approximately? I don't need to know exactly. But it seems that there's several thousand. I don't know what a statistical valid sampling would be, but I'd like to have your suggestion.

Ms. King stated at this point we aren't doing the sampling. To be quite honest, I don't know exactly how many hours. We have the bulk of our $500,000 plus budget for this contract allocated towards inspections and that's what it will go for.

Commissioner Johnson asked of identified sites?

Ms. King answered no, for the comprehensive inventory, which includes both the quality control as well as the standard inspections.

Commissioner Johnson asked does the group who has the contract on Washoe and Clark County in their contract have some contract terms that state how they will verify the responses?

Ms. King answered yes, absolutely. It's based upon location and where they are located with respect to sewer versus non-sewered areas.

Commissioner Johnson stated I think we're getting a little more detailed than we should. I would appreciate receiving information about what the sampling and verification of these sites would be.

Ms. King stated I will give you all the information that you would like. If I can give you a business card and we can exchange whatever information you'd like to. I'd be happy to do that.

Commissioner Iverson stated I just have one more question. If I drill a well 10 feet deep and I put a piece of corrugated metal down the sides of it and the bottom of it is empty or if the bottom of it is rotted out and I dump all my oil and my stuff in there, is that an injection well?

Ms. King answered yes it is.

Commissioner Johnson stated and you're in violation.

Commissioner Iverson stated and I'm in violation.

Ms. King stated yes.

Commissioner Iverson stated okay good. Now, could a person who has been doing this for 50 years contact the Division of

Environmental Protection and say, "Look, you know, I've been dumping oil in this thing for 20 years. I have no idea what's underneath it" and have an opportunity to work with Environmental Protection rather than just receiving a violation?

Ms. King answered absolutely. Our program has a focus to stop the contaminant source. If it's being injected to a well, you stop that activity. That's what we do. We also have our self-audit mechanism in place through Mr. Cowperthwaite's office and we also have our Corrective Actions group in place to assure cleanup if that's what is necessary.

Commissioner Johnson stated I have additional questions. Section 2 where it talks about cesspool and then Section 14, septic system, I guess I just need an explanation of the definitions. I thought I knew the difference, but in reading the definition I'm not certain that I understand it.

Ms. King explained a cesspool, which has been banned in Nevada for many years, is simply a hole in the ground which is dry on the sides as well as the bottom, unless filled with fluid and then it's free to be displaced however it goes. A septic system, on the other hand, actually has a treatment mechanism in place and it discharges typically to a leach field and then it's distributed to the ground via a leach field, which is now identified as an injection well.

Commissioner Johnson stated that's how I understood it, but cesspool that's dry, open to the sides, I would think that a cesspool is more open to the surface, a surface pond for instance, rather than a well. Am I reading something into this? By this definition, I don't see the difference other than the example that's cited.

Ms. King explained the definition of a cesspool is simply a hole in the ground, not necessarily a pond, but a hole in the ground which has perforated sides or bottom that are dry until fluid is placed inside of it. Whereas a septic system is actually a treatment mechanism and opens only to where it receives the injectate and where it discharges it to the leach field.

Commissioner Johnson stated I need you to elaborate just for my information a little bit more about the sensitive groundwater areas and the reason that you've taken the regulatory definition here as opposed to some other one. I think it was discussed in May on the difference between the approach that the State of Nevada has taken and the federal approach.

Ms. King explained the other sensitive groundwater area is a term and a process that EPA handed down in the Class V Rule and here they didn't give us a chance to comment on it. It wasn't in the proposed rule. It just came down on the final rule. What it said was every state must delineate sensitive groundwater areas or else. If they don't come up with a plan for doing this, they have to designate the entire state as being sensitive. The implications of having a sensitive groundwater area is that you have to meet drinking water standards at the point of injection. Now for the Phase I of the classified rule, which is what we're looking at right now with the motor vehicle waste disposal wells and cesspools, that would be fine. We wouldn't have gone through the headache of trying to come up with this plan if these were the only types of wells we were looking at.

Unfortunately, Phase II has yet to come down and there's a whole universe of UIC wells that can be thrown into this Phase II portion. Some of those may be mine dewatering wells, geothermal wells. We've got remediation wells, aquifer, storage and

recharge wells that would be fine. But, it didn't make sense for Nevada to have the entire state declared as sensitive, because, and I guess I'll take a dewatering well, for instance. Mines dewater and the water quality is typically not the best. It doesn't meet drinking water standards. Well, if we did not have another sensitive groundwater area in place for the State of Nevada, then being that the State would then be declared "sensitive" everywhere, the mines would have to treat that water that they pulled out from the aquifer prior to injecting it into the very same aquifer because they're in a sensitive area. That doesn't make sense for Nevada that it would be a huge economic burden for just the mining industry. So, we tried to take a proactive approach here. We don't know what's coming down in the Phase II portion of this classified rule. So, rather than trying to react to it, we try to be proactive and implement this plan.

Commissioner Iverson asked if you were to inject treated effluent water into a deep water aquifer would we require monitoring wells that we put up to make sure that that effluent stays in that aquifer?

Ms. King answered absolutely.

Chairman Close asked if I have a service station and I've been injecting my petroleum products into the ground for say 10 years, I've probably contaminated the ground around my service station somewhat, if I have a leaky gas tank there's a program in Nevada to assist in the cleanup of that contaminated ground. Does that same program exist under this scenario?

Ms. King answered no. The focus of our program is simply to stop the source of injection. No more injection into that well. There are other programs in place to facilitate the rest of it.

Chairman Close asked would the service station owner be covered under, if you know, under whatever program that's called. I don't recall the name of it, but there's some program where if you have a leaky gas tank and the State comes in and takes over the remediation . . .

Allen Biaggi stated I believe you're referring to the State Petroleum Fund, which is used for the cleanup of leaking underground storage tanks. That is specific to that type of a release from a leaking underground storage tank and consequently, the funds in that program could not be used to clean up contamination as a result of an injection well or a Class V well.

Chairman Close asked so then if I knew what I was doing, but there was no prohibition against doing it, if I now have contaminated the ground around my property, I could be compelled to remediate the contamination and do whatever has to be done to clean it up. Is that correct?

Mr. Biaggi answered that's correct. You would be compelled to do that at your own expense.

Chairman Close asked how many of those do we have statewide?

Ms. King answered tentatively we're looking at approximately 30.

Chairman Close called for further questions from the Commission. There were none. He called for public comment. Since there was none he declared the public hearing closed and called for a motion.

Commissioner Doppe moved to adopt the petition as presented.

Commissioner Johnson seconded the motion.

The motion carried unanimously.

David Cowperthwaite asked is the petition that's being adopted the LCB file dated September 14?

Chairman Close answered correct, September 14, 2001, LCB File No. R042-01.

Chairman Close moved to **Agenda Item II. G. Petition 2001-08**.

(Petition 2001-08 (LCB R-089-01) permanently amends NAC 519A.350, reclamation of land subject to mining operations or exploration projects. The amended regulations provide minor changes regarding surety bonding by allowing up to 75% of the required surety to be satisfied by the corporate guarantee, based upon periodic review by the administrator. The amendments also require that the financial information submitted comply with U.S. Generally Accepted Accounting Principles and that the financial statements submitted be audited.)

David Gaskin introduced himself as chief of the Bureau of Mining Regulation and Reclamation with the Nevada Division of Environmental Protection. He stated I'm here today to present Petition 2001-08 proposal to amend NAC 519A the regulations governing the reclamation of land subject to mining operations or exploration projects. The amended regulation would provide minor changes to NAC 519A.350, the general requirements for financial assurance for reclamation and in particular the requirements for corporate guarantees. Over the past several years, decreased metals prices have caused financial problems for less secure mining companies leading to bankruptcies and mine abandonment in certain cases. This is especially troubling when an affected mining company has a corporate guarantee as its method of financial assurance. In order to improve the security and effectiveness of the corporate guarantee process we are proposing the following revisions and we propose to revise NAC 519A.350(7)(a) as indicated in the petition. This revision would provide the Division added flexibility to adjust the corporate guarantee in response to a serious change in the financial health of a mining operator. Historically, corporate guarantees have always been allowed at 75 percent of the total required surety, with the remaining 25 percent satisfied by more conventional means. With this proposed revision, the administrator of the Division would have the ability to assign a corporate guarantee percentage less than 75 percent if warranted by the applicant's financial health. Changes in the financial status of a company will be tracked through more frequent review of financial information such as annually and quarterly reports. The administrator will have the ability to adjust the corporate guarantee percentage at any time based on such information.

In Part B the term "certified" has been replaced by the term "audited." This was done on advise from our financial consultant to utilize proper accounting terminology. Subsection 8 has been added and this clarifies the accounting principals to be used in the preparation of financial information to prevent confusion due to the differing principals used in different countries. In addition, one minor deletion was suggested to Subsection 5 by LCB. This is unrelated to our proposed corporate guarantee revisions and should have no impact. We held numerous meetings with industry over the past year and a half to discuss these proposed revisions. Public workshops were held in June of this year in Winnemucca, Elko and Carson City. We received support of feedback from environmental groups, tribes, regulators and industry. In summary, these revisions are being proposed to improve the corporate guarantee process and increase the security of financial assurance for mine reclamation in the State.

Chairman Close called for questions by the Commission.

Commissioner Johnson asked how many bankrupt mines do we have that have inadequate bonding or surety?

Mr. Gaskin answered currently the Airmetco properties are the most troublesome and the most prominent of those is the Yerington mine in the town of Yerington. They were covered under corporate guarantee and did go bankrupt and left the State with quite a significant burden that we're dealing with presently. Of a number of very small operations that have been affected by bankruptcy, but really none that were covered by the corporate guarantee process.

Commissioner Johnson asked the small ones are under the small mine bonding program of the State or some other?
Mr. Gaskin answered usually they just have another financial assurance mechanism other than a corporate guarantee.

Commissioner Johnson stated the Interim Finance Committee has allocated funds from a contingency fund. How much has been committed to Airmetco or the other projects?

Mr. Gaskin answered we did have $300,000 in disaster relief funding available. We did not utilize any of that money and it has reverted back to the State. We currently do have the Interim Fluid Management fund which was paid for by fees on industry and we are currently using that at one small mine. It has about ¾ of a million dollars in that fund currently.

Commissioner Johnson asked the interim fund is actually only for bonded and would corporate bonding qualify a facility for that interim fluid management fund?

Mr. Gaskin explained under the Interim Fluid Management fund the bonding for those activities that would be covered under that fund were required to be not corporate guarantees. It would be other financial assurance mechanisms. So that portion of the bond, which is allocated to interim fluid management, is another form of surety not covered by corporate guarantee.

Commissioner Johnson stated what we're dealing here is an overall but not fluid management. Fluid management bonding that's required on permitting would be separate from this?

Mr. Gaskin answered that's covered under the other 25 percent other than the 75 percent, which is corporate guarantee. The other 25 percent of other financial assurance would cover that interim fluid management.

Commissioner Johnson stated I'd kind of like a time frame. If there's an operation that's ongoing and has this, and they're submitting audit reports, what kind of response time from the time that they get into financial problem, say the price of gold goes to $100 an ounce, the depressed price it is now, how long until some action would be taken?

Mr. Gaskin answered well, as I mentioned, we will have more frequent reviews than we had in the past. We'll be looking at the quarterly reports and annual reports for the operators. If we do find out about, discover, see other concerning information, we'll certainly look at it on an immediate basis and make a recommendation to the administrator on a short time frame.

Commissioner Johnson stated it's my impression in reading this as an either/or kind of thing. If you get two out of the three in the qualifying mechanism, you can have this and if you don't, what kind of time frame? One quarterly report and you drop out? Does that trigger a 100 percent requirement or an annual financial report, or what basis? I see no time frame in an ongoing operation. I can see the original acceptance of the corporate bond, but the review process it seems that the director is going to have very few guidelines.

Mr. Gaskin stated that's a good point. The original regulations were set up to acknowledge that qualification process, but didn't mention any further subsequent review or any adjustment to that corporate guarantee amount and that is exactly what we're trying to put into the system is give us that flexibility. Now as far as the exact trigger, yes these criteria that were in the original regulations and remain in there will be good guidelines if someone does not qualify under these criteria. Historically, we have given them 60 days to find alternate surety. So that's the time frame that we have dealt with in the past.

Commissioner Johnson asked Mr. Biaggi if he was comfortable with the language and the discretion.

Mr. Biaggi stated I am comfortable with this language and the intent that I have here is to set up a corporate bonding review committee made up of representatives of the industry, financial, the Division and perhaps the environmental groups to periodically review and to provide information to the Bureau of Mining and to myself with regard to the financial health of mining operations utilizing the corporate guarantee process. I'd like to make one clarification. In the Airmetco situation, we have not gone to IFC to request funds to out of contingency to address that situation. All of the monies that have been used to address the Airmetco problem have come from industry fees that have been provided to our program that are allocated within our budget for response concerns such as this or other types of spills. So we have not gone to the General Fund or to contingency funds and as Mr. Gaskin indicated, we did not use the emergency management funds that were allocated to us.

Commissioner Johnson stated I guess a correction. My statement was simply that they authorized the $300,000.

Mr. Biaggi stated they authorized $300,000 of emergency management funds, but that was not contingency funds.

Commissioner Johnson stated my mistake. I applaud you and I think this is an improvement and we'll see how it works.

Chairman Close noted we do have an Exhibit 3, which is a letter of support from the Nevada Mining Association on this particular petition as well as 02. So, 02 and 08 if there's no objection, the Exhibit No. 3 will be added to the minutes to reflect their support.

Commissioner Coyner stated with regards to Subsection 7(b)(2) I was contacted by a member of the industry with a request that for clarification only it might be advisable to include a 0 in front of the decimal point before the 1. That would be on Subsection 7(b)(2), "A ratio of the sum of net income plus depreciation depletion and amortization to total liabilities greater than 0.1 to 1" only from the perspective in printing and duplicating and so forth. Very minor point. It doesn't change the mathematics.

Chairman Close asked is that accepted?

Mr. Gaskin answered that would be acceptable. That wouldn't change the accounting mathematics involved.

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

Commissioner Doppe moved to adopt 2001-08 with the addition that Commissioner Coyner mentioned, changing line 16 on page 1.

Commissioner Johnson **seconded the motion.**

The motion carried unanimously.

Chairman Close moved to **Agenda Item II. H. Petition 2002-01**.

(Petition 2002-01 (LCB R-096-01) permanently amends NAC 445A.070 to 445A.348, the water pollution control program by amending 445A.100 the definition for "point source" by adding language that defines earth moving equipment, and 445A.309, the definition for "diffuse source" to incorporate runoff in various subsections of the definition. In addition, the definition for "diffuse source" clarifies provisions regarding urban area runoff and earth moving activities. The regulation will assist regulated communities in determining when water pollution control permits are necessary.)

Allen Biaggi introduced himself as Administrator for the Division of Environmental Protection. He stated this proposed petition relates to a settlement agreement between the Nevada Division of Environmental Protection and Elko County with regard to the Jarbidge issue. The Division and Elko County have met both in person and on the telephone a number of times. We came up with regulatory language that was acceptable to both parties to resolve the issues in this case. However, when that regulatory

language went to the Legislative Counsel Bureau there were some very minor modifications to it. Both we and Elko County felt uncomfortable with coming to you today with that language without the Elko County Commissioners first taking a look at that language and once again approving those very minor changes. So we would ask that regulatory petition H. 2002-01 be removed for today and I'm sure you will see that at the next Commission meeting.

Chairman Close called for a motion.

Commissioner Crawforth asked is this a redefinition of rolling stock? Is that what we're doing here? Is it to address that issue?

Mr. Biaggi answered it is, yes. And what requires a rolling stock permit, what does not require a rolling stock permit, etc.

Chairman Close called for a motion to postpone.

Commissioner Dahl moved to postpone.

Commissioner Iverson seconded the motion

The motion carried unanimously.

Chairman Close moved to **Agenda Item II. E. Petition 2001-06**.

(Petition 2001-06 (LCB R-041-01) permanently amends NAC 459.952 to 459.95528, the chemical accident prevention program. The regulation adds new provisions to incorporate explosives manufacturing into the program, to add construction permit requirements for new chemical and explosive facilities, and other minor technical amendments to the regulations to reflect statutory amendments to the list of regulated chemicals. Facilities that manufacture explosives or ammonium nitrate/fuel oil for sale will be subject to the requirements of the program. A fee structure to regulate explosive facilities is established.)

Mark Zusy introduced himself as managing the Chemical Accident Prevention Program in the Bureau of Waste Management of the Division of Environmental Protection. He stated today I'd like to talk about a petition that we have before you to take a regulation that was adopted as a temporary regulation back in February of this year and make it permanent regulation. I apologize for this package not being forwarded to you prior to the meeting. We didn't receive a final version back from the LCB until late Thursday and were unable to get it in the mailing with everything else that the secretary sent out. So you're just seeing this for the first time today. We do have some amendments to the temporary regulation and I will note that the LCB, in getting into this regulation, has been able to greatly simplify this. I don't have overheads, but I will be using this handout that David is distributing to everybody. Basically, you've got the handout and two exhibits, No. 1 and 2, plus you have the regulatory petition.

Chairman Close asked does this deal with fireworks?

Mr. Zusy answered yes it does.

Chairman Close stated I will recuse myself then and I will not participate in this hearing. He asked Vice Chairman Coyner to chair this portion of the hearing.

Mr. Zusy stated I guess I'll start by just noting that in the drafting of this regulation by LCB they were able to go in and modify it pretty extensively. We went from one method of drafting regulation that was done several years ago when I did some work making an all-inclusive regulation. Rather than insert the word "explosives manufacturing operation" which I did in a lot of sections in the temporary regulation LCB was able to consolidate that into one statement up front. So consequently I didn't have to amend approximately 30 or 40 sections in the regulation. So there's quite a bit less to the amendment this time around. So I just wanted to call your attention to that. What I was going to do on these handouts since I don't have them up overhead was just refer to the slide numbers that are down in the lower right-hand corner as I go through this. You have a couple of pieces of information right now. In addition to the handouts you have the petition before you and you have an Exhibit No. 1 and 2. I'll refer to those exhibits as I get into the review in just a little bit. Since I've already gone into quite a bit of detail on this regulation in the past, what I propose to do today is to give an overview, focus on a couple of the primary areas of this regulation and then focus more prominently on the actual changes that were made since February because there were some amendments made.

Slide No. 2 - I'm going to review the purpose of the regulatory modifications, talk about the outreach efforts that we've conducted since the February adoption of the temporary regulation, going to talk about implementation coordination, primarily as related to permitting, and then get into reviewing the specific parts of the regulation.

Slide No. 3 - the bulk of this amendment is related to implementing statutory mandates that were actually made in the 1999 session. They are related to incorporating explosives manufacturing and adding construction permitting requirements, both which came from the Clark Commission that conducted a study after the Sierra Chemical incident. Additionally, there were some amendments to our list of highly hazardous substances in statute. In addition to that, we are proposing a few what I'm calling "programmatic amendments." They are improvements to the process, or program process or clarifications to certain items that we've seen have proved confusing over the last several years.

Slide No. 4 - we currently have 35 facilities that are subject to the Accident Prevention Program and emergency response program requirements. We have several levels in the program. These 35 facilities are essentially subject to the most stringent requirements of the CAPP (Chemical Accident Prevention Program). We do have a regulation in place since February to issue permits to construct. I was hoping by this time that we would have had at least one submitted to us so I could have reported back to you on how the system worked. Unfortunately, we have had no applications submitted. There is one pending for a refrigerated warehouse in North Las Vegas, but we haven't seen it yet. So, I can't give you any more information on that now, unfortunately. I will note as well in terms of consultants we do mention throughout when we talk about the fees that consultants are going to be enlisted when we need help with certain things. Those RFP's are due within a week or two so we're very close to having somebody selected and on board to help us with explosives.

Slide No. 5 - we held another round of workshops. The first thing we did was post notice of those workshops on our Web site and did mailings. We did all that in April. We held workshops in May. We held them in the three places we always hold them: Carson City, Battle Mountain, and Henderson. We received additional comments since February by way of two letters. I've also held conference calls with several different facilities going through a lot of the different portions of the regulations. So if people could not make workshops we did talk further with them. I will also note that in those conversations that I held with the regulated community we actually went through about two or three iterations of what you see before you today. So, we did re-work it a couple of times over the past several months.

Slide No. 6 - coordination of implementation. The coordination aspect is really tied to this permit to construct requirement under CAPP. I have worked quite a bit now with local building officials and fire departments. I held meetings several months ago, one in Clark County and got all the building and fire department agencies from the different municipalities and the county together and we discussed the permitting requirements and coordination. I did the same thing up in the Washoe County area and pulled in all the surrounding counties and municipalities and got a really good turnout. So we've talked quite a bit with these different folks. The agencies are generally very receptive to having our involvement as it goes with reviewing chemical plant installations. They really don't review the mechanical process. They recognize that, especially when we went through and talked about what we do. So they understand what we do and I think we have a pretty good understanding of how to go about doing this. We just need an application so we can make it work.

I have developed application forms and various check forms, all the different things I need to go forward with the program. I've shared those with the building officials. So they're all very familiar with the program. They know what we're looking for. They know what triggers our involvement and we have been talking to these people. There have been several things come through that really weren't subject to our program but at least they're looking at it and thinking about it so they understand.

Slide No. 7 - I was going to start talking about the regulation now. Please note Exhibits No. 1 and 2. As I explained earlier, the first version that we saw of this regulation as drafted from LCB came to me late Thursday. Unfortunately, we did not have an opportunity to have an iteration with LCB. Quite often when they draft regulation they don't always catch the meaning of what it is you want and it's necessary to go in and make some adjustments to the language. Since we were unable to go through that prior to this meeting, what I had to do was develop these exhibits, which I will be proposing as amendments to the petition that you have before you. Exhibit 1 includes all of the new sections that are being proposed to be added and it goes from pages 1 through 19 and it goes all the way up to Section No. 23. As I go through the information in here I'm primarily going to be working off of Exhibit 1. Then Exhibit 2 just has a couple of existing or permanent regulation sections that are being amended. I broke those out separately. There were some minor corrections I had to make to three different sections. I'll cover those on Exhibit 2 right at the end of my discussion.

So if we could start with Slide No. 7. What I'd like to do is go through the permit to construct portion of this regulation. I will be using Exhibit 1. The actual language starts Section 6 and it goes through Section 22 and it starts on page 2. I'm not going to go through each detailed section. I am going to focus on a couple of sections. The whole intent of the permit to construct and operate is to get involved in the accident prevention program and emergency response preparedness program before a plant starts

up. Prior to the permitting process being introduced to CAPP we never had jurisdiction until after the materials were on site. All of the plants that we've been dealing with to date had the materials on site. When they get into our program new, we'll go in and find things like they need a lot of work on their operating procedures, they don't have a maintenance program, they really haven't developed an emergency response plan. As long as things are chugging along and there's no accidents, that's fine but that's not prevention. And the idea here is to have these different elements in place so that you can just minimize the risk. What we're looking to do through this permit to construct program now is just look to see that that's in place before they bring the materials on site, before they start up so we don't have to worry about developing procedures after the fact, training operators after the fact, just hoping that these guys don't make a mistake or that there's enough instrumentation and controls to run the thing. So that's the main objective of this permitting program.

What we're looking for prior to startup is to ensure that the off-site consequences are adequately mitigated. The materials in our program are highly hazardous. A lot of them are very toxic, volatile. They can get off site and cause acute health impacts. Some are flammable and result in a vapor cloud explosion, large fire and some are explosive. So we want to ensure that things are done to minimize off-site consequences. We want to make sure that emergency response is adequate. We want to ensure that all of the CAPP program elements that I've talked about that we've done after the fact are in place and either done or ready to go when the plant starts up.

Slide No. 8 - there are two parts to this process. One is the permit to construct. These are things that they need to have in place before they actually start the construction of the mechanical process. The second part is the permit to operate. I previously referred to it as permit to commence operation, but LCB drafted it that way and I guess I don't have a problem with that language. That portion is required to be in place before they bring the materials on site and start running the plant.

Slide No. 9 - In terms of the permit to construct, first of all I'm going to have to apologize, the parentheses after permit to construct at Section 14, page 3 that is an error. What I was referring to there was actually Section 15 on page 11 and what that is is the criteria that we used to issue the permit to construct. I'll just briefly outline what we're looking to see in place before they actually start constructing the mechanical process and I'm going to get back into this in more detail. This is one area I'm going to focus on because this is very important. We want to ensure that the hazards associated with the operation are properly mitigated. We want to make sure that they have the emergency response capability in place, either at the plant level or at the local responder level. We want to ensure the plant is designed to codes or best engineering practices. We want to ensure that the plant gets installed per the specifications, per the way it was designed. If the design is good, it doesn't do you much good if you don't install it that way. We want to ensure consistency with the conditional use permit that's authorized by the local authority, the city council or planning commission and that's only as related to our specific program requirements. And, lastly, we do want to provide an opportunity for some public review, at least notifying them that this project is coming, here's basically what's going on with the project, so the public will have a chance to look at various parts of this program. I will stress, though, in this process we are not rehearing the conditional use permit. That's a decision that gets made by the local organization with our input because there were modifications in the 1999 session to planning commission statutes in Chapter 278 that basically require them to involve us so we can provide input about materials, off-site consequences and hopefully they use that in their planning. But we do not rehear their conditional use permit.

What I was going to do for a few minutes now was go to Section 15 on page 11 and I wanted to just go down each of those items. What this is, prior to this there's all the rules and regulations related to submitting an application, our review of the application, our acceptance of the application, all the different things that need to go into the application and the detail. That's in front of this. In Section 15 that starts at the bottom, this is the criterion that we use to approve the permit to construct. If these things are satisfied, they can go forward and start building the plant. We want to make sure that things are resolved on paper. It's easier to make changes on paper than to come back after a plant is up and say, "Oh, that line isn't big enough" or "You need to put a flare here" whatever it might be. I think it's easy enough to grasp that it's a lot easier to do it on paper. Under Subsection 1 of Section 15, "Approves the off-site consequences developed." How far can that toxic release go? How far can that overpressure go? Based upon what they're telling on materials and inventories does it appear reasonable? We just want to make sure that we have a good picture of that and that they do and that we agree with it. The next part, determine that the inspectors used out in the field basically are qualified without reading this. We don't anticipate a large number of permits to be submitted to us. Consequently, we really can't have a staff of inspectors like a local building department does. So, basically the company is going to provide those people. But the construction inspectors they have out in the field need to be qualified to inspect the different disciplines that they are going to be involved in. All we're looking for is that people in select areas that we're concerned with are qualified to do that and that they are going to keep records. So that's what we're looking for in these inspectors. We want to know who they are and that they can do the job.

(Item) C. we're talking about the emergency response program here. We want to make sure that they do have the capability to respond to emergencies. There are criteria in our program. They can go anywhere and they have a lot of latitude here. They can either just have a plan in place to recognize an incident and evacuate, they're obligated to respond under our law. But whatever their plan is, in addition to that we want to make sure that there's full-time emergency response capability available. The local fire departments there can come and respond and, in addition to that, hazardous materials response capability has to be in place. I don't know if everyone understands the difference or what a hazardous materials response capability is. Those are the people who are specially trained to respond to hazardous materials incidents. Things like a chlorine release. You can't just put on a turnout and run into a chlorine release. There are requirements above and beyond basic fire fighting qualifications to respond to those and there's additional training, there's additional equipment all involved with this. What we're saying in this regulation is if you've got something that's hazardous that may require a response, somebody's got to be able to do that. You can provide that internally. We've got situations like that up in Battle Mountain, Coastal Chem., very large ammonium nitrate manufacturer. Their staff is hazmat trained. They have hazmat responders on site. They have enough people. They can do that. That's very fortunate because they don't have the local capability there. Other places, down in Clark County for example, hazmat capability exists within the county and city fire departments in very good shape here for that. Plus a lot of the companies like down in the BMI complex have hazmat responders as well. But it's important to have that capability on site and some presence somewhere and able to respond.

There's one item here that may have jumped out at you and it's saying, "…will be provided by an organization that is not a volunteer fire department." I will note that I have absolutely nothing against volunteer fire departments. I certainly have a lot of respect for the individuals. We have had experience though in our program with various situations where volunteer fire departments were given hazmat response duties and one of the things we learned is there's quite a bit of turnover. So you may

get somebody trained and up to speed as a hazmat technician, but then they're gone. So there are issues of turnover and there are also issues of time. The training is above and beyond anything that they even need to respond to structure fires. So a lot of these people don't even stay current with their training. So the training is another issue and also the fact that they have other jobs and are not always available.

The process hazard analysis – this is a structured evaluation of the mechanical process whereby the plant goes through and just looks at each portion of the process and says, "Well what can possibly go wrong here?" And they do a very critical, very thorough analysis and they come up with all these scenarios and the next question is, "Well do we have what we need in place to keep that from causing a problem? Do we have sensors? Do we have control systems to take care of this? If not, well here's a hole in our design. We need to fix that." So one of the requirements is that that process hazard analysis is done. There's a requirement to approve a site plan and there's another subsection down below that talks about specifically what that takes, so I'll delay it until we get down to there.

Under F, there are some requirements on other drawings, electrical hazardous area plot plans. It's just tied to explosive atmospheres, places that handle flammables. They've got to define those areas and make sure that they have the right electrical systems being used in place there. If anybody's heard of explosion-proof electrical around propane, for example, it's that type of situation. Piping and instrument diagrams are consistent with process flow diagrams. Piping and instrument diagrams are schematics of the system. They define all the pipe equipment specifications. There's a lot of information on there.

The next 2, 3 and 4 are drawings related to concrete foundation and structural steel. We don't really do foundations and structural steel. It's not part of our program per se, but if the foundation is holding up a 30,000 anhydrous ammonia tank and it's not adequately designed, it becomes part of our concern. It's a hazard that's unmitigated. We really are not in a position to review that stuff in-house. We would need contract help for that. But in meeting with all the different building officials my message to them was, "If you're not looking at those, we'd like you do that." And they were all open to that. So, basically it's going to get covered one way or another. Through a local building official or by us, but primarily all the building officials said they would do that. It's interesting to note in a lot of places like even down here in Clark County if it's detached from the building they don't usually look at it. So, that was kind of a surprising comment there. But they've changed their mind at least as related to the CAPP.

Specifications – another important part of the design. They define code standards and all of the different construction standards. Calculations are submitted to support concrete structural steel design, relief valve sizing.

Conditional use permit, that's the NRS 278.147. The local authority issues that. If they have any conditions in there related to CAPP for whatever reason, we just want to ensure that they're complied with.

Public review process – what we're doing there is just making select portions of the application available to the public. They're not going to look at all the detail, design drawings, but they are going to have access to things like the emergency response plan, the general application that describes the facility and what they're going to do, the potential off-site consequences. So they are

going to be able to see those various things.

Now the last thing under here is the site plan. This one takes a little bit of explanation. On the site plan what we're doing is locating the plant on a map that shows general streets in the area, residences and what not and it has to be large enough to show what's called the "worst-case-release scenario." This is a situation where you lose the largest contents of any tank and it disperses out to a certain toxic limit. It's got to at least cover that limit. It would be a radial limit outside of the facility. So we want that site plan to show that type of information in addition to other things like, "Where are the local responders? Where are the hazmat responders? Where are public receptors, like residences, malls, schools, various things like that?" Now, in order for us to approve this site plan, we put specific criteria in here. There are locations being approved by the local authorities. I've said that about 100 times and that is the case. But, what we want to ensure is that these plants do all they can to minimize the off-site impacts. So for that worst-case release scenario, maybe you'll want to put some type of mitigation in. I say that they have to have some kind of passive or active mitigation. Passive would be diking. Maybe contain it so it doesn't spread out and disperse as readily. Have some way of capturing this material. It's not real black and white. It's somewhat gray. But it also gives a little bit of latitude to work with the facilities and come up with the best way to minimize the off-site impact because short of putting a dome over a plant, you're not going to totally eliminate off-site impact.

So, we wanted to put something in there to make that happen. The alternate-case release scenarios, worst-case and alternate-case are EPA terms from the risk management program. The alternate-case scenarios are what the EPA really means are more realistic scenarios. What can really happen? Well you're not going to release the entire contents of your tank. That's highly improbable. But you are going to have a hose rupture every now and then that's going to release 100 pounds of material and that stuff is going to vaporize. Okay with those alternate-release scenarios what's going to happen? You can dream up hundreds of alternate-release scenarios in a plant. Again, the desire is to minimize the impact on the public receptors. Can you totally avoid that? Possibly not. It may be really tough. But what we really want to do in this case is just ensure that the plant is capable of recognizing that situation and then being able to take action as quickly as possible to minimize that. So, consequently what I added to this section was a requirement that there are sensors, toxic gas, or combustible gas sensors located in the plant strategically possibly at the perimeter so that you can pick up on these releases. It's conceivable that a facility may not be aware they have a problem initially, but at least have this so that they can know something's going wrong and take that action. So those are pretty important things that we need to have in place. And then, of course, the location of the emergency responders coincides with the other information submitted. That's basically the site plan. Once you get through all of this and all of these things are satisfied, we're at a point where we're ready to say, "Okay you can go forward with your construction, build your plant. " Now they can start the construction portion. They're not able to start the plant up yet, though.

Slide No. 10 - what I'd like to do is just talk about the main comments that I received from the regulated community since February. One of the comments was that there was an excessive amount of information required. There was a fair amount that was being submitted. What I ended up doing was eliminating something that I think could be pretty substantial in terms of the amount submitted as well as pretty substantial in terms of detailed engineering review. That was the equipment and instrument lists. What we were going to do there was look in detail at all the vessels and piping and, primarily vessels and equipment, pumps, compressors, to see that they were designed for the conditions, right metallurgies, right design pressures, right design

temperatures. We have eliminated the requirement to submit that information. We have not excluded our review of that information, but we haven't asked for that up-front, prior to construction. At some point in time we'll be able to go back and look at that, but we cut that down and that's a pretty substantial part of what was in the applications. The issue about requiring no off-site impact was impractical.

In February I had the alternative-case release scenario. I was requiring the facilities to be able to totally mitigate that release. You couldn't have a hose rupture or a flange break, end up with substance going off site. Well the more I looked at that, the more unrealistic I saw that was because there are so many different places you just know what a plant like a Pioneer looks like or a Kerr-McGee and all the pipes and tanks. Things could happen anywhere. Is that really totally practical? No. I mean ideally that would be fabulous, but the important thing is to be able to pick up on it. So, in response to that comment and I do agree with that comment, I came up with the scenario to put some additional sensors in the plant to just be aware of those situations.

One of the other major issues they had was the permitting time line. Plants were concerned that they're going to be tied up in plan submittal with us for a long time and it's really going to hold up their projects. One of the big things that was happening there, especially for the smaller projects it was a bigger impact, was the way I had the public review process phased in. Initially I had the public review process tacked on to the very end of our detail plan review and we are basically saying, "Okay now you've got 30 more days to take a look at this." What we're going to do now is parallel that plan review, or that public information. The things they're looking at is information that's going to be supporting our review, but it's not things that we're necessarily plan-checking in detail, well except for maybe the emergency response plan. So they can get a very good sense of what is going on with the process and that's going to cut the timing down by like 45 days. We have a 30-day review period and we were supposed to take action on any comments within 15 days.

The other issue that was brought up was the emergency situation. "Hey, I've got to do something now. There's a hazard out there that's imminent. I am not going to go through a 6 month permitting process with you to take care of this" or "One of your other branches in the Division is forcing us to do something for regulatory compliance and they've given us this deadline and you're going to make me miss that." So I added a provision and that was under Section 16 and Exhibit 1, which is on page 14. Basically what that's doing is just acknowledging when there are situations where there's a potential for acutely hazardous affects on the public or damage to the environment or health of the plant personnel then we can basically let these folks go forward without going through the full permitting process. We are asking that we get the information on the project, though, by way of an application. But unless any major hazard does jump out at us we would let them go forward and we have the capability to set conditions so we could say, "All right, go ahead and build this. Go forward with it. But there are a couple of things we want you to take care of. You can do those later though, you don't have to wait to start building." Okay those were the major comments as I noted for the permit to construct.

Slide 11 - I was going to go to the permit to operate. The plant is essentially being given permission to build the plant. They're not allowed to bring materials on site yet, the hazardous substances, and they're not allowed to start operating the plant yet. What we want to ensure is that other things like operating procedures, operator training is done, a maintenance program is in place, so those things are ready to go and be used. Granted, once they're up and running things are going to get modified. They always

do as you start up. But you've got to start somewhere. You've got to have that stuff in place. So we want to see that all of those things, which are required by the CAPP program, are there. The other item that's noted on there are the hazard abatement measures is implemented. I talked about the process hazard analysis before, that structured evaluation of the hazards in the plant. They may have identified a bunch of things that needed to get taken care of. They needed to add sensors. They needed to added control interlock shutdown systems. We want to make sure that all those things that were identified prior to construction did get implemented. In the permit to operate portion there were no major comments from the regulated community that I've noted.

What I'd like to do is go to Section 20, Exhibit 1, page 17. This is the criterion that we use to grant them a permit to commence operation. Once they've satisfied this, they're ready to go. They're ready to bring the material on site and start the plant up. Okay, we've already issued a permit to construct is criteria number 1. If anything related to concrete foundations or structural steel that's tied to our facility is being reviewed by the local building official, we'll want to see that those permits are done and satisfied. Okay they've submitted the assessment report. This is just the EPA's risk management program report that outlines their accident prevention program. It's really more a technicality there because we're looking at everything ourselves in detail. But the other issue is that all the Plan to Abate Hazards (PTAH) measures have been approved or resolved. That's those things from the process hazard analysis. Those are all taken care of. Okay, the Division has determined that the requirements set forth in 459.95412 to 442 have been satisfied. That's the CAPP program, the Accident Prevention and Emergency Response program. So we're just making sure that everything's there. And then of course, if there are any fee balances due that those are paid. And that's the permit to operate. They go through those and they are ready to go forward with operation.

Slide No. 12 - permitting fees. The fee is covering the cost of review. We are going to be billing the facility for our time and if we do get into a situation where we need to use a consultant, for the consultant time. They're going to give us a $5,000.00 payment initially. Small plants will probably not use that much money and we have provisions to refund unexpended portions. Other plants can be invoiced for additional amounts. We do define fee caps in the reg. It's based upon the complexity of the process, the number of drawing specifications we have to review. We are excusing the CAPP program fees for the first two fiscal years. For a smaller plant, say a bleach manufacturer, they may have annual permit fees of $5,500.00 a year in our program. If we spend $4,000.00 or $5,000.00 reviewing this plant, they could essentially be saving $10,000.00 over the next two fiscal years. The main reason we're doing that is because we're spending money up front to review the development of their program in detail. What we're going to be doing in those first couple of years is not ignoring the plant. We're going to be looking to see that they are implementing things. They've got a training program in place. That's great. Well are they training the operators? We're going to review records. We'll talk to operators. They've got a maintenance program in place. Are they doing the maintenance? Do they have records? So we're looking for implementation. But we are not going to have to expend nearly the amount of time in that plant as we do in a lot of other plants because things are developed.

Slide No. 13 - explosives manufacturing. This was the other addition that was the result of the Sierra Chemical explosion and the subsequent Clark Commission hearings. There are two places where this is covered and these are both on Exhibit 1, Sections 5 and 23. Section 5, page 1, talks about the applicability. The Nevada legislature was very specific on this. It was only to apply to explosives that were being manufactured for resale. They very clearly did not want this applying to people that were making stuff on-site and using it like manufacturing ANFO on-site and using that. It does not apply to mining in any way. It does include

the manufacture of ANFO Ammonium Nitrate Fuel Oil Mixtures for resale. This has been in effect since shortly after it was adopted in February and we have one registered facility right now and that is it. We have TRW, which makes an air bag propellant. They use high explosives. There are currently no active ANFO manufacturing operations that are manufacturing for resale. Of course there's a lot going on on-site in a lot of places.

Slide No. 14 - program fees. I mentioned this at the last hearing. We have three experienced engineers on the CAPP staff. None of us have any type of explosives background. We worked in a lot of different chemical industries. We have varied backgrounds and we can work in a lot of chemical plant situations pretty effectively. But explosives is unique. Because of that, we need somebody with that type of background to do this review. There aren't very many registered facilities. You can see there's only one so far. That doesn't justify another position. So we can't add staff. Consequently, what I want to do is go to experts and have a consultant on board to just handle those inspections of those plants. I have a couple of concerns. I'm always concerned about our program adding value to the plants. We provide good, sound safety suggestions to plants. We do that because we have good experienced people. We can't do that at explosives plants, but a good consultant could. The other issue is just inspector safety. We have a pretty good idea of what to look for when we go in a chemical plant, but in an explosives manufacturing operation we really don't know what to look for and I do have a concern for my own personal safety and that of my inspectors. In a lot of places, that may not be a concern. But in some of the more run-down operations that could be and someone needs to be able to recognize that. So, I won't go out there alone and I won't send my people. So we do need that person.

We received major public comment. One ANFO manufacturer was very concerned about the fees as they were adopted in February. My initial take on this, and I didn't think about ANFO at all, quite honestly. I was thinking about high explosives and I had fees ranging from $17,000.00 on the low end all the way up to a cap of $50,000.00 per year. This was to have some pretty high-powered people spend a lot of time in these plants. I have reconsidered this and I have taken a look at how we work with the CAPP program in these plants. We don't spend time to look at every single detailed element every year. We focus on select items and spend maybe a week at the most in a plant during a year. So we only look at select things. I use the same approach with the explosives manufacturers and said, "Okay, an inspector's going to go in there. He's going to get an initial inspection and an overview of where they're at and all of their prevention elements and then decide where do I need to focus? Maybe look at that one and then the next year come in and look at something else." That's reducing the time and consequently what I did was reduce the cost. In high explosives manufacturing I dropped the annual fee to just the flat $13,500.00 and the ANFO manufacturer was even a lot simpler. The ANFO manufacturing annual fee I dropped to $5,600.00 per year. And that's primarily consultant; they're not cheap. So we did drop considerably. An ANFO manufacturer that was concerned with the $17,000.00 fee is now looking at $5,600.00. That's still not real cheap, but it's considerably less than it was.

Slide No. 15 - the substance list amendment. That is the extensive tables that you see in the regulation. Those are the lists of toxic and flammable chemicals that are covered in our program. What we did was amend the list to coincide with statute. Part of that list resides in statute. It happened that way when the law was passed in 1991. So, what we did was bring our table in the regulation in line with that and we further clarified that from here on out any statutory amendment is covered specifically by the regulation. The only reason I initially repeated the substances in the regulation was because I wanted one all-inclusive place to have all of the requirements. I did not want to force a plant to jump back and forth between the reg. and the statute, which is what

had to happen before 1999 when I revised this thing the first time. But we're just cleaning that up right now. That's all I was going to say on that.

Slide No. 16 - various programmatic amendments. These were the same as the February adoption. They're very minimal things. They are things like simplifies registration timing, clarifies initial registration quantities, clarifies reported release of any CAPP substance. These have not changed.

Slide No. 17 is more of the same. I was not going to talk to any of those in detail unless anybody saw something that they wanted me to bring up.

Exhibit No. 2. – Proposed amendments to existing regulatory language. The amendments are denoted by the underscore.

Section 35, clarification of the fee situation. We have two different fee structures for the annual program fees. One applies to facilities that don't have explosives and the other one applies to facilities that have explosives. So I had to clarify that in Subsection 2 of Section 35. Section 38(a) was the next one. Back in the new sections you'll see under (a) I'm crossing out 23 and putting in Section 22. I was swapping Sections 23 and 22 in the regulation. The only reason being with them in the order that LCB put them, they were putting annual fees within the sections that apply to the permit to construct. So I just swapped those two around and that's really all I was doing there, just a minor technical correction. And then Section 49 the change is actually on the very last page of that exhibit, page 63 where it's "(a) Bring Tier B substances on site at the facility and commence operation of the process." That's related to the assessment report. A plant has to submit that assessment report prior to both bringing the material on site and commencing operation of the process. So it's not an "or" it's an "and" situation.

Commissioner Doppe stated I think you've cleaned up my concern about the length of time to process an application by running certain parts of it concurrently. I had a question with regard to site plan review. To the extent that you're concerned about the implication of some sort of spill or leak vaporizing or something like that. Why would you not look for any sort of meteorological data, prevailing winds in the site location, that kind of stuff, to determine who is down-wind and how far away down-wind they are?

Mr. Zusy answered there's no requirements for any type of met. station at the facility. The hazmat responders typically can get that kind of information.

Commissioner Doppe asked after the fact? I'm talking about during the approval process; if you're sitting there looking at a site doesn't it behoove you to know who is down-wind and how far down-wind they are?

Mr. Zusy asked you mean prevailing conditions?

Commissioner Doppe answered yes.

Mr. Zusy explained that type of information is in the models. You'll understand where the prevailing winds are, how large the releases can be. So you can see how far that goes. I did mention, though, that it's a radius and the reason being is because at any given time the worst-case will be when that prevailing wind is not there. It'll be going in the opposite direction.

Commissioner Doppe asked so when you look at your worst-case analysis you're going to wrap up meteorological implications in that?

Mr. Zusy answered right. That's actually defined in the detail in the regulations. The worst-case conditions actually involve pretty stable ambient conditions so that you don't get a lot of turbulence and mixing to disperse. It's there. There's enough wind to disperse it and move it, but it doesn't get broken up. So it formulates what the EPA determined to be the worst possible scenario for a toxic spill. And then the alternate-case scenarios what you're actually doing is taking into account the normal conditions that exist at that site.

Commissioner Doppe asked so you're comfortable that to the extent that there is a chlorine spill and the public wants to know did you adequately consider the impact of locating this plant up-wind from the housing division that the chlorine cloud drifted across after the spill? You're comfortable that you have enough information prior to approving the plant in the first place?

Mr. Zusy answered that's why we need to be involved in the use permit process when a plant like this is going in. The local authorities, the local planning commission needs to contact us. They're obligated to do that statutorily and if they involve us in that we will raise those issues, and we can even look at some of that in-house and give them some technical information so they can understand that, "Well here's what might happen with this plant under some serious situations. Do we really want to put it at this place?" So we hope that they get enough of that information from up front. We can provide enough direction there. We can ask questions like, "What about hazardous materials response? Who can respond to this? Somebody has to go in and they can close a valve to stop this release and save a lot of members of the public from exposure. Do we have people that can do that?" So we want to raise those issues through the use permit process up front. I'm hoping that that stuff is resolved before we even see a permit to construct application.

Commissioner Doppe asked you're comfortable then that the statute allows you input into the use permit process?

Mr. Zusy answered it does. Chapter 278 Section 147 was specifically amended. What I found, though, is a lot of the local organizations have not done anything to their charters or ordinances to modify that language necessarily to get us involved. So I've been working to outreach as best I can with those different organizations to ensure that they do something that will trigger our involvement because by rights they're supposed to notify us, the State fire marshal and State OSHA when they have a situation like that and the whole idea is for us to provide technical input so that the commissioners or the city council folks can make an informed decision about where you locate a plant and what you need in terms of infrastructure to have that plant there.

Commissioner Doppe stated my next question is dealing with operating permits it says that you will only issue a operating permit

to an application, or if you've issued a construction permit. Are there existing plants that that creates kind of a "Catch 22" for?

Mr. Zusy explained it's not grand fathered in, but there could be an existing plant out there, an existing site that may want to add a brand new process. They make chemical X over here in this process and now they've got some real estate over here and they want to add another process, they would have to comply then. But we don't grandfather in these requirements to existing plants, these things are really covered under our CAPP program and we try and get as much of that as we can into the plant after the fact. But a lot of times it's not always practical.

Commissioner Doppe asked so the existing plant then wouldn't have an operating permit that is covered by this particular set of regulations anyway?

Mr. Zusy answered right. That's why I had a little reservation about using permit to operate because in a lot of different programs permit to operate implies some type of renewable permit that a facility gets. This is a one-shot deal and it's really to commence operation. Okay we gave you a permit to construct, you satisfied that, you build it, now you've satisfied our other criteria, go ahead and operate and that's it. After that permit to operate is issued, then our regular CAPP program takes over and what we do is conduct annual inspections in the plant to see that they are maintaining their elements, they're maintaining their training, their maintenance and various other programs managing their changes.

Commissioner Doppe stated all right then, now that I understand that and before I actually had thought that you were incorrect and it really is a permit to operate. But in fact, it's a permit to begin operations. Why do you say in here that they need to do it every year except that they're covered the first year or two?

Mr. Zusy explained there is a requirement to pay annual fees to the plant. We are a fee-funded program. The annual fee is something that's based upon the facility's potential impact on the public plus a unit fee that's tied to the amount of substance that they have on site. That funds our inspectors to do annual inspections. But there is no requirement to get an annual operating permit in the language.

Commissioner Doppe stated that was my mistake. I mentally filled in the blank and assumed that the fee was for the operating permit. But in fact, what you've got is a construction permit and a construction fee, you've got a commence operation permit and then you've got a annual fee over here that hooks partly to that commence operations, but then after that just to the normal inspections and then some other place you've got yet an operating permit and it probably has fees with it too, correct?

Mr. Zusy answered no. There are really just two things. The permit to construct, permit to commence operation or that operating permit, that's all one thing. That's before the plant ever starts up. That has one fee associated with it. They satisfy those two portions, but the fees we charge cover both of those activities. Once they've got that permit to operate that says, "Okay, you're ready to start up." Okay then everything there is history. Now they go forward operating. That's when the annual fee kicks in and they pay an annual fee to us to come out and do an annual inspection and we're looking to see that they're implementing all of these good programs they developed prior to the plant starting. So there's really two parts now. Prior to this regulation being

in place or the temporary regulation last February being in place, we only concerned ourselves with the plant after they were up and running. After they had materials on site. So now we're adding this step before.

Commissioner Doppe asked is there a fee for the operating permit in subsequent years?

Mr. Zusy answered no there's just an annual program fee.

Commissioner Doppe asked and that's relatively minor compared to this inspection fee?

Mr. Zusy answered it depends on how large the plants are. There's a $4,100.00 base fee that these facilities pay and then there's a graduated fee that's tied to the amount of substance. That can be as low as $25.00 and it can be as high as $20,000.00 to $30,000.00. There are plants down in BMI that have that much stuff on site.

Commissioner Doppe stated I guess that just summarized with this, it just seems a little confusing to have an annual inspection fee tossed into this regulation which primarily seems designed as a construction approval permitting kind of a deal when you've got yet an operating permit and operating fees living somewhere else in the regulations. It might have been easier if this annual inspection was hooked to that rather than kind of shoehorned into this construction application.

Mr. Zusy explained there are two things going on in these new additions. There's the permitting function and then there's the addition of explosives and that's the part you're looking at in here for the annual fees is just for the explosives operation. We are assessing their annual fee in a different way than chemical plants, non-explosives because we have to use consultants for that specifically.

Commissioner Doppe asked these rates that you have listed for approval of the site plans, the technical drawings, etc., it's my understanding with the exception of concrete foundations and structural steel, that all the rest of that stuff you're going to do in-house. Is that right?

Mr. Zusy answered we'll probably do a lot of it in-house. There are certain things that we, depending upon availability of personnel and expertise, may not do. There's some technical review of mechanical processes that we look at, sizing of certain things we have that capability in-house now. We may not in the future. The other issue that drives the potential use for consultants would be turnaround. A lot of plants are very concerned about the time and turnaround. Rightfully they should be. If we get hit with several of these things at once, we wouldn't be able to handle them in-house and we would need to use a consultant for that as well.

Commissioner Doppe asked in any case, the structure you've established fundamentally either refunds or charges based on actual cost anyway, right?

Mr. Zusy answered correct.

Commissioner Johnson stated I have a question on Tier A threshold quantities. Some of these numbers are drastically reduced in the threshold value. Is that a response to federal changes?

Mr. Zusy answered yes. We are correcting statutory amendments. The reason the statute was amended was it went more in line with OSHA's process safety management program. That's what our list was based upon back in 1991. When the list was developed in '91 OSHA's process safety management was in proposed rule. When it actually became promulgated in '92 they amended substances and threshold quantities in their program and they did not get amended in the State program. And what we're doing now 9 years later is bringing those in line with that.

Vice Chairman Coyner asked is there any scenario whatsoever that a emergency permit holder could move to operation where he's got his emergency permit that you allowed him to construct? Is there any possible scenario that he could move to operation without getting a final permit to construct?

Mr. Zusy answered I think the language is pretty flexible. We want to see the application so we can see what they're doing and determine at least from our review that there are no hazards.

Vice Chairman Coyner asked you allow them this deviation in that permit to construct phase to have we call it "emergency?" I'm not sure it was your nomenclature.

Mr. Zusy answered it's to mitigate the effects of acutely hazardous conditions. It gives them the ability to go ahead and start building it. Now your question is how does that relate to startup and the permit to operate?

Vice Chairman Coyner answered correct. I'm looking at page 14 of the LCB draft, Section 16, Subsection 2 where you allow the owner/operator to move forward with construction if they've fulfilled these two (a) and (b). Now is there a lock-tight that does not allow operation? What I'm getting towards is a situation where the cart gets ahead of the horse.

Mr. Zusy answered there is not similar language in the permit to operate that allows that process to be bypassed. Quite honestly I didn't think about that, but . . .

Vice Chairman Coyner stated I think I found my own answer. On page 17, Section 20, Subsection 1, Item (a) is "The Division has issued a permit to construct the new process." So that would seal that condition that you allowed them to go forward and construct based on those two items you outlined, but yet it would look like Section 20 would say, "Wait a minute now. You cannot operate until you get the permit to construct."

Mr. Zusy stated right and I think the biggest concern as I understand it and as I think has been expressed by the regulated community is that the lead-time to get out in the field and start building this thing is what would be the problem. At least if you can get into construction, things don't get built overnight. While they're building the plant they can take care of all these other things. So that's doable. But quite honestly I didn't think about anything beyond an accelerated permit to construct.

Vice Chairman Coyner stated I think you're okay.

Commissioner Ricci asked looking at your handout sheet and Slide 7 where you talk about these assurances of off-site consequences adequately mitigated and emergency response plan in place, when a plant is first located and when you were answering Mr. Doppe's question you talked about how you got involved in the conditional use permit, how do these regulations then apply if development starts creeping closer to the plant? Do you have a mechanism for changing the emergency response plan? Finding out, you know, are there other off-site consequences that occur as a result of that or is that strictly up to the local zoning?

Mr. Zusy answered there's nothing in our regulation that addresses that. That's a valid question and it's been raised quite often, the issue of encroachment. I think that's something that only the local planning commission can answer. They need to have their plans in place, their 5 or 10 year plans or whatever defining what's going on and determine how that plant's going to fit into that future community. There may be a point where it's located now, it's fine, there's nobody around, but in 10 years we're going to have residential community. Maybe something at that point would need to be built into their use permit that would say, "By year X you're going to have an enclosure over this tank with a scrubber. You can get away with that now, without having that now because there's nobody here." But it's got to be really a local authority issue and it's certainly something that should be talked about up front. But it's not in our regulation.

Commissioner Johnson asked when you review on an annual basis, would this process take into account the receptors that have moved into the area in your emergency preparedness plan? I would think that there would be a change in conditions at least.

Mr. Zusy explained the facility is obligated to prepare these release scenarios, tell us how far out they go. In terms of emergency activities off site, it's actually part of the local emergency planning committee's responsibility to develop a community emergency response plan and that should incorporate the information from the facility about the release scenarios. But what happens off site is not something that the plant controls. They provide input. They inform the responders what the scenarios are, what can happen, what the impacts of the materials are. But as this encroachment happens, it's really up to the LEPC to ensure that their community emergency response plan is properly updated and that things are in place to provide that response.

Commissioner Johnson stated I guess you don't have any control over them. Otherwise, the local governmental agency that's supplying the emergency response, what's the interface to the company and the company's obligation? You're overseeing the company, but do you have any authority to review the local plan and say it's adequate or inadequate?

Mr. Zusy answered cooperatively yes, but not authoritatively, no. We have no jurisdiction over the local responders in that situation. What we're trying to do with this permit to construct process though is force somebody's hand and if the company wants this plant here and the community wants this plant here, somebody's going to have that response capability whether it's the company or the local community. So we're trying to force that up front so we don't get into situations like that and we do have situations like that in Nevada now in a lot of places.

Commissioner Johnson asked do you have those?

Mr. Zusy answered yes.

Commissioner Johnson stated so it is a problem that should be addressed.

Commissioner Johnson stated yes and it's tough. There's at least one place for certain that I've spent a lot of time trying to do something about hazmat response capability in a community. It just isn't there. I mean the scenario is to evacuate and it's not good. Any facility that's already in the program and you don't have the hazmat capability there's not much we can do about that. We cannot force a company to have that capability.

Commissioner Johnson asked would that require statutory or is that something that could be addressed at the regulatory basis?

Mr. Zusy stated I can't answer that for certain. I don't know that we could do that through regulation. I think that would be really tough. I will note that even organizations like or agencies like OSHA cannot force a hazmat issue on a company, nor can they force that on a community.

Commissioner Crawforth asked we've talked a lot about impacts to citizens in your review of plans and etc., will you be considering potential impacts to things such agricultural operations, crop production, livestock and other natural resources concerns where there might be impacts on water, air, wildlife, etc?

Mr. Zusy answered the way the EPA has handled that and I was involved in final promulgation of some of their rules, what they determined was that it's really hard to evaluate what the impacts of a toxic gas release would be on an environmental receptor or a non-human. What they did was say, "Okay what we need to do at a minimum is to define the extent and whether or not you are impacting any of those areas." They defined things like national parks and things like that. The best we can do is just put that information out there and say that these situations can get out and impact say livestock. What the impact is I don't know if we can say that honestly.

Commissioner Crawforth asked do they need to address that in their plans?

Mr. Zusy answered they need to note that that would occur. Can we force them to mitigate that? Through our regulation we've got the requirement that they do what they can to minimize that off-site impact and that's what we're going to look to do. So I don't know what you mean by address. Do you mean prevent?

Commissioner Crawforth answered be prepared to address it, prevent it, and also to address it if it does occur. I mean if I'm a neighboring agricultural operation and we have an incident and it affects my annual production or kills a bunch of wildlife or something, long-term impacts to either the agricultural operation or other environmental receptors, are we making provision for them to be prepared to address that? Be aware of it and address it?

Mr. Zusy answered the off-site consequence analysis is available. They can see that. See the extent of that. So the neighboring community can be aware of that and hopefully they would provide input in the use permit process. Maybe they don't want that there because of those concerns. I don't know. I'm not answering your question am I?

Commissioner Crawforth stated I think you're answering the question. It doesn't sound to me like there's much provision for that. If I'm a neighboring agricultural operation and we have an incident and I lose my entire year's production or all my livestock on a neighboring grazing allotment, is it affected? It doesn't sound like there are provisions for that.

Mr. Zusy stated no, other than to make every effort to minimize those off-site impacts, but things can still get off-site if it's a large enough operation.

Commissioner Johnson asked if it's vacant land and there aren't dwellings or commercial human activity, then there's not considered a receptor in your analysis?

Mr. Zusy answered there's no public receptor.

Commissioner Johnson stated so I think the answer is that as far as my livestock operation or my agricultural operation or my wildlife, it's not considered.

Mr. Zusy stated actually, yes. I can answer it a little bit better now that I've thought about it. There are certain defined levels in our program under a Tier B program that basically say if your offsite impact does not impact a public receptor, in other words a human, what you have to comply within our program is essentially the emergency response program elements. We don't get into the detail accident prevention program requirements unless it impacts a public receptor. Now that's for Tier B substances, which is primarily a lot of flammables. Things like the highly toxics are part of our Tier A program and they do have to comply with all of those requirements, chlorine, ammonia, some of the really nasty chemicals. So there are scenarios where something could get released and if it gets off site and it's not impacting a public receptor, our program requirements aren't quite as stringent. But the highly toxic substances, that would not be the case. We're talking about some flammables.

Commissioner Johnson asked and agricultural use of ammonia and other agricultural use is exempt?

Mr. Zusy answered that's correct.

Vice Chairman Coyner called for further questions. There were none. He opened it up the public comment portion and called upon Susan Crowley from Kerr McGee Chemical.

Susan Crowley introduced herself as representing Kerr McGee Chemical Corporation with facilities in Henderson, Nevada and Apex, Nevada. She stated first I wanted to say that we wholeheartedly support the requirements of RMP PSM the CAPP regulations as being the right way to do business. Putting together a hazard assessment before a process is put in place is

important to understand how to mitigate any kind of emergency situation that might come up. However, we believe that there's been an underestimation of the impact that this information submittal and the subsequent reviews will have on businesses. We are primarily concerned about losing control of proprietary design information as the information is discussed with consultants that will be providing assistance to NDEP and develop the costly the time delays between engineering and commencement of construction. We understand that the temporary regulations are set to expire November 1st and there's a need to adopt permanent regulations. If these regulations are adopted we would request that they be reviewed after they've been tested, perhaps in another two years.

Vice Chairman Coyner called for questions. There were none. He called for questions from the public. There were none so he closed the public portion of the hearing. He motioned for approval of Petition 2001-06 and that petition be in the form of the LCB language of September 13, 2001, except where superceded by changes in Exhibit 1 or Exhibit 2 as submitted by Mr. Zusy.

Commissioner Johnson seconded the motion.

Commissioner Doppe stated I would like to know whether the maker in the seconder would entertain a review as requested after a couple of years to make sure that the process is working properly and, in fact, this new system doesn't have such super huge holes in it that we need to readdress it.

Vice Chairman Coyner stated I certainly would entertain it and I would be in favor of it as I think through it. But in terms of putting regulatory language together, we have to approve or deny or whatever the language that we have before us from LCB. Would you actually be speaking to putting additional language in the regulation? Perhaps that can be handled outside of the regulation.

Commissioner Doppe stated no, not in the regulation. We approve it with the stipulation that the Division brings it back to us for review in two years.

Vice Chairman Coyner asked Mr. Biaggi if that would be a problem.

Mr. Biaggi stated the suggestion is fine with us. We will make a note on Mark's calendar that in two years we will review the process. Probably the best way to review that is also to take a look at the economic analysis that we have prepared for this regulatory package and work with the regulated communities to see if there's any modification that could be done to make it more streamlined or less burdensome to the regulated community without reducing the safeguards and protections that are intended.

Commissioner Iverson stated historically I think Allen and his group have shown that they would do this anyway without even a motion to do it or a direction from this Commission. Allen's group has continually worked with the regulated

communities to make sure that our regulations are not impacting in a way that jeopardizes safety, but at the same time we want to make sure that we can continue to build and that economic growth continues in this State. So, I really believe that with Mark's suggestion we're fine, but I think we're fine without it because I think you do have a very proactive Division here that wants to work with the regulated communities to make it work.

Commissioner Johnson stated as seconder of the motion I agree. I also think that there were a couple of other issues raised in the discussion and one is the interrelationship between the Division's efforts in this area and the local planning groups that need consideration, probably not included in the stipulation here. In addition, the issue of the auxiliary environmental non-human impacts of this should be in consideration at some time in the future.

Commissioner Crawforth stated I appreciate that Commissioner Johnson. Allen, in your processes of the plan review and those things, if staff could take a look at those environmental receptors, it would be more from a prevention standpoint if anything. I guess just as an example if we have an explosion at the large plant in Battle Mountain and it escapes and causes fire and escapes from a facility and burns up 50,000 acres of rangeland, we don't want it out there. So just if in the plans of operation, construction, etc. those things are considered so that we don't eliminate a lot of natural resources or a five generation family agricultural operation, those kinds of things. Be cognizant of those when that happens.

Mr. Biaggi stated I think that's an excellent suggestion and I know Mark will take that to heart.

Vice Chairman Coyner called for further discussion of the motion. There was none.

The motion carried unanimously. Chairman Close recused himself from the discussion and the vote.

Chairman Close moved **to Agenda Item III. Settlements on Air Quality Violations.**
A. Road and Highway Builders; Notice of Alleged Violations #1563 and 1564.

Michael Yamada introduced himself as the supervisor of the Compliance and Enforcement group in the Bureau of Air Quality. He stated we have two proposed settlements to bring before you today. One of them is Road and Highway Builders and the other is Eagle-Picher Minerals, Inc. I will start with Road and Highway Builders, the limited liability company. They operate asphalt plants for paving of roads and highways. Road and Highway Builders operate under a general Class II air quality operating permit No. AP3531-0970. The permit allows for the operation of temporary gravel processing cement and asphalt plants. The operating permit was issued to Road and Highway Builders on May 22, 2000 and they also obtained Change of Location permits, which we call COLAs, which allows Road and Highway Builders to move its portable asphalt plants to a specific location for a period of 12 months.

The Division of Environmental Protection, Bureau of Air Quality, conducted unscheduled inspections on May 12, 2001 at two

different COLA sites operated by Road and Highway Builders. COLA No. 1799 for Road and Highway Builders' operation located near Rye Patch Reservoir on east I-80. The site contains a lime marination and an asphalt plant. At the same time of the inspection the inspector conducted a visible emissions evaluation at the asphalt plant. The emissions from the asphalt plant were documented at 45 percent opacity using a 6-minute average, which exceeded the 20 percent opacity limit in the permit. A Notice of Alleged Violation No. 1563 was issued for failure to comply with NAC 445B.275. COLA No. 1813 for Road and Highway Builders operation located south of Imlay City, east of I-80 also operates a lime and marination plant and an asphalt plant. At the time of the inspection the inspector conducted a visible emissions evaluation at the asphalt plant. The emission from the asphalt plant was documented at 31 percent opacity using a 6-minute average, which also exceeded the 20 percent opacity limit of the permit. NOAV No. 1564 was issued for failure to comply with NAC 445B.275. At the time of the inspection the inspector issued verbal stop orders until the plant could be fixed. It took several days but they did get it back up and running again and the verbal stop order was lifted.

The base penalty amount for NOAV No. 1563 was $3,600.00 and for NOAV No. 1564 the amount was $3,200.00. The penalty matrix was used to determine the alleged violations and both of these were considered major deviation from regulatory requirements with a moderate potential for harm. The base penalty amount for each violation was reduced by 5 percent for Road and Highway Builders' efforts to immediately correct the mechanical problems with the control equipment and ensuring that the operational manager obtain training to become a certified visible emissions reader. A negotiated sum to settle both NOAVs was $3,040.00. So the total for this particular proposed settlement is $6,460.00. Recently, Road and Highway Builders has been issued nine additional NOAVs for the asphalt plant near the Rye Patch Reservoir for subsequent alleged violations of COLA No. 1799. The penalties for those NOAVs are being negotiated at the present time. We expect to present the resolution of the nine NOAVs at the December meeting of the State Environmental Commission.

Commissioner Coyner noted that the Commission has no previous record of violations from them.

Mr. Yamada stated right. There were some complaints but there were no violations issued.

Commissioner Coyner asked is this a new company to Nevada?

Mr. Yamada answered yes. Basically, their first permit is May 22, 2000.

Commissioner Coyner asked is there a need to convey to them the rules of the road for the State of Nevada, perhaps? It looks like they're off to a little bit of a rocky start.

Mr. Yamada stated maybe I'll talk a little bit more about the nine violations. They are just alleged violations. We have had subsequent work with them. We issued Stop Orders that effectively shut them down for about a week and a half. I think they're quite cognizant of the problems that they had. They were required to do some source testing and before they've started up their other plants they've had a fee emission test done on them. So we're now in negotiations. The second bunch of proposed penalties are considerably higher. So I think they may be getting the picture a little bit of how to do business in Nevada.

Chairman Close called for further questions. There were none. He called for public comment and since there was none he called for a motion.

Commissioner Doppe moved to approve the proposed settlement for NOAV 1563 and 1564.

Commissioner Johnson seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Item III. Settlement Agreements on Air Quality Violations.**
B. Eagle-Picher Minerals, Inc.; Notice of Alleged Violations #1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1513, 1562 (Clark Plant): 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1519, 1521, 1523, 1525, 1549 1551, 1553, 1555 (Colado Plant).

Mr. Yamada stated Eagle-Picher Minerals, Inc. is a company that mines and refines diatomaceous earth for the production of filtration media, filter systems, paint additives and wallboard formulations. EPMI operates two such facilities in Nevada. One facility, the Colado Plant, is located in Pershing County and the other facility, the Clark Plant, is located in Storey County. The Colado facility operates under Air Quality Operating Permit AP 1449-0279 issued in May 2000, 1999 and the Clark facility operates under Air Quality Operating Permit AP 1499-0281 issued on September 23, 1998. During 1999 the NDEP learned that the Oregon Department of Environmental Quality had reviewed an August 1966 source test report for Eagle-Picher Minerals' diatomaceous earth processing facility in Vale, Oregon and found that the EPMI had greatly exceeded their permitted limits for SO_2. It was found that the AP42 emission factors that were used to calculate the emissions limits for the Oregon permit were the same generic factors used to calculate the Nevada Division of Environmental Protection permit limits for the EPMI's Clark and Colado plants. Based on the similarity of the Oregon and Nevada facilities, NDEP believed that the actual emissions from the EPMI's Colado and Clark facilities exceed the limits of their permits.

In July 1999 NDEP issued a letter to EPMI requiring source testing of the emission limits at Clark and Colado for CO, NOX, VOCs, $S0_2$ and H_2S as required by their air quality operating permits. EPMI argued against the conducting of source tests and submitted generic test data for the plant processes in lieu of conducting the source tests. Examination of the generic data by the Bureau of Air Quality indicated that EPMI had violated the emission limits of the permits for the Colado and Clark facilities. In the period between 1999 and 2001 NDEP made numerous attempts to obtain data needed to verify the emission limits and production levels. EPMI was unable to provide sufficient production information to validate the generic methodology proposed by EPMI to be used in lieu of source testing. In September 1999 EPMI notified NDEP that a potential existed for $S0_2$ emissions to exceed Title V thresholds of 100 tons per year at the Clark facility. In June 2000 EPMI notified that it needed to submit a Class I permit application to NDEP for the Colado facility. EPMI did not submit a completed Class I permit application for either facility within the dates that EPMI had specified. EPMI then agreed to submit a Class I permit application by November 1, 2000

for the Clark facility and by December 31, 2000 for the Colado facility. EPMI failed to submit completed Class I permit applications by their due dates.

In January 2001 the Bureau of Air Quality issued a total of 32 Notices of Alleged Violations for exceedences of permitted emissions for both EPMI facilities. The Nevada Administrative Code cited in NOAVs are NAC 445B.275, Violations, Acts Constituting Notice and NAC 445B.289, Class I Application for a Class I Operating Permit, Filing Requirement. NDEP also issued a compliance order, No. 2001-12 for the Clark facility and a compliance order, No. 2001-13 for the Colado facility requiring EPMI to source test the Colado and Clark plants for $S0_2$, VOC, CO NOX and H_2S. EPMI then initiated source tests for the Colado and Clark plants. The source test data for both plants was submitted to BAQ for review. The source test results indicated that the two plants had violated their permitted emission limits. An enforcement conference was held on May 2001 to discuss the NOAVs that were issued on January 2001 and the additional violations substantiated by the source test results. The conference included a discussion on issues of concern noted by the inspector during the source tests. Another inspection was conducted of the Colado plant to determine the cause of the fugitive emissions that were occurring at the kiln COs and other points along the processing equipment. The follow-up inspection determined that kilns were not operating properly and that fugitive emissions were a violation of EPMI's operating permit. A subsequent follow-up inspection of EPMI adjusted the kilns determined that the kilns still were not operating properly. Two Stop Orders were issued in May and June for the Colado plant to address those fugitive emissions. The Stop Orders were lifted after EPMI took steps to correct the problem.

On July 9, 2001 NDEP issued an additional eight NOAVs to EPMI for the Colado plant for fugitive emission violations uncovered during the follow-up inspections and for additional permit limit exceedence violations substantiated by the Colado plant source test data. Also another eight NOAVs for the Clark Plant for additional permit emission limit exceedence violations substantiated by the Clark Plant's source test data. The Nevada Administrative Code section cited in the 16 NOAVs are NAC 445B.227, Prohibitive Conduct Operation of a Source without Required Equipment, Removal or Modification of Required Equipment, Modification of Required Procedure and NAC 445B.275, Violations, Acts Constituting a Notice. Beginning in June 2001, EPMI and NDEP entered into discussions for the purposes of resolving the violations at the Colado and Clark plants. As a result of these discussions a significant number of environmentally related plant operating and maintenance procedures and training was discussed. As a result of those discussions a significant number of environmental related plant operating and maintenance procedures and training, record keeping and monitoring programs have been implemented at the two facilities in order to keep them in compliance with their operating permits. Plant personnel have been assigned environmental assurance duties to ensure that the plants update their permit to operate within their permitted emission limits. A recent facility site visit by NDEP administrator and deputy administrators found that the two facilities were found to be operating in compliance.

NDEP and EPMI have agreed to an administrative stipulation and order for the settlement of all 50 NOAVs for the Colado and Clark plants. Included in the settlement are two NOAVs for fugitive dust violations emissions at the Clark plant and lime. NDEP withdrew 14 of the NOAVs and retained 36 of the NOAVs. Each of the remaining 36 NOAVs represents an individual violation and are not duplicative of each other. The agreement requires that the Colado plant and Clark plant maintain process records that document emissions and corrective action measures to ensure compliance with air quality regulations. EPMI will make physical modifications to its monitoring systems to warn plant operators of emission control problems. It also requires EPMI to submit

complete Class II permit applications for the Colado and Clark plants to reflect updated permit emission limits. The agreement states that EPMI shall pay a civil penalty of $90,000.00 to be divided equally between two counties that the plants reside in: Pershing and Storey and to provide funds totaling $92,000.00 for two supplemental environmental projects. The first supplemental environmental project will be funded to the sum of $50,000.00 and that will go to the Nevada Small Business Development Center (inaudible) the environmental program at the University of Nevada, Reno for the purposes of designing and delivering air quality training seminars that will address dust control. These seminars will be offered throughout the State. The second supplemental environmental project involves the Truckee River. Eagle-Picher Minerals will provide $42,000.00 to Storey County Board of Supervisors for the purposes of funding environmental projects within Storey County. The money is to be used to fund the following programs: the sum of $10,000.00 for the procurement and application of herbicides to control the spread of non-native white-top weed along the Truckee River and the sum of $32,000.00 for remedial work on the eroded areas along the Truckee River, that portion that's within Storey County. As far as past history, within the last five years, we have one fugitive dust emission violation.

Commissioner Iverson stated I think the use from the money is a good idea. The concern I have about this is that $90,000.00 is a lot of money to these companies because they operate on a very fine line anyway. I don't think they're the type of company that has a lot of excess dollars floating around. But I guess my biggest concern in all of these facilities like Colado and Clark and the kitty litter place and the new place you're going to have above Reno, I'm not so sure that these diatomaceous earth places are not like professional football on the offense and that's what you could call "holding" every single play if you wanted. I'm not so sure that you couldn't walk into these facilities on any given day and find violations because of the nature of the beast. I've called Allen at least ten times on a plant where I know there's something wrong, or I can't see when I drive on the road. So I'm just wondering if there's something we can do as a regulatory body to maybe take a look at this type of a facility and come up with something that's a little bit more specific to their industry. They're not like a gold mine. They're not like a silver mine. They're not like any other kind of a mining operation. There are some inherent things with these companies that maybe we need to look at. But, again, I really believe that as hard as they try, it's very much like the holding (inaudible) and I'm not so sure they ever get over that. But what do I know? I think the decision to use that money to do training throughout the State is an excellent opportunity. I think the herbicides for noxious weeds is a great thing. I think that's excellent. I could not object to that at all.

Mr. Yamada stated I think if you look at the violations that we have they basically were somewhat related to maintenance problems and not having an environmental inspection procedure to follow. My personal opinion is that implementing the programs that they've been talking about will basically keep them from being cited by us for the same type of violation.

Commissioner Johnson stated I think most of these emission limits are based around the fuel that they're using in the operation of the kiln and not so much the nature of the material, diatomaceous earth. Is that true?

Mr. Yamada answered well there's some sulfur in the diatomaceous earth and the natural gas doesn't really happen very much when they burn actual gas. But they could run 4 or 5 percent sulfur. So it would form sulfur dioxide.

Commissioner Johnson stated diesel oil in the one plant, so there could be some sulfur in that oil.

Mr. Yamada stated yes, the waste oil. There was also a problem I guess with one of the dryers, which had excess CO, but I think their fuel mixture was wrong.

Commissioner Dahl asked I assume that they were invited to be here today?

Mr. Yamada answered yes they are here. Mr. Tom Buchanan, who is the vice president of production and technology, is here and I believe he will want to say something and he's brought along Lita Humphries, who is the manager of health and safety.

Commissioner Crawforth asked $90,000.00 is being split evenly between Pershing and Storey County, what's that based on? Why the even split?

Mr. Yamada answered it was something that was negotiated at the settlement hearing.

Commissioner Crawforth asked so it wasn't necessarily founded on the amount of problem in each of those counties?

Mr. Yamada answered actually the NOAVs sort of came up pretty close to one another because they were similar violations. I think there were about 25 on each side.

Chairman Close called for further questions.

Commissioner Dahl asked what is the origin of the idea for supplemental environmental projects to be funded in this way?

Mr. Yamada answered actually the EPA had a program and my recollection was the EPA started a program where they allow people to do environmentally related projects rather than the fine.

Commissioner Dahl asked is there anything in the Nevada Revised Statutes that addresses this?

Mr. Biaggi explained each of the programs, water, air, hazardous waste, allows for penalties and for administrative and civil penalties for violations of Nevada law. There's latitude provided for settlements, both an administrative and a civil perspective for those violations. So I don't think that you could go to Nevada Revised Statutes or Nevada Administrative Code that states that supplemental environmental projects are allowed. This is just something that has been recognized not only in the environmental field, but other fields as well as settling violations in an amicable way between the company and the regulatory agency.

Commissioner Dahl asked who makes the decision where the money will be spent and what it will be spent for?

Mr. Biaggi explained the monetary penalties in this particular program are required to go to the county where the violation occurred. Then with regard to the supplemental environmental project, we have a policy that we have developed within the agency that is consistent in general with the U.S. Environmental Protection Agency and then ultimately the settlement documents are reviewed by the attorney general and approved by the agency. In the case of air quality, of course, they also come to this body for approval.

Chairman Close called for further questions. There were none. He called for public comment.

Tom Buchanan introduced himself as vice president of production and technology for Eagle-Picher Minerals. He stated I wanted to give you a little bit of Eagle-Picher's background in Nevada. Eagle-Picher Minerals has continuously operated diatomaceous earth mining and processing facilities in Nevada for over 50 years. The Clark operation began operations in 1947. The Colado operations began in 1957. Both facilities have operated continuously since then. We mine and process diatomaceous earth, or DE for short. The application of those products is soil amendments, oil and grease absorbents, and filtration products. Filtration products go into all types of industrial filtration from surface drinking water to sweeteners, beer, wine, and fruit juices. Our products are sold worldwide. We ship approximately 30 percent of our volume internationally.

As Mr. Yamada mentioned, in the past sulfur emissions were not recognized as a potential pollutant from diatomaceous earth operating facilities. That became apparent several years ago that we were actually getting some sulfur emissions evolving from the diatomaceous earth itself. Eagle-Picher Minerals, prior to that, had very little documentation or information on how much or under what circumstances that would happen. Since that time, Eagle-Picher has taken a lot of steps to try and address those issues both in Oregon and in Nevada. Eagle-Picher recognizes that it hasn't managed its environmental affairs in the way that it would like to and hence, some of the issues that you've just taken a look at, some of the violations that we had. In addition to that, Eagle-Picher felt that it had lost its working relationship with NDEP and Eagle-Picher views that as its responsibility to maintain that relationship with NDEP.

Eagle-Picher has initiated organizational and operational changes to correct this situation and looks forward to working cooperatively with NDEP to finalize operating permits that accurately represent their operations. Included in those changes, we've added several positions in our organization: one, an environmental health and safety manager that oversees all of the facilities. We've redefined our operating manager's responsibilities to include the environmental responsibilities. We've added a director of operations development to help review and institute additional maintenance and operating parameters for our operations. Eagle-Picher views the agreement in front of you as a mutual agreement and on behalf of Eagle-Picher I personally would like to extend my appreciation to Allen Biaggi, Jolaine Johnson, Colleen Cripps and their staff for working with us to try and come to a resolution of these issues. We recognize we still have a lot of work to do. We're committed to a more open-end regular communication with the NDEP staff in finalizing our operating permits and we look forward to a more positive working relationship in the future.

Commissioner Ricci stated in looking at all of these violations, most of them came from source test results. I never realized until today that they were associated with diatomaceous earth and if it is then how do you plan on controlling that?

Mr. Buchanan explained the sulfur that we find in our crude ore today ranges in the range of undetectable to as high as, in Nevada, .07 percent sulfur in the crude ore. That doesn't sound like a lot, but when you add it up over the number of tons that we process over the year, it starts to become significant. The way we intend to control it in the future is, as part of this learning experience over the last couple of years, we've done extensive drilling programs and assayed the ore to determine its sulfur content, which is information that we didn't have in the past. We do normal drilling programs to identify the quality aspects of the ore before we mine it. Sulfur in the past was not one of those quality aspects. So we had to go back and re-drill everything and identify exactly what the sulfur levels are in the ore.

The other thing that we had to do was identify how much of the sulfur in the ore actually does come off in the process. We do have some processes that are simple drying processes where little or none of the sulfur comes off in that process. We also have some high temperature processes, calcifying in a rotary kiln where some of the sulfur is oxidized and comes off as SO_2. In the case of the Colado facility approximately 1/3 of the sulfur in the crude ore actually comes off, the rest stays with the product. Within the settlement that you have, we have proposed a mass balance to monitor levels of emissions. We measure the amount of sulfur coming into the process. We measure that going out and by difference, make a determination on what goes out the stack. Beyond that, within the process itself, there are no design controls to control SO_2.

Commissioner Iverson asked since we're addressing the sulfur issue with these two, I assume that your organization is also looking at and addressing the potential sulfur issue with the kitty litter place and also the new place in Reno?

Mr. Biaggi answered there are three air programs in the State of Nevada. We operate for the 15 rural counties, Washoe County, and Clark County. Oil Dri, the kitty litter manufacturing operation, falls within the Washoe County program and not within the Division of Environmental Protection. But I'm sure particulates, sulfur, carbon monoxide, are at the forefront of their minds in the permitting of that operation.

Commissioner Iverson asked do you monitor the other kitty litter place?

Mr. Biaggi answered yes we monitor Moltan.

Commissioner Crawforth stated in my experience on the Environmental Commission, we have regular repeat offenders until they recognize that they need to be proactive and get environmental health staff and when that has occurred and they become proactive then things run pretty well and we don't see them again. So I hope you'll implement procedures to listen to them because it's been very effective. I'd also compliment both the Division and Eagle-Picher on being good neighbors. I know that you have a large economic impact on, and benefit to both Pershing and Storey Counties. And God knows we could do some things on the rehab on the Truckee River. You live right there everyday and we've got full of white top and a river channel that's not in very good shape. So, I think those are very good projects in addition to the seminars for fugitive dust and etc. that you're planning.

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

Commissioner Johnson moved for adoption of the agreement. He stated I think it would be appropriate that we note the supplemental environmental projects portion of this and include that as a portion of public policy that this body recommends.

Chairman Close stated at this point I think we ought to just adopt the agreement, and then we can make side comments relative to that at some time in the future.

Commissioner Johnson agreed.

Commissioner Iverson seconded the motion.

The motion carried unanimously.

Commissioner Johnson stated to make part of the record the supplemental environmental projects portion of this is part of individual comment that we approve of because it's not a noticed item.

Chairman Close moved to **Agenda Item IV. Programs and Policies.**

Mr. Biaggi stated first of all, I would like to thank Mike Yamada. This is his first time up before the Commission today and I know it can be somewhat intimidating and Mike has been doing an outstanding job for us in the time that he's been with the Division in the enforcement program for Air Quality and I'd like to thank him for his efforts and also Corey Kern, who is here, who is the inspector on some of the projects and settlements that you've heard today. They have both done excellent work.

I think it's important to point out that you do have changes in membership of the State Environmental Commission. Mr. Doppe has been reappointed to the Commission for another term. Unfortunately, we lost Fred Gifford. Fred has been on since 1989. He's been a long-term member that I know we all have appreciated for his professionalism and his analysis and his excellence on this program and he will be missed. We will be sending a letter to him thanking him for his many years of service on this Commission. His replacement is Tim Crowley. He was formerly with the Governor's office in the Miller administration. He is now with the Nevada Mining Association headquartered in Las Vegas. Mr. Crowley would have been at this meeting today, but he got married last weekend and is on his honeymoon. So he will be with us at our next meeting.

There has been an appeal of the water discharge permits for Las Vegas, Clark County, and Henderson. A panel was originally scheduled in early September to address that issue. Because of the somewhat controversial nature of this appeal and the sheer numbers of individuals that are likely to be subpoenaed for that hearing, it has been put off pretty much indefinitely now. We're hoping to get that on maybe in late October or early November. I think the panel members know who they are.

There's been a lot of talk about the TMDL rules, the Total Maximum Daily Loadings on the water quality side. It's been a tremendous concern to agriculture and to other, to municipalities because of the potential cost of that rule. I think EPA recently

estimated that could cost up to $5 billion over the next 10 years to comply with that rule. It was originally scheduled to go into place on October 1 and again has been delayed by EPA for another 18 months while they revisit that rule and the economic analyses for it.

For whatever reason, today seemed to be the day for the Division of Environmental Protection to be in the newspapers in northern Nevada. There was an article this morning in the newspaper concerning the Walker River water quality standards. We are going out to workshops once again in early October in Yerington and in Hawthorne to revisit those standards and they will be somewhat abbreviated, probably not addressing TDS, chlorides and arsenic. Those constituents will be addressed in the alternative dispute resolution process that Mike Turnipseed has started for an overall settlement to all issues related to Walker Lake. So, you will probably see something in your December meeting on revised standards for Walker River. The Walker River Irrigation District was also recently served a Notice of Intent to Sue under the Clean Water Act based upon what is called the Talent Decision coming out of Oregon. That is a decision that was made by a federal court that said that a NPDES discharge permit is needed whenever herbicides are being added for control of weeds and irrigation ditches. We have met with the Department of Agriculture and working with the agricultural community to determine how best to respond in Nevada to this decision. Right now it looks like we're going to attempt to develop a general permit which will outline the policies and the way the agricultural community applies those herbicides in the irrigation ditches and sign on to a general permit which will provide not only the ecological protection, but also some legal protection for these agricultural operations based upon the Talent Decision.

Also, there was an article in the newspaper this morning outlining the Division of Environmental Protection will begin sampling in Fallon for the cancer cluster that is occurring in that area. We will be undertaking this effort in support of the Division of Health, the Centers for Disease Control and the Agency for Toxic Substance Disease Registry who also will be undertaking this effort. It involves about 30 of our Division employees for about one month. So this is a very large effort. We have not received any additional resources, either at the State or federal level. So we're undertaking this using our existing resources. We're having to prioritize and it is putting a crimp in some of our programs. But, nevertheless, I feel it's the most important effort that we've undertaken in the 22 or 23 years that I've been with the Division and we want to do it right the first time and we're fully engaged in that process.

Finally, the last item in the newspaper this morning was that there was an explosion in Douglas County last night that seriously injured five individuals at a facility that does recycling of propellants out of aerosol cans. Mr. Zusy has talked at some length today about the Chemical Accident Prevention Program and I believe that this facility did not fall under that program because the amount of materials they contained on that property was less than the triggering amounts. Nevertheless there was some oversight by our hazardous waste facilities and programs. We sent an individual out to the plant last night to help with emergency operations and apparently were instrumental in giving Douglas County some information on exactly what this operation did. Once again, it's a very tragic event and one that did injure five people, apparently very seriously. Three of those people apparently were taken to the burn center in UC Davis and two of them were taken to the burn center here in Las Vegas.

Commissioner Johnson asked could you give a real short synopsis of the air quality reorganization in Clark County?

Mr. Biaggi explained there were two bills that were heard in the Nevada legislature concerning air quality issues in Clark County. One of those bills would have restructured the air programs in Clark County to incorporate what was historically comprehensive planning, which was the planning functions of air quality and the functions that were contained within the Health District, which was permitting, enforcement and inspections. A companion bill to that would have provided the funding to run that revised agency. In the very last few days of the Nevada legislature, the restructuring bill passed, but the funding bill did not which left a very unusual situation of having a revised agency that couldn't be funded. In response, Governor Guinn vetoed the restructuring bill and in the ensuing days Clark County came forward and stated that they would allow the program to operate under their auspices and provide the necessary funding. In response to that, Governor Guinn designated Clark County as the appropriate air quality agency within Clark County under the direction of Christine Robinson and that transition has been going forward over the last 30 days or so. Chairman Close and I attended a meeting with the Governor and the elected officials from Clark County again approximately a month and a half or two months ago because this did create some concern among the elected officials. But I think that they were assured that they will be a part of the Clark County decision making process as it relates to air quality, and, again that program is moving forward.

Commissioner Crawforth stated I know you've had some staffing difficulties, people making raids on your people, paying them more money. How are you coming along with getting back up to staff?

Mr. Biaggi answered right now we have 18 vacancies within the agency. That includes four new positions, which we acquired through the 2001 session. I think that some of the pay increases that we saw for most employees and then additional pay increases on top of that for the engineering series will help. However, we're still not on parity with many of our counter parts in local government. We are still losing people out of primarily the air quality programs, which is of great concern. We recently lost one of our inspectors. And, you know, that's probably going to continue and there's not a whole lot we can do about it. But the pay raises have helped.

Chairman Close called for further questions. There were none. He called for public comment. There was none. He then asked Mr. Cowperthwaite about the status of future meetings.

Mr. Cowperthwaite answered that the appeal hearing for Bob Hall would probably be sometime in October or November and that next Environmental Commission meeting will probably be in early December.

Meeting adjourned at 1:35 p.m.