

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF September 24, 1998

HELD AT: Reno, Nevada

TYPE OF HEARING:

YES REGULATORY

APPEAL

FIELD TRIP

ENFORCEMENT

VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES AGENDA

YES PUBLIC NOTICE

YES MINUTES OF THE HEARING

LISTING OF EXHIBITS

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
September 24, 1998
9:00 A.M.

The Nevada State Environmental Commission will conduct a hearing commencing at **9:00 a.m., on Thursday, September 24, 1998, at the Division of Wildlife, Conference Room A, 1100 Valley Road, Reno, Nevada.**

This agenda has been posted at the Grant Sawyer State Office Building in Las Vegas; the Washoe County Library and Division of Wildlife in Reno; and at the Nevada State Library & Archives and Division of Environmental Protection in Carson City. The Public Notice for this hearing was published on August 25, September 2, and September 10, 1998, in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

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

- I. Approval of minutes from the June 17, 1998 public hearing and August 27, 1998 teleconference meeting. * ACTION**
- II. Regulatory Petitions * ACTION**
 - A. Petition 98008 (LCB File No. R-124-98)** is a proposed permanent petition amending NAC 444.8427 to 444.9452, the hazardous waste management regulations. The proposed amendments update those regulations adopted by reference from July 1, 1997 to July 1, 1998 for NAC 444.8427, 444.84275, 444.850, 444.8632 and 444.9452. The major changes proposed by the adoption by reference are new land disposal restrictions treatment standards for metal bearing wastes, including toxicity characteristics for metal wastes and hazardous waste from minerals. The new federal regulations will exclude from the definition of solid waste certain shredded circuit boards in recycling operations as well as certain materials used in wood preserving operations. The proposed amendments are necessary to incorporate changes to the federal hazardous waste regulations to refer to the most current federal regulations, to revise state regulations to be more consistent with federal regulations and to make technical corrections to state regulations.
 - B. Petition 98009 (LCB File No. R-125-98)** is a proposed permanent regulation amending NAC 444.84555 by adding language to expand the application process for a written determination for the construction and operation of a facility for the recycling of hazardous waste including: the basis for determining the economic value of a hazardous waste recycling process; requirements for public participation; and provisions for revocation, modification and appeal of administrator's decision. The proposed amendments are necessary to provide the administrator with the relevant information and facts to properly review written determination applications and determine whether and when it is appropriate to issue, modify, suspend, revoke or deny a written determination.

- C. Petition 98010 (LCB File No. R-126-98)** is a proposed permanent regulation amending NAC 445B.221 by the adoption by reference of 40 CFR 63.40 through 63.44, dealing with construction or reconstruction of major sources of hazardous air pollutants and maximum achievable control technology (MACT) requirements. This adoption by reference implements section 112(g) of the Clean Air Act Amendments of 1990, the Operating Permit Program. In addition, the date reference to 40 CFR Parts 72 and 76 has been updated from July 1, 1997 to January 1, 1998. The proposed amendments are necessary since the State must have the authority to review construction and reconstruction of major sources of hazardous air pollutants as part of the Part 70 Operating Permit Program.

III. Settlement Agreements on Air Quality Violations * ACTION

- A. Ames Construction Co.; Notice of Alleged Violation # 1320
- B. Foreland Corporation; Notice of Alleged Violations # 1313 & 1314
- C. Frehner Construction; Notice of Alleged Violations # 1327 & 1328
- D. Granite Construction; Notice of Alleged Violations # 1334 & 1335
- E. LSP Products Group Inc.; Notice of Alleged Violation # 1307
- F. LSP Products Group Inc.; Notice of Alleged Violation # 1308
- G. IMV Nevada.; Notice of Alleged Violation # 1316
- H. Uhalde-Lease.; Notice of Alleged Violation # 1330

IV. Clark County Health District Emission Offset Program * ACTION

The Environmental Commission will receive a report and recommendations from the Division of Environmental Protection, Bureau of Air Quality, regarding an evaluation of the Clark County Health District Air Pollution Control Division's Emission Credit Program. On June 17, 1998, the Environmental Commission requested the Division to determine whether the Clark County Health District was implementing the recommendations pertaining to an independent management report, issued May 28, 1998, by Stewart, Archibald & Barney, that focused on the District's emission offset program.

V. Petition to Reconsider the Commission's Action of June 17, 1998 Regarding Mr. Robert Hall's Petition * ACTION

The Environmental Commission will review an addendum request from Mr. Robert Hall, dated August 26, 1998 regarding the Commission's action of June 17, 1998.

Page 3 - Agenda - Environmental Commission Hearing - September 24, 1998

VI. Discussion Items

- A. Proposed Environmental Commission INTERNET Website
- B. Status of Division of Environmental Protection's Programs and Policies
- C. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (702) 687-4670, extension 3118. The public 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>**.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary, in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (702) 687-4670 extension 3118 no later than 5:00 p.m. - **September 18, 1998.**

###

**NOTICE OF INTENT TO ACT UPON REGULATIONS
NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF HEARING**

The Nevada State Environmental Commission will hold a public hearing beginning at **9:00 a.m. on Thursday, September 24, 1998, at the Division of Wildlife Conference Room A, 1100 Valley Road, Reno, Nevada.**

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of permanent regulations in Nevada Administrative Code (NAC) Chapters 444 and 445B. 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.

Petition 98008 (LCB File No. R-124-98) is a proposed permanent petition amending NAC 444.8427 to 444.9452, the hazardous waste management regulations. The proposed amendments update those regulations adopted by reference from July 1, 1997 to July 1, 1998 for NAC 444.8427, 444.84275, 444.850, 444.8632 and 444.9452. The major changes proposed by the adoption by reference are new land disposal restrictions treatment standards for metal bearing wastes, including toxicity characteristics for metal wastes and hazardous waste from minerals. The new federal regulations will exclude from the definition of solid waste certain shredded circuit boards in recycling operations as well as certain materials used in wood preserving operations. The proposed amendments are necessary to incorporate changes to the federal hazardous waste regulations to refer to the most current federal regulations, to revise state regulations to be more consistent with federal regulations and to make technical corrections to state regulations.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The proposed regulation should make it easier for affected businesses to comply by simplifying the requirements. 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 Resource Conservation and Recovery Act (RCRA) Public Law 94-580 was passed by Congress in 1976. Revision of the state hazardous waste regulations is required pursuant to 40 CFR 271.4. This provision requires an U.S. EPA approved state hazardous waste program to be consistent with federal regulations. When federal hazardous waste regulations are revised, state regulations must be updated in accordance with the procedures in 40 CFR 271.21 to remain consistent. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Page 2 - Notice of Environmental Commission Hearing for September 24, 1998

Petition 98009 (LCB File No. R-125-98) is a proposed permanent regulation amending NAC 444.84555 by adding language to expand the application process for a written determination for the construction and operation of a facility for the recycling of hazardous waste including: the basis for determining the economic value of a hazardous waste recycling process; requirements for public participation; and provisions for revocation, modification and appeal of administrator's decision. The proposed amendments are necessary to provide the administrator with the relevant information and facts to properly review written determination applications and determine whether and when it is appropriate to issue, modify, suspend, revoke or deny a written determination.

The proposed amendments are not anticipated to have a significant adverse short or long term economic impact on Nevada businesses. The addition of a public notice and comment period will likely extend the application review process which may impose additional minimal costs on the hazardous waste recycler. The proposed amendments are not anticipated to have a adverse short or long term impact upon the general public. The public will receive a benefit from the information obtained during the public participation process. The amendments are intended to lessen any adverse effects that hazardous waste recycling facilities may have on the public. There will be minor additional costs to the division of environmental protection in providing notice to the public and maintaining a mailing list. These costs are expected to be covered by the application review fees already established for the purpose of reviewing the written determination. The proposed amendments are consistent with, and in addition to, those of the federal government. The proposed amendments do not duplicate or overlap any other existing state regulations. The Resource Conservation and Recovery Act (RCRA) Public Law 94-580 was passed by Congress in 1976. Revision of the state hazardous waste regulations is required pursuant to 40 CFR 271.4. This provision requires a U.S. EPA approved state hazardous waste program to be consistent with federal regulations. When federal hazardous waste regulations are revised, state regulations must be updated in accordance with the procedures in 40 CFR 271.21 to remain consistent. This regulation does not add a new fee, nor increase an existing fee.

Petition 98010 (LCB File No. R-126-98) is a proposed permanent regulation amending NAC 445B.221 by the adoption by reference of 40 CFR 63.40 through 63.44, dealing with construction or reconstruction of major sources of hazardous air pollutants and maximum achievable control technology (MACT) requirements. This adoption by reference implements section 112(g) of the Clean Air Act Amendments of 1990, the Operating Permit Program. In addition the date reference to 40 CFR Parts 72 and 76 has been updated from July 1, 1997 to January 1, 1998. The proposed amendments are necessary since the State must have the authority to review construction and reconstruction of major sources of hazardous air pollutants as part of the Part 70 Operating Permit Program.

Page 3 - Notice of Environmental Commission Hearing for September 24, 1998

The proposed regulation will have a positive short and long term economic impact on the regulated facilities. The amendments will simplify the processes for assuring that major stationary sources are in compliance with all applicable air quality requirements. 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 will be consistent with U.S. Environmental Protection Agency statute 42 USC 7401-7671 and the Federal Clean Air Act Titles I-VII. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Persons wishing to comment upon the proposed regulations or any other matter listed above 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 5 days before the scheduled public hearing.

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

Pursuant to NRS 233B.0603(c) the provisions of NRS 233B.064 (2) is hereby provided: "Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption".

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

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89706-0851, facsimile (702) 687-5856, or by calling (702) 687-4670 Extension 3118, no later than 5:00 p.m. on **September 18, 1998**.

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

####

STATE ENVIRONMENTAL Commission
Meeting of September 24, 1998
Division of Wildlife Conference Room
Reno, Nevada
Adopted Minutes

MEMBERS PRESENT:

Michael Turnipseed
William Molini, Vice-chairman
Marla Griswold
Paul Iverson
Fred Gifford
Roy Trenoweth
Mark Doppe
Joseph L. Johnson
Alan Coyner

MEMBERS ABSENT:

Melvin Close, Chairman
Robert Jones

Staff Present:

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

In the absence of Chairman Close, Vice-chairman Molini called the meeting to order and verified the meeting had been properly noticed in compliance with the Nevada Open Meeting Law.

Agenda Item I: Approval of minutes from the June 17, 1998 meeting.

Commissioner Griswold moved for acceptance of the minutes as presented.

Commissioner Trenoweth seconded the motion.

The motion carried.

Approval of transcript of August 24, 1998, Commission teleconference.

Commissioner Griswold moved for acceptance of the transcript as presented.

Commissioner Trenoweth seconded the motion.

The motion carried.

Vice-chairman Molini moved to **Agenda Item II. Regulatory Petitions**

A. Petition 98008 (LCB File No. R-124-98) a proposed permanent petition amending NAC 444.8427 to 444.9452, regarding the hazardous waste management regulations.

Jim Trent, Supervisor of the Program Development Branch of the Bureau of Waste Management, Division of Environmental Protection (DEP) reported this petition proposes to update our adoption by reference of federal hazardous waste regulations and explained two workshops, attended by a total of 18 people, were held on August 26 and August 27 in Las Vegas and in Carson City. Discussion at both workshops focused on the new land disposal restrictions. Nevada adopts by reference federal hazardous waste regulations and we must periodically update this reference in the NAC as changes are made at the federal level to remain authorized to enforce the regulations. This petition covers the one-year period from July 1, 1997, to July 1, 1998. Sections 1, 2 and 3 update the incorporation by reference to July 1, 1998, for these specific provisions.

Section 4 includes our general adopted federal hazardous waste regulations by reference. By revising the reference date of the federal regulations from July 1, 1997, to July 1, 1998, we are proposing to adopt by reference 8 federal regulations that have been approved by the U.S. EPA during this period. Those titles proposed for adoption are:

- 1) Emergency Extension of the K-0-88 National Capacity Variance;
- 2) The LDR Treatment Standards for Liquid Hazardous Waste from Car Paint Production;
- 3) Organic Air Emissions for Tanks and Containers;

- 4) Craftsmill, Steamstripper and Dictate Exclusion;
- 5) Organabromine Production Waste;
- 6) Recycled Used Oil Management Standards;
- 7) Land Disposal Restrictions Phase IV; and
- 8) Hazardous Waste Combustors.

The Land Disposal Restrictions Phase IV Treatment Standard And Exclusions is the most significant new rule. Our regulation would prohibit the Land Disposal Hazardous Waste unless the waste first meets treatment standards established by the EPA. This rule addresses inter-related areas associated with the land disposal restrictions.

- 1) New land disposal restriction treatment standards are promulgated for waste identified as hazardous because they exhibit the toxicity characteristics for metal;
- 2) The new rule establishes a land disposal provision of treatment standards for a group of new identified wastes - mineral processing wastes that exhibit characteristics of a hazardous waste;
- 3) Through amended provisions defining the second year of materials are a solid waste;

This rule also addresses issues related to whether materials are within the scope of the Bevel Amendment for exclusion.

- 4) The rule includes amended treatment standards for soil that contains ballistic hazardous waste or would exhibit the characteristics of hazardous waste; and finally the rule clarifies certain provisions of Land Disposal Restrictions (LDR) as well as correcting typographical errors.
- 5) The rule clarifies that a previously promulgated exclusion of hazardous waste for recycled shredded circuit boards also applies to the full circuit board and an exclusion from RCRA jurisdiction is provided for certain woods observing waste water.

Mr. Trent explained the Bureau had discussions with the Nevada Mining Association (NMA) regarding the LDR Stage 4 Rule. NMA has indicated that they are not opposed to the state's adoption of this rule though they have expressed concern that the rule may be changed or clarified by subsequent federal revisions. The Bureau of Waste Management has advised NMA that any subsequent clarification, corrections or revisions issued by EPA will be considered in our compliance and enforcement of this regulation and that revisions to this rule would be included in our next update and adoption by reference

Section 5 updates the reference to federal regulations as they are cited in the governing of PCB's. PCB regulations will also cite these current federal regulations.

Vice-chairman Molini asked for questions from the Commission and from the public.
No questions were forthcoming.

**Commissioner Turnipseed moved for approval of Petition 98008, LCB File No. R-124-198 as presented.
Commissioner Trenoweth seconded the motion.
The motion was unanimously adopted.**

Vice-chairman Molini moved to **Agenda Item II. B.** Petition 98009 (LCB File No. R-125-98)

Jeff Denison, Supervisor of the Hazardous Waste Permitting Branch, Bureau of Waste Management - NDEP, explained Petition 98009 is a proposed permanent regulation amending NAC 444.84555. This regulation outlines what an application for a risk determination for hazardous waste recycling should include. The written determination review process is designed to ensure that hazardous waste recyclers who are afforded certain provisions and allowances under the law, are indeed operating as recyclers as opposed to treatment facilities of waste, are subject to much more stringent permitting and regulatory requirements and proposes 3 basic changes that are intended to enhance the application process:

- 1) To include both the name of the applicant as well as the property owner;
- 2) Clarifies what is meant by primary economic value.

3) Includes a provision for a 45-day comment period. This applies to recycling facilities, it has now been extended to mobile units and it also includes provisions for revocation & modification until there is a determination.

Mr. Denison explained workshops were held in August. The bureau received no comments or inquiries regarding the regulation. This is an enhancement to the existing regulation and does not substantially alter any process. The only exception would be the 45-day comment period.

Commissioner Turnipseed recalled a recent speech by the waste handler in Las Vegas complaining about people disposing of waste under the guise of recycling and asked if this regulation addresses that complaint or pertains only to hazardous waste.

Jeff Denison explained this regulation specifically applies to the recycling of hazardous waste and it does not apply to solid waste.

DAG Mischel explained it does not apply to salvage yards.

Commissioner Iverson requested an explanation of "economic value".

Jeff Denison explained the recycling process has economic value if the application shows that the material recovered from, or the product for energy produced as a result of the process, has value in the market place. We ask the applicant to demonstrate that the cost associated with the fees he charges and the recovery value of the recycled product show that it is economically motivated by the recycling aspect.

Commissioner Iverson noted that one concern of recycling is that values change. Today it could have economic value but a year from now it may not.

Jeff Denison remarked that in the 8-9 years that he has been doing determinations each case is overlaid differently and that is part of the reason we wanted to have the modification procedures in the regs. If a recycler is recycling and the revenue that is gleaned from that is subsidizing the process then we would probably take action to revoke the permit. The exercise that we go through initially would show that they had done homework to demonstrate that what they are recycling is a viable enterprise.

Commissioner Coyner questioned if there is a timing mechanism to ensure that the recycled material doesn't have a long residence time at the place where it is being recycled.

Jeff Denison explained separate provisions under federal law require that in order to recycle hazardous waste you must recycle 75% of the material stored on site within one year.

Commissioner Coyner asked if, in 9 years, there has been a track record of violations.

Jeff Denison replied that probably no more than 15 violations had been issued and the bulk of those had been mobile recyclers.

Commissioner Turnipseed asked if they had anybody recycling medical waste.

Jeff explained medical wastes do not come under the hazardous waste definition.

Vice-chairman Molini called for questions or testimony from the public. No questions were heard.

Commissioner Turnipseed made a motion to approve Petition 98009, LCB File R-125-98, as presented. Commissioner Trenoweth seconded the motion.

The motion was unanimously approved.

Vice-chairman Molini moved to **Agenda Item II. C. Petition 98010 (LCB File No. R-126-98)** a proposed permanent regulation amending NAC 445B.221 by adopting by reference 40 CFR 63.40 through 63.44, dealing with construction or reconstruction of major sources of hazardous air pollutants and Maximum Achievable Control Technology (MACT) requirements.

Gay McCleary, Supervisor of Planning and Program Coordination Branch - Bureau of Air Quality, explained that Title V of the Clean Air Act (CAA) Amendments of 1990 charged EPA with promulgating regulations that require minimum elements of the State Operating Permit Program. In July 1992 EPA promulgated regulations contained in 40 CFR Part 70 Operating Permit Program. This program required states to develop and submit to EPA programs for issuing operating permits to major sources, including major sources of hazardous air pollutants as listed in Section 112 of the CAA.

NDEP first submitted its operating permit program to EPA in November 1993 and an amendment in February 1995 requested interim approval of the operating permit program. EPA approved this interim program and it became effective on January 11, 1996. As part of EPA's approval they concurred that NDEP has a broad legal authority to enforce all applicable requirements.

NDEP is asking the Commission to adopt by reference 40 CFR 6240 through 6344. These regulations apply to newly constructed facilities or reconstruction units or sources and existing facilities that have a potential to emit hazardous air pollutants in major amounts. Reconstruction is defined as a change that costs 50% of the cost of constructing a new unit or source like the one being rebuilt. Sources subject to these regulations will be subject to stringent air pollution control requirements, MACT. New source MACT control is required to be no less stringent than the best controlled similar source or facility in the United States. The adoption of these regulations by reference will give NDEP the authority to implement the requirements for construction or reconstruction of major sources of hazardous air pollutants as required by our operating permits program.

NDEP asks the Commission to adopt by reference 40 CFR Parts 72 and 76, previously adopted by the Commission on July 1, 1997. There have been amendments since 1997 and EPA requests that we have them adopted by reference as they existed on January 1, 1998. Part 72 and 76 deal with acid rain permits and the acid rain nitrogen oxide reduction program, respectively. Again, as part of our operating permit program we also committed to adopt by reference provisions to implement necessary portions of the acid rain program. Acid rain applies to powerplants to reduce the emission of nitrogen oxide and sulfur dioxide.

Gay McCleary explained the last section we are asking the Commission to adopt is, as required by regulation and LCB, the information whereby the public or interested persons can purchase these documents. The listing contains the current prices of the volume.

Commissioner Johnson asked, regarding MACT, if science develops a more cost effective improved system, can you require that system to be installed?

Gay McCleary explained if a facility received approval of MACT determination from the Bureau of Air Quality and then the federal government developed a MACT standard that was more stringent that facility would not be required to install the better technology because they had already installed the very best available at the time they constructed.

Commissioner Johnson requested clarification. Does EPA insist that there has to be a plant that has this technology in place -

Gay explained there are two different avenues for MACT determination. EPA has already developed and promulgated MACT standards for several source categories and they are required by the CAA to develop standards for many more source categories, these must be completed early in the next century. All those sources would be

required to meet the emission limitation contained in that standard. It is the source's option on how they wish to attain that standard by utilizing actual control requirements established within the standard. If there is a new or reconstructed major source that does not have a MACT standard or is not subject to a MACT standard developed by EPA then that source, at the time of application, must provide information on a MACT determination that we would review based on the control technology that is used on the best controlled similar facility in the country.

Gay revealed a public workshop held September 21 was attended by 2 representatives from Southern Cal Edison, 1 representative from Round Mountain Gold, 1 from Dura-Bond Company, 1 from Mission Industries, and 1 from Chromalloy. All these companies are considered minor sources, not subject to these standards and they do not anticipate making changes to their facility.

Commissioner Coyner asked if there is a particular industry in the state currently having trouble meeting the standards.

Gay reported the Bureau does not anticipate any industries subject to these in the near future. Two major sources of hazardous air pollutants in Nevada are in the process of receiving their Title V permits but since they are existing facilities they are not required to add any further controls to reduce emissions unless they modify their facility.

Vice-chairman Molini called for public comment. No comments were made.

Vice-chairman Molini called for a motion.

Commissioner Johnson moved for adoption of Petition 98010, LCB File No. R-126-98 as presented.

Commissioner Griswold seconded the motion.

The motion was unanimously approved.

Vice-chairman Molini moved to **III. Settlement Agreements on Air Quality Violations**

A. Ames Construction Co.; Notice of Alleged Violation # 1320

Eric Taxer, Supervisor of the Compliance and Enforcement Branch in the Bureau of Air Quality reported that Ames Construction operates an aggregate crushing and screening facility at the Barrick Goldstrike Mine north of Carlin. An inspection in June noted the facility was operating without the required air pollution equipment, they did not have their fogging sprayers turned on. During the enforcement conference Ames noted that they had intentionally turned off the fogging sprayers because they were plugging equipment in the rock crushing process. As a corrective action Ames Construction has installed new fogging sprayers and they voluntarily enclosed most of the equipment at the site with sheet plastic and plywood to further reduce emissions. An administrative penalty of \$5,280 for the violation was agreed upon by Ames Construction and NDEP.

Vice-chairman Molini asked for questions or comments. No questions were forthcoming.

Commissioner Turnipseed made a motion to accept the settlement with Ames Construction.

Commissioner Trenoweth seconded the motion.

Commissioner Gifford asked how long they had been operating without the sprayers and if this was a scheduled inspection or a complaint.

Eric Taxer explained they were cited for one day in violation of their air pollution permit and this was a scheduled inspection.

The motion was unanimously approved.

B. Foreland Corporation; Notice of Alleged Violations # 1313 & 1314

Eric Taxer reported Foreland Construction, also known as Eagle Springs, operates a Crude Oil Storage Facility located in Nye County. A regularly scheduled inspection was conducted in March which documented 2 noncompliance issues. NOAV 1313 was issued for construction of certain portions of the facility without a permit and NOAV 1314 was issued for uncontrolled hydrogen sulfide emissions from the facility. During the enforcement conference Foreland Corporation stated that they were originally going to install eight 400 barrel tanks for crude oil storage. That translates to 17,000 gallons per tank. The tanks actually installed were three 1,000 barrel tanks for a

total capacity of approximately 44,000 gallon. Tanks over 40,000 gallons are required to be permitted pursuant to NAC 445B.395. As part of their corrective action Foreland has submitted a revised application for their existing operating permit to include the three new 1000 barrel tanks. An administrative fine of \$900 was agreed upon. NOAV 1314 was dismissed after test results indicated that H₂S was lower than or equal to the applicable ambient air standards.

Commissioner Gifford asked how the bureau tests for the hydrogen sulfide level.

Eric explained they went in with the Bureau of Land Management. They have a monitor.

Commissioner Coyner explained Mr. Decker came to our office (Division of Minerals) to ask about the conditions that existed. The testing that was originally done turned out to be false positive - in other words it was a much greater release of hydrogen sulfide than was actually present because we determined the meter was faulty. The Division of Minerals, which is mandated to be involved with safety aspects of the oil and gas industry in the state was not notified until Mr. Decker appeared in our office. Hydrogen sulfide can be a hazardous situation, a life-and-death situation if those emissions are concentrated in an area that a human could be exposed to. On a procedural basis, I think we have an understanding now that if we have a recurrence of that situation NDEP will notify the Division of Minerals immediately because of the safety aspect.

A partnership of three, the BLM, NDEP and Minerals need to be involved with the safety aspects of that. The BLM and The Division of Minerals share responsibility on permitting, regulation and safety aspects of oil and gas programs in the state.

Vice-chairman Molini asked Mr. Coyner and Allen Biaggi if they were satisfied that there is now that relationship.

Commissioner Coyner replied they hadn't had a recurrence so it has not been tested yet in the field but all the individuals are on board with regards to it.

Allen Biaggi recommended that the relationship be formalized through a memorandum of understanding (MOU).

Vice-chairman Molini called for public comment. No comments were forthcoming.

Commissioner Turnipseed made a motion to accept the settlement of \$900.

Commissioner Trenoweth seconded the motion.

The motion was unanimously approved.

C. Frehner Construction; Notice of Alleged Violations # 1327 & 1328

Eric Taxer explained on June 10 NDEP inspected the Frehner Construction sand and gravel/asphalt plant located approximately 1/2 mile east of Carlin. The inspection noticed that the plant was operating the facility without the appropriate Change of Location Permit and they were not operating their lime silo with appropriate air pollution control which resulted in the emission of lime, a caustic substance that can damage lung tissue, into the atmosphere. A Stop Order was issued to prevent operation without a permit and operation of a source without controls. During the enforcement conference Frehner's representative explained that employees believed they could operate under a previous Change of Location Permit and agreed the baghouse on the lime silo was not operating during the loading of the silo. Corrective action measures included the receipt of the permit application and the repair of the baghouse associated with the lime silo. The total administrative penalty agreed upon for the two violations was \$22,750. \$10,000 for operating without the controls and \$12,760 for the violation of operating without the permit.

Vice-chairman Molini called for questions.

Commissioner Doppe expressed concern with both the Frehner and Granite violations, huge companies doing road

work in the state. \$20,000, \$30,000 or \$15,000 a year penalties won't be noticed by these companies. Only the attitude will make a difference and asked:

- 1) what is the attitude of this company; and
- 2) now where do you go?

The history of fines starts at \$50, then \$100, then \$200 - soon you are charging \$10,000 and now you are up to \$25,000 Do you keep raising the fine or do you eventually not issue them a permit?

DAG Mischel revealed they can revoke the permit.

Eric explained in respect to the fine the only thing that he can do is recommend the maximum penalty for the two days of violation. It is difficult to assess their attitude on compliance however there will be additional NOAV's issued to Frehner Construction to come before the Commission at the next hearing. As part of that corrective action Frehner has agreed to training regarding air quality regulations for all their staff and how to operate their facility in compliance with their permits will be part of the education effort.

Commissioner Griswold asked if Frehner Construction has one person that is responsible for environmental permitting?

Eric Taxer replied one person, Jim Matthews, oversees the construction operation today and they recently hired a person in the Reno office specifically to make sure the company is in compliance with the requirements. For such a large company, with different sites, ensuring that they are in compliance will be a difficult task for one person.

Commissioner Johnson asked if this violation and their past history targets Frehner for additional scheduled inspections or are they in a regular inspection cycle.

Eric Taxer explained they will be targeted for a follow-up inspection to ensure they are operating in compliance.

Commissioner Coyner noted the compliance history data given shows violations in 1996 and in 1998. But nothing is given about 1997. Were there scheduled inspections in 1997? Were they in compliance. We only see the out-of-compliance data, we don't see when they were inspected and were in compliance. That data is important and I would like to see that data in any future inspection history of a company. Frehner is operating multiple sites all across the state so is our level of inspection high enough? That would be another aspect I would like you to speak to at some point in the future. Looking farther into the future, we know the new highway bill will bring millions of dollars for road funding in Nevada over the next several years so this issue will continue to grow for NDEP.

Commissioner Iverson agreed with the comments and added construction crews are not the only ones that are continually getting cited. We need a complete history whenever there is a compliance problem. There are some mining operations that pop up often. Understanding attitude has to go across the entire gamut of industries and companies that you deal with.

Commissioner Doppe suggested refusing to issue "habitual polluters" a permit - a "three strikes you are out" for a year. A \$15,000 or \$20,000 fine doesn't seem to get their attention but a moratorium on doing state work for a year would wake them up and how do we get something like that going?

Vice-chairman Molini agreed but reminded the group that there are considerations relative to economic impact and employment that have to be weighted against the environmental damage that is done.

DAG Mischel explained the Commission has the authority to deny this settlement, request Frehner to come before you in a contested posture and ask the company principals those questions.

Commissioner Doppe clarified that before he actually pulled the trigger on a three strikes you are out sort of a deal

he would want to know the attitude issues and review a much more thorough background than what is presented in the information packet and wondered if there are more potent tools to use, rather than a \$10,000 a day fine. His impression is if you had 4 times as many inspectors you would probably have 4 times as many fines on some of these firms and that is not good. They are playing the odds.

Commissioner Iverson remarked that when you are working with people and equipment things do happen and for the most part companies are trying to stay in compliance. Things seem to happen only when an inspector is there but agreed that the company's attitude would change if we did not accept the settlement and requested them to appear before us.

Vice-chairman Molini noted that in the years he has served on the Commission he has been troubled. If we look at fugitive dust and air pollution as a whole we have a little gravel operator whom we are fining for various reasons but one can drive through Lovelock Valley where agriculture is exempt and they are burning fields, plowing and there is fugitive dust. Where is the equity?

Commissioner Turnipseed agreed and recognized that the Commission only regulates stationary and mobile sources that create perhaps 1% of all the fugitive dust. Keeping it in perspective, there are many sources of dust outside of construction companies and mining companies.

Commissioner Doppe stated he would defer to the judgement of NDEP and made a motion to accept the settlement with Frehner.

Commissioner Trenoweth seconded the motion.

The motion unanimously carried.

Commissioner Turnipseed moved to D. Granite Construction; Notice of Alleged Violations # 1334 & 1335

Eric Taxer explained on June 9, NDEP inspectors in the area observed visible emissions from the Granite Construction facility located 1/2 mile east of Carlin. The emissions were associated with two asphalt plants. During the inspection it was documented that Granite Construction Company had failed to control emissions from the pugmill system. Returning on June 10 inspectors noted continued emissions from the pugmill system, a dust issue, and additional emissions from the lime marination system, a lime emission which is much more caustic. Two separate NOAV's were issued for the violations. During the enforcement conference it was agreed that Granite Construction would submit a Compliance Plan which would delineate the remedial actions to be implemented that would control the emissions from the pugmill system and lime marination system at that facility. That Compliance Plan has been submitted and the Division has reviewed the Plan that will bring them into compliance with their permits. In addition, an administrative penalty of \$30,000 was agreed upon by Granite & NDEP for two violations. \$20,000 for the pugmill for two days of violations and \$10,000 for the lime marination system for the one day of observed violation.

Commissioner Johnson asked if Granite just had inadequate facilities.

Eric Taxer explained they had inadequate control on the pugmill system, the process of how the conveyor was dumping into the mill, and they did not have the appropriate control in place for the grinding process. They stated on the first day that they would correct the problem but it was not yet corrected on the second day.

Commissioner Griswold questioned if Granite had the ability, equipment etc., to correct the problem on site.

Eric Taxer explained they could have increased the moisture content on site but they eventually had to bring in additional equipment to correct the pugmill problem. They needed to only repair the baghouse on the lime marination system at the site.

Commissioner Coyner asked if Eric knew what kind of lime they were using, slaked or unslaked. Lime is used as a soil amendment and was once used to mark the base pads on baseball fields. There are two different limes and one of them is more hazardous in its handling characteristics than the other.

Mike Robinson, Granite Construction Company Administrative Plant Manager explained Granite had two hot plants and a marination plant all under one Change of Location Approval at that location. Only one hot plant and the marination plant had problems. The marination plant, required by the Nevada Department of Transportation (NDOT), is the addition of hydrated lime - not quick lime - mixed with aggregate and allowed to sit in the stockpile for at least two days. That mixture is then processed through the hot plant where oil is added and the resulting material is used to pave the road.

The pugmill for the baghouse fines exiting the hot plant is a high maintenance issue. The fines are a very fine material - a dust, but it flows like water - and it does not come out in a constant rate so the water content has to be adjusted to match the flow-rate of the dust and you don't know if you have it right until it is too late. You either have water coming out or you have dust coming out and if you get too much water in the system the pugmill turns into two tubes and no longer mixes effectively. Granite is looking at other ways of dealing with that problem.

The baghouse is a set of filters where the lime is pumped into the vessel, pressure relief goes through that set of filters and strips the dust out of the air and the air exits. The problem is truckers are pumping this fine material in there and if they pump too fast the system is overwhelmed, plugs the filters and either tears bags or breaks the seal around the base of the baghouse.

Also, this year we have experienced the lime coming in at a much higher moisture content because of production problems by the manufacturer and that also plugs the bags more rapidly. Once that seal is broken it is very difficult to repair in the field, you essentially need a crane to lift the baghouse off, build a new seal and put it all back together.

Vice-chairman Molini called for public comment on the Granite Construction NOAV.

Commissioner Turnipseed made a motion to accept the \$30,000 settlement.

Commissioner Griswold seconded the motion.

The motion was unanimously approved.

Commissioner Turnipseed moved to E. LSP Products Group Inc.; Notice of Alleged Violation # 1307 & # 1308

Eric Taxer explained although these were two issues he would discuss the two together.

LSP Products Groups operates a plumbing products manufacturing facility located in Carson City. An inspection in February documented that baghouses had never been constructed on 5 silos that were being operated at the facility. While reviewing the annual 1997 Production and Emission Reporting Form it was noted that LSP had exceeded the maximum allowable loading hours of Polystyrene into one of their silos. Two separate NOAV's were issued to this company.

During the enforcement conference LSP agreed to submit an application for revising its air quality permit and to perform modeling on the storage silos. They didn't believe the baghouses were necessary to control emissions from the silos because of the low amount of product stored in the silos and the infrequent deliveries to the silos. NDEP agreed that these actions were sufficient to bring the source into compliance to get it re-permitted and LSP and NDEP agreed upon an administrative penalty of \$5,400 for NOAV 1307, operating the facility for 5½ years without the facility being constructed in accordance with the way the permit was written for them to construct it.

NOAV 1308 was modified to a minor violation. NDEP questioned the accuracy level of the records. The loading rates did not correspond with purchase records and with the truck delivery logs. A penalty of \$125 was agreed upon by LSP and NDEP. LSP was warned that they need to pay closer attention to their monitoring and record-keeping at that facility.

Commissioner Gifford asked how clear is it, in the permit, that baghouses are required and who makes that decision.

Eric explained that when they applied for their permit 5½ -6 years ago they included in their application the fact that they were going to install baghouses on their silos. At that time they provided modeling information for the emissions that could emanate from the silos. The permit was written to reflect the information provided by LSP. A point of discussion at the enforcement conference was why they did not install the baghouses after the permit was written. They didn't believe the baghouses were actually necessary to protect air quality. As part of their corrective action we required them to spend the money to re-perform that modeling analysis to demonstrate that to us.

Commissioner Gifford expressed concern that 4 years had passed.

Eric explained inspections were performed in that time period but due to various safety reasons the inspectors did not climb on top of the silos to verify the baghouses were there. Inspectors were told by plant personnel that the items they saw on top of the silos were baghouses but they were not, they were a filter screen.

Commissioner Gifford replied he could not envision NDEP accepting that argument.

Eric Taxer explained the crux of the argument was the demonstration that the baghouses do not need to be there due to the additional modeling that they performed. It was a major deviation from the requirements by not constructing the baghouses but there was a very minor, albeit insignificant, potential of harm to human health and the environment based on the demonstration through their modeling at the facility.

Commissioner Turnipseed asked if inhaling the polystyrene was a health hazard and what was produced from the product.

Eric explained the company produced plastic products - basically plumbing products - but if inhaled the small particles could cause a lung problem.

DAG Mischel asked if the permit was subsequently modified to take away the baghouses and isn't that Best Available Control Technology (BACT) for this facility.

Eric Taxer replied he did not know if the permit had been reissued but the intent is to reissue without the baghouse requirement.

Jolaine Johnson, Chief of the Bureau of Air Quality explained this site was not subject to any sort of a BACT standard for federal regulations, not a major source in that sense.

Commissioner Coyner asked if statement in the letter issued to Philip Mulvey was correct. Can they only load Polystyrene 11 hours out of the whole year?

Eric explained they do have 5 silos but it was 11 hours for that one particular silo. The new permit will allow additional hours. Limited hours are considered in the modeling process as a control of certain emissions of the particulate matter. The modeling looks at what is being emitted, how frequently it is being emitted, potential concentrations of the emissions and any applicable control that they intend to install, and then the permit is written in accordance with the results of that modeling analysis.

Commissioner Iverson noted, as a preliminary to the Amargosa Valley violation that he wishes to discuss, that LSP is located in downtown Carson City - on Arrowhead Drive - in a residential area. The fine is \$5,000, you have a "baghouse" that looks like a baghouse but it is not-

Eric explained that NDEP looked at a fine of \$1,000 per year of violation as opposed to a per day violation. \$1,000 per day would put the company out of business and reminded the Commission it is also costing LSP approximately \$10,000 to perform the new modeling at the site. In reviewing the penalty matrix NDEP also considered that the

material being emitted is a fine particulate matter, not toxic material or a hazardous air pollutant.

Commissioner Johnson asked if the facility does its own sampling and if so, does NDEP have the in-house expertise to see that the assumptions are appropriate.

Eric Taxer explained minor sources do not. Major source do their own sampling. The permitting branch has the expertise to review the assumptions.

Commissioner Gifford asked if LSP's original estimate of 0.00166 tons/yr differed in the re-modeling.

Eric could not remember the exact number but it is still insignificant and stressed the importance of recognizing that the modeling technology has changed since the facility was initially permitted. New models available now are more accurate and probably the reason we are seeing the change in the permitting requirements for this specific facility.

Commissioner Coyner noted that 0.00166 tons per year equated to between 2 - 4 pounds modeled to be escaping into the atmosphere on an annual basis from each silo.

Eric reiterated when the permit is written it is based on the information the facility presents in their application, i.e., they will be operating the silos for a certain number of hours and they anticipate these emissions. The permit will then reflect those requirements or those statements that were made in the application but the actual threshold might be somewhere in the 100's of hours. The permit is written specific to information in the application. The facility could conceivably come back, like LSP did, and say they need to operate more hours. A re-modeling will make that demonstration that there would not be an adverse impact to ambient air quality standards for this fine particulate matter and the permit would be reissued for based on those limits identified in the subsequent application.

Vice-chairman Molini asked for public comment. No comments were forthcoming.

Commissioner Turnipseed made a motion that both settlement agreements be accepted.

Commissioner Trenoweth seconded the motion.

The motion was unanimously approved.

Vice-chairman Molini moved to G. IMV Nevada.; Notice of Alleged Violation # 1316

Eric Taxer explained a scheduled inspection in March was conducted at IMV Nevada, a clay processing facility located in the Amargosa Valley in Southern Nevada. The inspection documented excess emissions from a baghouse on the dryer-radial stacker circuit. During the enforcement conference IMV stated that the emissions were a result of a mechanical failure of the baghouse components which resulted in the high opacity. The opacity was roughly around 60% - 80% although an official opacity reading was not conducted. IMV agreed to, and has implemented, the replacement of the defective components in the baghouse and NDEP has agreed that these actions are sufficient to bring the source back into compliance. An administrative penalty was agreed upon in the amount of \$5,040 for four days of violation. In each case the plant was immediately shut down after each emission occurrence. The reason for each occurrence was the plant was trying to find a way to operate until new replacement bags and other parts could be delivered to the facility.

Commissioner Iverson expressed concern with the amount of fine issued to IMV. That facility is located in the Amargosa Valley in an area where the dust blows all the time, and IMV produces a natural substance in the area, a fine silica basically used for kitty litter and PeptoBismo. Only a few residents and a dairy with 7,000 cows are located nearby. IMV was operating with a baghouse but had mechanical problems and their fine is \$5,040. Compare that with LSP, located in the middle of Carson City, they have a baghouse that is not a baghouse and they are not just emitting dust.

Commissioner Gifford asked if Mr. Kennedy from IMV indicated how long they had been operating with the mechanical failure.

Eric Taxer reported that 4 days of violation is reflected in the proposed penalty and we initially requested the maximum penalty of \$10,000 a day for each occurrence but because the company took the initiative to shut the facility down during each occurrence the penalty was reduced.

Commissioner Iverson recognized the difficulty of repairing a baghouse in the middle of the Amargosa Valley. There are no suppliers close by and it takes time to get parts delivered to that remote location.

Eric Taxer agreed there was a problem getting the parts delivered to the facility because of its remoteness and the distribution warehouse did deliver the wrong piece of equipment which further delayed the repair.

Commissioner Coyner noted that the requirement is not to exceed 20%. The inspection indicated a 30% - 40% opacity and asked if that was bad or marginal.

Eric Taxer reported that opacity is not good. 30% - 40% would be roughly half of the light being transmitted through that plume and there was a lot of dust belching from that baghouse while it was operating.

Commissioner Coyner asked Eric if the natural loading in that area on a very windy day would be 40% opacity?

Jolaine Johnson, Chief of the Bureau of Air Quality, explained that opacity is a measurement that you take off of a stack, generally. You measure with your eye how much light is able to pass through the plume. To imagine a 40% opacity in a valley is a tremendous dust storm. Typically, we do not see that or we would be more concerned about the general attainment status of that valley and we are not. Similarly, we don't have non-attainment status in Carson City which is being raised as a comparison.

Commissioner Coyner asked for the attitude of the company. How many other times have you been out there and found them in compliance. Your report notes all other portions of the facility were in compliance and they only have one previous warning.

Eric replied they have been in compliance and this one particular time was an unfortunate circumstance.

Commissioner Coyner stated he was ready to make a motion.

Commissioner Turnipseed asked Counsel if he should abstain from voting because he is involved with litigation with IMV -in a case where we are on the same side.

DAG Mischel advised if he had no pecuniary interest in this company his disclosure does not affect this issue.

Vice-chairman Molini called for public comment relative to IMV Nevada. No comments were forthcoming.

Commissioner Coyner moved to accept the violation but to reduce the penalty to \$1,000.

Commissioner Doppe seconded the motion.

Vice-chairman Molini explained the motion was to accept the violation but to reduce the penalty from \$5,040 to \$1,000.

Commissioner Gifford and Johnson opposed the motion.

The motion carried.

Vice-chairman Molini moved to **H. Uhalde-Lease.; Notice of Alleged Violation # 1330**

Eric Taxer explained Uhalde-Lease operates a gravel pit and placer mine located in the Crescent Valley. An inspection conducted in June documented that a temporary sand & gravel process was being operated by Uhalde-Lease without an air quality operating permit. During the enforcement conference it was noted by Uhalde-Lease that other processes had been previously exempted from permitting requirements however it was explained that his exemption did not apply to the equipment and operation of the portable sand and gravel process which had recently been moved onto the site and was being tested and in addition, the temporary sand and gravel process resulted in fugitive emissions, large clouds of dust that were being blown across Highway 306. Uhalde-Lease agreed to the removal of the sand & gravel equipment from the property as part of the corrective actions. It was also discussed that in the interim time, from when that exemption was initially given to date, that there had been significant changes in the air quality regulations. Uhalde-Lease agreed to submit a permit application for the remaining portions of the facility. An administrative penalty of \$1500 was agreed upon by Uhalde-Lease and by NDEP, specific for the operation of the temporary sand & gravel process.

Commissioner Coyner asked if there had been previous violations.

Eric Taxer explained there had not been previous violations but inspections had not been conducted at this site because there was no air quality permit. A violation typically goes to the permit holder but in this case there was no permit holder so NDEP made the decision to cite the property owner and let the property owner figure it out with his subcontractor.

Commissioner Gifford asked why the subcontractor was not required to have a permit before he could operate his equipment.

Eric Taxer explained a subcontractor typically obtains a permit but this case was weird. The subcontractor was testing a process and was not going to be there for a long period of time. By the time we conducted the inspection they had completed the process and were getting ready to dismantle the equipment.

Vice-chairman Molini called for questions from the public. No comments were forthcoming.

Commissioner Turnipseed made a motion to accept the settlement agreement in the amount of \$1500.

Commissioner Doppe seconded the motion.

Commissioner Iverson opposed the motion.

The motion carried.

Vice-chairman Molini moved to Agenda Item IV: Clark County Health District Emission Offset Program

Jolaine Johnson, Chief of the Bureau of Air Quality - NDEP, recalled at the June 17, 1998, the Commission expressed concern that financial management issues related to the Clark County Health District had been put forth by an independent accountant's report and requested the Division to make an evaluation of whether the Clark County Health District (CCHD) was actually implementing the recommendations presented by the independent accountant's report.

Jolaine distributed her report along attachments to back up the programs that the CCHD has put forth to date. The attachments include a copy of the independent accountant's report. Jolaine noted for the record that evaluation of this program was performed by NDEP staff, namely me, and I don't have expertise in formal auditing programs or formal financial evaluation. That was not a part of the Chemical Engineering curriculum. I am not an expert but in response to your request I simply compared the recommendation presented by the independent accountant to the procedures that the CCHD have implemented in response to those recommendations. I would also like to note that in my review I've learned that the independent accountant firm is scheduled to do a follow-up review of the CCHD's programs sometime in November/December of this year and staff is available today for questions. They have indicated that after the Clark County Health Board has evaluated the new report they will, at your request, present that to you.

The background of the program being evaluated by the independent accountant is:

The CCHD has an Emissions Offset Program. Stationary sources that are subject to the program - and many were grandfathered out of the program - are required to submit on an annual basis their total emissions of pollutants. This offset program establishes a requirement that source is required to offset those emissions, or reduce emissions in another manner, on a two-to-one basis in the valley in hopes of reaching attainment of the ambient air quality standards that continue to be a problem in the Las Vegas Valley. The sources subject to this program meet their obligations for offsets in several ways, but primarily two:

- 1) They simply pay Clark County Health District a fee of \$629 for the offset ton that they owe. That money is placed in a designated account, then paid to the various public works entities and used to pave dirt roads in an effort to reduce overall dust emissions in the valley.
- 2) A source can work in a market system. For example, Las Vegas Paving or some other paving company could go to the public works entity and ask "which roads can I pave that will benefit emissions in the valley"? The public works entity informs the company "these are the roads that are eligible for this program".

Las Vegas Paving may then pave a section of that roadway and earn a credit for emissions reduction. They can keep the credits and use them for their own offsets over the next several years or they can sell them in the marketplace. Other companies who have offset obligations can go to Las Vegas Paving and purchase credits. Typically, in recent years, that selling price has been about \$400 so it is less expensive for the obligated company to buy credits from Las Vegas Paving and submit those to the CCHD then to pay directly the \$629 fee.

This program currently addresses 900 stationary sources in the Las Vegas Valley with an estimated emissions of 2,000 tons per year of carbon monoxide, particulate matter, NOX, VOC's and volatile organics. So on an annual basis they receive credits or fees for 4,000 tons of offsets. Over the life of the program 35 miles of unpaved roads has been paved for an estimated 14,000 tons of emissions credit.

Commissioner Turnipseed asked how that determination was made.

Jolaine explained the tonnage is estimated based on factors provided by the Federal EPA. A book of factors called AP42 provides us with ways to calculate, or estimate, how much tonnage you are going to get if you take an unpaved road with a certain silt content and a certain dryness factor then gives the estimated reductions of emissions if that road is paved. One of the variables is the number of vehicles that travel that road.

Jolaine explained in 1993 to 1996, due to numerous other program priorities - a rapidly growing community, a staff that wasn't keeping up with the number of sources that needed permits and other demands on the agency - the agency failed to thoroughly access these offset emissions. Although legally required to do so, they did not have the staff and resources to completely bill those sources that were subject to the program. That issue became noticed in the public and a reporter has raised substantial issue with the fact that this "money" that was due to CCHD for paving roadways was not collected. In January of 1998 the Board of Health acknowledged there were problems and instructed the CCHD to have an independent evaluation of the program to determine what measures might be necessary to get the program back on track.

In January 1998 CCHD commissioned Stewart, Archibald and Barney LLP, Certified Public Accountants, to a three-year contract to perform the Health District's routine audits of their financial program. Under that contract they are also available for special projects, this special evaluation. Stewart, Archibald & Barney and the CCHD agreed upon the objectives and the procedures for the special program evaluation and a copy of the report in Attachment B. The results of the program evaluation was presented to the Clark County Health Board on May 28, 1998. A copy of the meeting minutes are in Attachment D. During that meeting the Board of Health instructed the CCHD to implement all of the recommendations and requested that Stewart, Archibald & Barney perform an evaluation of the implementation recommendations by CCHD within six months (approximately November of this year).

Questions raised at the June 17 Commission Hearing concerned appointed and elected entities responsible to provide oversight to this and I am pointing out that the Clark County Health Board is just that and that they are providing oversight to this issue.

Pursuant to your request, we asked CCHD to provide details on how they intended to address each of the findings and meet the specific recommendations presented in the report. Their letter response is presented in Attachment E for your reference.

On September 11 I met with numerous representatives of the CCHD's financial management and program management members and representatives of Stewart, Archibald & Barney to evaluate the recommendations and efforts that have been put forth. The atmosphere was very cooperative and helpful to me to learn more about the program and how they are implementing the recommendations. I have listed all of the recommendations the accountants made and provided details on how the CCHD has responded. Generally, I find the CCHD has responded to every one of the recommendations. Some of their fixes are short-term fixes while they are gearing-up to put together a more detailed, strong program to properly manage the program.

I saw two primary improvements:

- 1) A substantial database system that allows them to manage this information in a much better fashion. Trying to manage a database with 900 facilities trading credits - different emissions every year - some are paying and some are buying credits, was a very difficult information management problem. CCHD has implemented a substantial data management program that I think is going to be very effective. I saw information that will allow them to use the database to present various reports that tracks where those emissions are and who is current with their offset obligations.
- 2) The CCHD has hired several new people which allows them to better, more adequately address all of the programs that they are mandated to perform. They are putting specific people and specific efforts on this issue.

Jolaine offered to review the entire report step-by-step and discuss specifics reiterate that she finds the program is in pretty good shape and still being followed through on.

Commissioner Doppe reported he had skimmed the written report which confirms that in each case they have either fully complied or are in the process of complying and that, along with Jolaine's summary, was good enough for him.

Jolaine Johnson reminded the group that a CPA from Stewart, Archibald and Barney - Mr. Glenn Goodnough, and Michael Naylor from the CCHD were present and available for questions.

Commissioner Griswold questioned why this report was not sent to the Commissioners along with their information packet, noting that she would like time to review the information.

Jolaine Johnson reported she wanted the Commission to have a report at this meeting and her time-frame just did not allow her to visit Clark County in time so that she could have the report prepared sooner. Jolaine offered to return to the Commission's next meeting if they wished time to review the report.

Commissioner Griswold agreed that would be helpful.

DAG Mischel suggested that the second accounting statement be made available for the January meeting.

Vice-chairman Molini asked if the Commission has to take action today in relation to Agenda Item V - Petition to Reconsider the Commission's Action of June 17th?

David Cowperthwaite reported that is a separate agenda item but you do have the flexibility to deal with the report at this point or you can defer the decision to the next meeting or you can make it contingent upon the finalization of the report by the accounting firm.

DAG Mischel advised that two separate motions would be required - in respect to this report to accept it and to continue it for further discussion at some future meeting or to reject it and give further direction to the Division.

Separately, the request for reconsideration by Mr. Hall has to be the subject of a separate motion.

Commissioner Iverson reported that he had missed the last meeting but did not understand why the Commission is involved in this. The Clark County Commission oversees all of the different agencies in Clark County, the Health Board oversees their agency and now you have a separate accounting firm doing an audit. I am sure that Clark County must audit their agencies periodically to make sure that internal controls and fiscal management policies are in line. We have internal controls and fiscal management policies and procedures in state government and I don't understand how the Commission gets involved in recommendations dealing with how & when you cash a check, who cashes checks, etc. That is just good management practices in a public entity.

Vice-chairman Molini stated he believed there is a delegation of authority first from EPA to DEP and from DEP to the Clark County Health District.

Allen Biaggi, Administrator of the DEP, clarified that the delegation comes directly from EPA and from the legislature to the CCHD. There is a statutory provision that gives this Commission a certain oversight obligation, albeit very small, of the Clark County Program. The statutory language is whether or not Clark County is operating an adequate program and this Commission became involved. A private citizen in Clark County petitioned the Commission to review the Clark County program to make a determination as to whether or not an adequate program existed in Clark County. At the last meeting the Commission determined that there was an adequate program but also directed the Division to review the independent auditor's report and determine if Clark County was taking the necessary steps to correct the problems.

Commissioner Iverson stated he understood but he still thought the procedural issues were their management's responsibility. Not the Commissions.

Commissioner Molini reported that because the Commission has this statutory responsibility and because Mr. Hall petitioned us to address our statutory responsibility, this is the way that we tried to do it.

Commissioner Doppe agreed and pointed out that after 3 - 4 hours of testimony at the last meeting the Commission concluded that, based on the air quality kind of evidence, there is no way that you can say that Clark County is not doing an adequate job. In the face of increasing population in a confined space they are reducing PM₁₀ and they are reducing carbon monoxide and as an Environmental Commissioner I don't care how their checks get deposited. I thought that our authority under that legislative mandate said "are they doing an adequate job of providing an air quality program". And, if two of the major items are going down in the face of a doubling population it seems to me they are doing an adequate job. Granted, there may be management questions - and I said that to Mr. Hall - you may or may-not have a gripe with that but you need to take it up with the right people but we are not the right people because all we are mandated to do is to determine whether or not they are doing an adequate job. We made that determination at the last meeting.

DAG Mischel asked to clarify this legally. This was essentially a compromised position - the Commission voted not to take this program to hearing which would have been the next step in a supersedence process. Some of the commissioners requested that the Division address some of the issues and that, in my opinion, is consistent with the review program under NRS 445B.500 because they describe a program of including one that is adequately financed.

Commissioner Iverson agreed, in talking about credits, that this body has some input but cautioned the Commission about getting into areas where we don't belong. Adequate is a great word but what the heck does adequate mean.

DAG Mischel admitted the Commission did grapple with that at the last meeting.

Vice-chairman Molini thanked Jolaine for her report and suggested it might be of value to continue this, to not take

action on this report until such time that we have the final report from the independent auditor. That would give everyone an opportunity to read this thoroughly.

Commissioner Doppe reported he was confused as to what action we are supposed to take with this report other than accept it.

DAG Mischel advised that you can't accept it and just close the matter, you are still potentially reviewing to reopen the supersedence process which would create the necessity for a hearing.

Commissioner Doppe asked if DAG Mischel was saying that the issue was not, in fact, decided at the last meeting?

DAG Mischel replied it was decided with the condition that there was a report for the report.

For purposes of Hall's petition the issue is closed. You have decided not to take that particular petition to hearing. But the Commissioner's voted, and it was not unanimous, in addition to not going to hearing on Hall's petition you voted to review, in the form of a report, some of the accounting deficiencies. So you could just accept this report and close the discussion, you could continue it for further discussion at another meeting, or you could reject the report and ask for further information.

Commissioner Johnson pointed out that the minutes of the June 17 meeting Chairman Close stated "to ask the staff to make an examination of the accounting report and report back to us within a reasonable time" and the motion included that because it simply stated "so we would bring this to a close I would so move". There was not an explicit finding for instance, it simply had to do with a large dialog of the chairman's and it was seconded and that was the motion. I simply was not prepared to make finding at that time because I thought there was inadequate information.

Commissioner Johnson requested time to review Jolaine's report and at some future time that there be a noticed time that we review it. If additional information, a new accounting report comes in, fine, but on this report, as my position originally was, I want additional information and additional time to review what has been presented. My original May vote was based upon a wish for extension and that is my position now. I would like to see us continue this to the next meeting or to some meeting within a reasonable time frame and that we have a time to review it.

Commissioner Trenoweth asked Jean Mischel if it is proper to accept a report and then continue it to a future time?

DAG Mischel advised the Commission can accept the report at the completion of your discussion.

Vice-chairman Molini questioned what, in this case, "acceptance of the report" means. It may be the desire of the Commission to do that or it may mean "we have received the report". Some commissioner want the opportunity to read and review the report. A motion could be made that we have accepted the report, we've done some review in concert with our statutory mandate, we find the program adequate and move on - if that is what you want to do.

Commissioner Doppe commented it would be very plausible to say we know you are going to have an auditor's follow-up report early next year so let's take a look at that report as part of our ongoing duties to make sure that they are in compliance with what they are supposed to be doing. My problem with keeping acceptance of this report open implies that we have not already yet taken action on the adequacy of the program and I think that we clearly have. That is not to say that we are not going to continue to keep our eyes open but we have already taken action and I don't want people to be mistaken about that. I think that we should accept this report and read it as part of our on-going job. Then, if another auditor's report comes out in January let's ask them to give us an update. We can continue to do our job but let's not let people think that we haven't made up our mind on what we have so far.

Commissioner Johnson agreed. I am perfectly willing to accept this report and then I would ask that there be an agenda item at the next meeting so that we can review the broader issue and to reaffirm there was a finding that the program is adequate.

Commissioner Doppe made a motion to accept this report and then we bring it back when the auditors are done and take another look at it at that point.

Commissioner Gifford seconded the motion.

Vice-chairman Molini reaffirmed that the motion is to accept this report and to continue our oversight as other information, possibly the accountant's report becomes available. And, if upon review of this report, something is found that causes a Commissioner some grief - bring it up.

Vice-chairman Molini called for public comment.

Lee Dazey asked if the Commission could accept public comment before the decision making?

DAG Mischel advised in the interest of the Open Meeting Law we can take a break from the motion and discussion, receive public comment and then come back.

Vice-chairman Molini reiterated that the motion would be set aside to hear public comment.

Lee Dazey with Citizen Alert in the northern part of the state stated she was attending in behalf of the Las Vegas office. The reason it came to the Environmental Commission was a petition by Mr. Hall and environmental groups in Las Vegas regarding the air quality issue. On behalf of our Southern Nevada staff I would say that the public has not had the opportunity to review the evaluation by the state and I ask that this Commission allow for that possibility to happen before the next hearing and then you can take public comments on the adequacy of the evaluation and the audit before a decision is made.

DAG Mischel clarified that the motion, as it was discussed, is not setting this for a hearing - it would be an agenda item in the normal course of business and public comment could be taken during that time.

Lee Dazey noted because this hearing is in Reno you are not hearing from people who are concerned about this process so I want to impress upon you the need to hear from folks in the southern part of the state. The way I understand this board's decision today is to simply receive this document and keep it open for the potential for comments and concerns and review. Is that correct?

Vice-chairman Molini explained the motion that is on the floor is to accept the report with the understanding that when the Commission has time to review it and after receiving public comment at the next meeting there could be some other action relative to the report if there is some finding that is not acceptable to the Commission.

Commissioner Doppe agreed and reiterated that his motion in no way suggests that we cut off public debate or comment but we need to keep things clear as to what we have done, what our duty is and what we need to be doing in the future and that at any point in time that anybody feels concerned enough I think this item can be brought back in front of this Commission for further discussion.

Vice-chairman Molini called for additional public comment. No comments were forthcoming.

Commissioner Coyner asked if there was a mailing list for public dissemination of this report.

Jolaine Johnson declared she did not have a mailing list but would provide the report to the public upon request.

Commissioner Gifford asked if the motion is interpreted to include a public comment session at the next meeting.

DAG Mischel advised it is required.

Commissioner Doppe reported that his motion says no. The public has the right to comment at every meeting and we have the duty and obligation to listen to what they have to say but I don't envision an agenda item on the next meeting to talk about the public comment about this particular issue. The concept of a meeting to talk about the auditor's report that is coming up is appealing as an agenda item and I suspect that we would have public comment at that point in time but right now I don't know what there is for the public to comment on. Those who are interested should request this report and they can come to the next meeting and talk about it if they so choose.

DAG Mischel reminded the Commission that anybody can petition the Commission for an agenda item.

Commissioner Doppe re-stated the motion. The motion is to accept this report for our individual consideration.

DAG Mischel asked, and not to bring the whole issue back when the auditor's report is in?

Commissioner Doppe replied no. We all have the right to do that to the extent that we think we need to for this report or for any other reason and I am not cutting off public comment or anything. It is simply to accept this report, take a look at it and see if we individually feel like we should be using this to bring it up at the next meeting or whatever. Accept the report, that is the motion.

Commissioner Gifford seconded the motion.

Commissioner Griswold asked if the Commission would automatically hear the auditor's report at the next meeting?

Commissioner Doppe stated that would be a separate motion if you wanted to do that if the report is available.

Vice-chairman Molini stated that anyone who reads this report desires to have further discussion or concern with it can call David and request to see this report as an agenda item at the next meeting but this motion does not make it an agenda item at the next meeting.

The motion was unanimously approved.

Commissioner Griswold made a motion that the next audit report be presented to the Commission when it becomes available.

Commissioner Trenoweth second the motion.

The motion unanimously passed.

David Cowperthwaite informed the Commission the next meeting is scheduled for December 9, 1998, in Las Vegas. The Commission will address a major petition regarding the Chemical Action Prevention Program from the Bureau of Waste Management, a variance request from the U.S. Department of Energy and a letter regarding I/M. A very full agenda. The audit report will be placed on the agenda for a late winter meeting when it becomes available.

Jolaine Johnson asked if the Commission wanted to provide for some sort of public comment, public notice, on the final audit report before it is presented to the Commission.

Commissioner Coyner stated that would be a matter between the Health District and the Board - I don't see that we have oversight on distribution of that report.

Jolaine Johnson explained the board will review the report in a public meeting subject to public notice which should be adequate but I am asking if you wanted additional efforts on our part.

Commissioner Coyner asked only that the audit report be included in the Commission information packet so the

Commissioners have time to review it.

Vice-chairman Molini moved to Agenda Item V: Petition to Reconsider the Commission's Action of June 17, 1998 Regarding Mr. Robert Hall's Petition

DAG Mischel explained the grounds for reconsideration adopted by the Commission in 1995 specifically set forth the nature and purpose of any evidence set forth and shows that evidence is not merely cumulative and could not have been introduced at the hearing. This petition to reconsider alleges that the decision is in error because of an incomplete or inaccurate record. I have reviewed Mr. Hall's petition and I find it inaccurate in terms of meeting those criteria in terms of the regulatory requirements.

Vice-chairman Molini stated the Commission is faced with taking an action of either accepting or rejecting the petition.

DAG Mischel agreed and explained there are additional requirements. Petitions must, and we did use mandatory language in the regulation, identify the portion of the challenged decision which the petitioner deems to be unlawful, unreasonable, or based on erroneous conclusion and to cite the law or record that would support the allegations in the petition.

Commissioner Doppe stated if Mr. Hall had anything new to add he would like to hear it but this letter revisits the same thing we heard in Las Vegas.

Commissioner Gifford made a motion to reject the petition.

Commissioner Trenoweth seconded the motion.

Vice-chairman Molini requested public comment. Hearing none, he called for a vote.

The motion unanimously passed and the petition was rejected.

Vice-chairman Molini moved to Agenda Item VI. Discussion Items.

A. Proposed Environmental Commission INTERNET Website

David Cowperthwaite reported that he and Allen Biaggi are working to provide a site that is inter-linked with the Division's site now under development. The Commission has a depth of information resources and we want the Commission activities, public notices, agendas, petitions, minutes, exhibits, the statutes and the regulations available to the public. Our goal is to demonstrate to you in December or at a late winter meeting the website.

6-B. Status of Division of Environmental Protection's Programs and Policies

David Cowperthwaite reported on the Appeal Hearing in Elko. The Commission was involved in the teleconference of August 27, 1998. Elko County's appeal triggered an area of the regulations called "diffuse source". On Wednesday, September 16, Commissioner's Turnipseed, Doppe and Coyner visited the site of the violation near Jarbidge and on September 17 a formal hearing was held in Elko. The panel:

- 1) Upheld the Division's position in terms of requiring that Elko County needed a permit when they went into that area in the South Canyon;
- 2) Requested that Elko County submit a rolling stock permit application; and
- 3) Requested the Division to move forward post-haste on that application.

An ancillary issue was the recommendation by the Commission regarding the fines that were to be levied by the Division.

As a result of this appeal hearing the panelist saw ambiguity in the regulations and they want to see that distinctly clarified. The Division is preparing a petition that will clarify the definition of rolling stock, what is an emergency circumstance and how that operates with the rolling stock permit which is a water pollution control permit.

Vice-chairman Molini stated he understood that was a settlement conference between Division staff and Elko County and asked what the recommendation of the Division was relative to a fine.

Commissioner Turnipseed interjected that he did not think elements of settlement conferences were public information.

DAG Mischel agreed they were not, unless you have waiver from both parties -

DAG Charles Meredith explained his office, DEP and Elko County were engaged in settlement talks right up to the 15th of September. Elko County is not here so we will not discuss those numbers.

An issue at the appeal hearing was whether this body can dictate or recommend penalties. The water pollution control statutes recommend either civil or criminal penalties but have no language for administrative penalties. It has been the procedure at DEP that once a violation has been determined they enter into settlement negotiations per penalty amount but that amount is only recommended to the party involved. The party can refuse to pay that penalty, make a counter offer to lower the amount, or they can just refuse to make a penalty payment at all. Staff then refers that case to the DAG's office and we proceed in the district court of the county involved at a court level, not administrative level. That is the determination.

DAG Mischel explained that panel who heard the case recommended that the Division not go above \$1,000 in their negotiation.

DAG Meredith explained the problem is the order itself did not have a penalty amount. When water pollution control violations are issued the Division does not specify an amount of penalty because they have determined, on the advice of our office, that they do not have the authority to issue a dollar amount penalty to the defendant. There is generally a cease and desist order and then the parties meet and agree to an amount that is determined by staff. If it is not accepted then it is referred to our office and we proceed through the judicial remedies that we have.

DAG Mischel explained the water pollution control laws are just one example of the difference in the procedures. Hazardous waste and solid waste has similar language. Ms. Mischel asked if Brian Chally had ever issued a written opinion on the office authority.

DAG Meredith reported the DAG's office had an unpublished opinion by Marta Adams, it was an informal guideline with an interpretation of power within water pollution control to issue penalties. The crux of the issue is that legislation puts statutes in air quality which provide for administrative fines and your board can issue those fines. If we interpret that the statutes are absent under the water pollution control sections then there is no provision for administrative fines - only civil or criminal, and the legislative intent is to not have this panel or the Division issue penalties under water pollution control, that those are only determined at the conclusion of a trial in front of a district court judge and that the negotiations that occur prior to that are basically settlement negotiations.

Hypothetically, if a water pollution control statute was violated and staff determined the fine should be \$5,000 they would offer that settlement to the defendant. The defendant could agree to pay, the issue is then confirmed with a settlement agreement stipulation - a consent decree through a district court. If the defendant refuses to pay the settlement amount then we file a complaint to go after the maximum amount under the statutes.

Vice-chairman Molini agreed that is awkward. If the division does not have the authority to levy a fine and the defendant wouldn't pay because there is no authority, then under what grounds would the attorney general file a complaint?

DAG Meredith explained if there has been a settlement agreement and both parties have agreed upon an amount we file a complaint. But concurrently we file a stipulation which generally provides to the court that the parties have agreed to this amount and we are settling the lawsuit at that stage. We also have a consent decree which is signed by the judge that states that the parties have come to an agreement, that defendant X will pay \$5,000 for a violation of

the water pollution statutes. It is filed and then we do not pursue the lawsuit if there has been an agreement. When the amount has not been agreed upon or has not been paid we file the complaint under concurrence, as a regular lawsuit would. Those are the two options that we have been working with.

Commissioner Griswold asked if that has been followed in the past with water pollution violations.

DAG Meredith replied that is almost exclusively the way the water pollution violations have been handled.

DAG Mischel reported there had not been a lot of the liability issues come to the Commission during her 6 years with the Commission. But after live discussion in Elko the Commissioner's issued a recommendation, rather than taking the process away from the Division. If you read the statutes the Commission has no role in the penalty phase, only in reviewing the violation, and if the Division chooses not to put a penalty into the violation order than arguably it is not subject to review by the Commissioners. DAG Mischel suggested the Commission ask for a formal attorney general opinion on this question. They are quite intertwined because the Commissioners will make the findings that would perhaps mitigate the penalty.

Commissioner Doppe explained after two days of investigation the law was reasonably clear, although there's some ambiguity. We see what happened, we know why it happened and if we say "yes, they violated the law" then the county could be facing a \$25,000 per day fine yet we don't have any say-so over that. It put me in a position of trying to figure out ways around that to protect those people. I think the panel did the best we could by suggesting that they impose a \$1,000 fine. We found them in violation, we upheld the order but it put us in a hard spot.

Commissioner Turnipseed summarized the appeal hearing.

In 1995 there was a rain-on-snow event and it caused two landslides, one smaller than the other. The larger would have filled this room with rocks and dammed up the river. The second one was not as big, maybe 6 or 8 feet tall and 50 feet. For 2 years the Forest Service was promising Elko County that they would restore the road in South Canyon. At the trail-head there is a Forest Service turn-around and a restroom that is over-flowing and there is no way to get there to empty it.

After 2½ years had gone by, in June the Forest Service, apparently as a result of a letter from Trout Unlimited, changed their mind and said "we are going to close the road, we are not going to repair it". There are allegations that Elko County did blatantly violate and ignored the law. We didn't have any of that in evidence but none-the-less the Forest Service put a log up across the road that said "road closed". Elko County then crossed the stream with a trackhoe, cleared out the debris in the old channel for a distance of 900 feet, built a pad upon the bank, reached in with the bucket, breached the plug, allowed the water to continue down the old channel. It appeared they did a pretty good job of avoiding knocking down trees and everything that was adjacent to the old channel. Instead, the water washed the road out in about 3 places and was running down the road in another 3 places.

Commissioner Turnipseed reported he had not seen the letter from Trout Unlimited and he was not a fisheries biologist but he is a fly fisherman and it appeared to him that the water in the original channel was much better trout habitat than running down the road. At any rate, the order simply said "cease and desist, get the equipment out of the stream and appear at this show cause hearing". Without question all of the witnesses testified that somebody needs to get up there and finish the work that they started so the panel added two conditions to the order:

- 1) That they apply for a permit within 60 days.
- 2) That NDEP process that as expeditiously as possible, put whatever conditions they would normally put on the permit and if they had to reject it to state the reasons why, whether it is Corps of Engineers, whether it is the Division of Wildlife Service.

Testimony was that the silt cleared up within 3 hours when they did the work. Where the water is going down the road or has washed the road out it is against the bare dirt bank so as that continues to erode that dirt bank it will put much more sediment in the stream than what they put in by their work.

DAG Mischel clarified for the record that this discussion is only informational.

Commissioner Turnipseed stated what we are talking about here is whether we went beyond where we had authority to go with the recommendation of fine.

DAG Meredith reiterated that the panel did confirm the fact that there was a violation and that Elko County did not get, but needed, a rolling stock permit.

Commissioner Iverson noted that in the area of waste and water the Commission has no authority to do what we do in air quality settlements and that is to take a look at the penalties that have been assessed, why they were assessed and to look at the settlement agreements.

DAG Meredith explained it is unfortunate that the way the statutes are drafted present those differences. In water pollution, you have two separate types of penalties, criminal or civil. The criminal ones are easy, that goes to the District Court or the District Attorney in the county or it could be referred to our office for criminal sanctions. Interpretation has to be used with the term civil penalties - does it include administrative, which would be the Environmental Commission, or is it strictly within the purview of the District Court where a judge determines those fines? To our view, legislative intent put it in the air quality section for this board to affirm, change or modify but the legislature does not put it in the water pollution control or hazardous waste regulations, so the intent was not to have this panel issue penalties.

DAG Mischel explained a bill draft would attempt to rectify that.

DAG Meredith stated it is confusing to the public and other entities when this Commission has the power in one section of the statutes but not under the other sections.

Commissioner Iverson noted that new regulations are coming from EPA regarding dairies and the feedlot operators with the concentrated feeding operation program. For the first time dairies must be permitted and the Division of Agriculture has 2 dairies permitted and 12 that needs permits. He would like to see legislation that gives this Commission the opportunity for involvement in some of those processes as they go along, even though it is not air quality.

Commissioner Johnson informed the Commission that he served in the legislature and tried to modify some portions of what happens to the fines that you collect and there was legislative intent to keep it away from non-elected people. The argument could be made that this Commission has demonstrated the ability to deal with these issues on the air basis and it would be appropriate to seek jurisdiction in these other areas, administrative fines. Legislative personalities have changed and the ability to demonstrate the rationale basis for including the power within this Commission could, and probably should be made.

Commissioner Doppe suggested contacting Dean Rhodes to introduce a bill draft.

Commissioner Turnipseed included Assemblyman Carpenter.

Vice-chairman Molini asked if the Commission wanted to direct the Division or David to put together a bill draft request that parallels the administrative fining capability of the air quality statutes and see if we could get it in under the deadline.

Commissioner Johnson noted the Senate Natural Resources - or the Public Lands Committee is still yet to meet and they could ask Senator Rhodes to consider a bill draft in this area. We can't really take action now because of notice so I will talk to the Senator.

DAG Mischel suggested working on the language and presenting it to the Commission in December.

Commissioner Johnson agreed that getting the request for a bill draft is what we are really talking about and he thought the Public Lands Committee would probably do that.

Vice-chairman Molini questioned if they would want to enhance our administrative authority. It wouldn't have helped them in the Elko case. It would have hindered them probably.

Commissioner Turnipseed wasn't sure because based on the court and the maximum fine of \$25,000 a day it might have ended up being a \$50,000 fine.

Commissioner Doppe explained that would have been unfortunate because there is a lot more than meets the eye going on in this particular issue that we were able to discover.

Commissioner Griswold noted there are political issues.

Commissioner Coyner questioned, regarding water quality, if the settlement can come before the law suit the settlement requires, how that is determined.

DAG Meredith explained a penalty panel - 5 staff members - meets, refers to a penalty matrix, plugs in all the factors and presents that number to the defendant.

Commissioner Coyner noted since most of the situations don't go forward to a judge and jury, non-elected officials are already negotiating the vast majority of fines and settlements.

DAG Mischel explained those fines would ultimately be ordered by the court but the court does not necessarily question it.

Commissioner Coyner noted the hard-nosed decision happened in that room. We listened to testimony, we invested time, money and effort to weigh all those things to come up with a reasonable solution to a problem. It was disheartening to the panel and that is why we recommended the maximum fine not exceed \$1,000. It was a sense of fairness that we had come to after spending that time and effort involved. That is basically a signal for that penalty panel to consider. That is the perfect way the process should work rather than being a formalized "we can do but you can't do" type of thing.

DAG Meredith reported because there has not been that many appeals to this Commission, the process with staff has been working and these rarely go to court in a contested case. We settle most, they pay the fine, we do the paperwork with the court, and we move on because generally they really are in a sense strict liability violations. Challenging whether or not there has been a violation is generally not what the defendant is appealing or trying to argue.

Commissioner Johnson noted it is though, heavy-handed in the sense that as a violator you accept the fine that is assessed by the penalty panel before you go to court and face the \$25,000 a day fine. Attorney fees would probably run more than the penalties assessed. And from the other side the penalty panel may not assess high enough in the strictest sense of what the public would choose to see a violator pay and there is no provision for public comment about the issue.

DAG Meredith explained that staff has the option to refer it to our office immediately without any penalty discussion and we would go right through the court system and get it taken care of that way.

Commissioner Turnipseed asked, when you reach a settlement, essentially you file a complaint and a motion to dismiss at the same time on agreed upon terms and isn't that just taking up time with the court?

DAG Meredith explained all that does is to make sure that the parties agree to a number. We would reactivate the case if for some reason the defendant decides not to pay the fine we would have the complaint in process and be ready to proceed with the case civilly. It is assigned a case number and the whole works.

Commissioner Iverson stated he was not convinced the process works because the cost of going to trial is so expensive for the defendant. The state pays for our deputy attorney generals and for staff - we do not pay out of our pockets. If we did the settlements would be even lower. Does it work or is it forced to work? The guy on the outside has no choice.

DAG Meredith explained that at the penalty level the attorneys aren't involved. Our office does not generally get involved until the talks break down and the case is issued to our office to instigate the lawsuit. That is one of the benefits, the defendant makes his case the show cause meeting to determine whether or not the violation has occurred.

Vice-chairman Molini asked if the Commission wanted an agenda item to look at the statutory construction relative to these penalties as they relate to water and other elements.

Commissioner Griswold stated she was not sure that is necessary. We have legislators who are very aware of the situation and I am willing to let them make the determination.

Commissioner Turnipseed replied that Assemblyman Carpenter made a statement that we need some law that makes this whole process reasonable so he may do it on his own.

Commissioner Johnson stated that what Assemblyman Carpenter's proposes may not be the will of the Commission so having an agenda item to discuss the language that we would like to see would be appropriate.

Commissioner Griswold expressed concern that we are blazing new ground here that we haven't been into before and wondered if it is wise.

DAG Meredith added that staff does have 25 - 30 years of experience in dealing with these violations and one reason the penalty panel theme was introduced was the attempt to get uniformity and consistency in violations so that it could be better administered.

Commissioner Turnipseed recalled the penalty panel was created as the result of an audit finding. There was no procedure in place to determine these fines and the auditors could not see why one would be \$500 and one would be \$5,000.

Commissioner Doppe interjected that the panel's problem in Elko was we had to rule guilty or not guilty and we had no idea what that penalty discussion was because it was all privy to negotiation discussion.

Commissioner Doppe asked to place this item on the agenda at the next meeting or the one after and asked that the Commission invite Assemblyman Carpenter to attend that meeting.

DAG Mischel advised that is all we need. We do not need a motion.

Vice-chairman Molini moved to Agenda Item VI-B: DEP Programs and Policies

Verne Rosse, Deputy Administrator for the Division, explained he did not have anything to present relative to programs or policies but he did want to express appreciation to Willie on behalf of the Division for his years of service to the Commission, for his interest in protecting the environment and for his support of the Division's

environmental programs.

Vice-chairman Molini moved to Agenda Item VI-C: General Commission or Public Comment

Melissa Smith reported she resides in Churchill County, has a business in Fernley, is a property owner in Washoe County and has been in Nevada for over 20 years. Melissa expressed concerns with some of the issues that were raised today. Regarding Frehner Construction, I have been very familiar with Frehner back to when they took over the Helm's Pit at the 102 Ranch at Tracy Clark. They dug too close to the river, the berm broke and now the pit is flooded and is now part of the Truckee River. It is my understanding it is going to be turned over to become state property. Frehner is now starting to re-pave Highway 50 between Fallon and Fernley and they are going to be using an area east of the railroad tracks on the north side of the road - an alkali flat - to store all their heavy equipment. There is a conveyor belt in there and God knows what else they are going to bring in there. I know some of their past track record as far as air quality concerns and I am just wondering if we can expect more air quality violations from this project? I know from talking with Don Del Porto at NDEP to contact air quality and I do have his phone number.

Now Granite, bless their heart, they sand-blasted my truck and I got it painted. That was pretty good and that happened at Patrick. I don't know whatever became of that, fines or what but that was a mess. You could not see, you couldn't even see to stop.

We are experiencing a big boom in Fernley with all this Wade Development, Quebecor, Stanley Tools and a bunch of other things going on and the housing industry is growing incredibly and there are some air quality concerns out there.

I have a little drive-through espresso shop so I am interested with PM_{10} . DRI did a PM_{10} study about 2 years ago - it showed where it is kind of high so I would like to ask if there is a way to put some sort of a cap on Class I source emissions?

We're directly down-wind from the Truckee River Corridor. I did a study when Pinion went on line of all the pollutants that came down the Truckee River Corridor and there are tons and tons of stuff coming down that Corridor, right into Fernley, to Wadsworth and then out towards Nixon. Nevada Cement is a Class I source they have had many, many past violations. Quebecor, a huge printing operation, was just permitted as a Class I Source and Valley Joist is going through the permit process - the public comment period just closed on that. I believe Louisiana Pacific is a Class I. They have a baghouse that is neglected and does not get cleaned from time-to-time and that is just really messy. Is there anything we can do to put a cap on pollutants?

Vice-chairman Molini asked if she meant a cap by individual Class I source or do you mean the total Truckee River Corridor cumulative impact?

Melissa Smith agreed, the cumulative impact. I know that every Class I Source permitted is able to emit certain tons per year per pollutant but if you look at the whole thing it gets kind of messy. Driving into Reno today there is a nice brown haze and I don't think that would be nice in Fernley. In the past there has been a green/brown haze over Wadsworth - that is because everything sort of accumulates right over Wadsworth and when the Sierra Chemical blast occurred this past year I watched the smoke, it came over the mountain and dissipated right over Wadsworth and it wasn't very pretty.

Melissa Smith asked for Mr. Turnipseed's attention on a water matter. The navy is once again trying to transfer all the water rights in Dixie Valley out to the geothermal plant and I know that the recharge in that valley is quite low - I did not bring the figures -

Commissioner Turnipseed presented Ms. Smith with his business card and asked her to call his office and he would have the facts at hand.

Melissa Smith agreed to do that and returned to the air quality issue. There is a new chaff study released by the navy and the chaff is like an air pollutant, it doesn't dissipate, it doesn't dissolve in the air and the new chaff study reports that it is littering Dixie Valley and it if you were to drive out to Dixie Valley you could find it on either side of the

road. It is part of the land that they would like to withdraw and that scares me because if they do get that land, if they do withdraw it, then they will heavily pollute it with the chaff and according to all the chaff reports I have read it is not a good substance for animals or humans.

Jolaine Johnson explained if you exceed the National Ambient Air Quality Standards then you get into stronger programs that new sources can't come in that are going to aggravate that problem. The Division, under the direction of the regulations established by this Commission, looks at the potential impact of a new source in any community, building and polluting at the level that they propose to pollute, and we determine whether that will cause an exceedence of the National Ambient Air Quality Standard. If it does, the regulations indicate that we are not allowed to issue that permit. We then go back to the negotiating table with the source and explain they must come up with tighter controls on their facility or perhaps tell them they won't even be able to locate there. We have had very few circumstances where we have had to say "no you can't come".

To answer Ms. Smith's question in general, there is a cap created by the National Ambient Air Quality Standard for various pollutants and we evaluate a new source coming into the area to determine if they will cause an impact, The Fernley area is experiencing substantial growth, particularly with industry and there will come a time when those additional sources of certain kinds of pollutants won't find room in the air shed and we won't be able to permit them. If Ms. Smith is asking maybe for a lower threshold, that would be up to this Commission to establish something below the National Ambient Air Quality Standards that have been set by the EPA for health-based issues related to those pollutants.

Commissioner Gifford asked if their models are capable of incorporating everything that is already there and adding the proposed emissions of the source so it is a combined picture.

Jolaine replied we don't necessarily take every source in the area and put them into a model although we are developing our capability to do that. We have substantial monitoring data, real time data for existing conditions in that community and those background levels are added to any potential new sources impacted to determine if that threshold will be met.

Vice-chairman Molini asked for general comments from the Commission or additional business.

David Cowperthwaite, recognizing that this was Mr. Molini's final meeting, presented him with a letter of appreciation signed by the Commissioners in attendance, a shirt that reads "Jarbidge loves bull trout" and a commemorative two-by-four. Mr. Cowperthwaite thanked Mr. Molini for his years of service and dedication to the Commission.

Commissioner Griswold recognized that Willie's retirement leaves her as the senior member of the Commission and applauded Willie for his service of excellence that has set a standard and gained this Commission a great deal of respect.

All members agreed that Mr. Molini will be missed.

Vice-chairman Molini commented his involvement and service with the Commission has been a pleasure and that he had told his successor Terry Crawford what a learning experience it is and an opportunity to learn a great deal about a different aspect of our environment than we tend to focus on in the Division of Wildlife. During my tenure, the Commission has changed complexion but does a great job for the people in the State of Nevada.

Vice-chairman Molini adjourned the meeting at 12:50 p.m.

INDEX

Adams	22
adopted	1, 2, 4, 21
agenda	1, 2, 4, 14, 16, 18-21, 26, 27
Amargosa Valley	10-12
Ames	5
Attorney General	1, 23
audit	16, 19, 20, 27
BACT	10
Biaggi	6, 16, 21
Carpenter	25-27
Clark County Health District	14-16
Class I Source	27, 28
Close	1, 12, 17, 18, 23, 27
Commission	1, 2, 4, 7, 8, 11, 15-29
compliance	1, 2, 5, 7-9, 11, 12, 18
Cowperthwaite	1, 16, 20, 21, 29
Coyner	1, 3, 5-7, 9-13, 19-21, 25
Crawforth	29
Dazey	18, 19
December 9, 1998	20
Decker	6
Denison	2, 3
DEP	1, 2, 16, 22, 27
Division	1, 6, 8, 14, 16, 17, 21-25, 27-29
Doppe	1, 7, 8, 13, 15, 17-21, 23, 25, 27
dust	8, 9, 12-14
Elko County	21-24
emission	4-6, 8, 9, 11, 14
exceedence	28
Fallon	27
Fernley	27, 28
fine	6-9, 11-13, 18, 22-26
Foreland	5, 6
Frehner	6-8, 13, 27
Gifford	1, 5, 6, 10-13, 18-21, 29
Granite	7-9, 13, 27
Griswold	1, 5, 7, 9, 16, 20, 23, 25-27, 29
Hall	16, 17, 19, 21
hazardous waste	1-3, 22, 24
IMV Nevada	11, 12
INTERNET	21
Iverson	1, 3, 7, 8, 10, 12, 13, 16, 17, 24, 26
Jarbidge	21, 29
Jolaine Johnson	10, 12, 14, 16, 19, 20, 28, 29
Jones	1
LCB	1, 2, 4, 5
LSP Products	9
MACT	4, 5

Melissa Smith	27, 28
Meredith	22-27
Minerals	6
Mischel	1, 3, 7, 8, 10, 12, 16-25, 27
Molini	1, 2, 4-9, 11-14, 16-23, 25-29
motion	1, 2, 4-6, 8, 9, 11-13, 16, 18-21, 26, 27
National Ambient Air Quality Standards	28
Naylor	16
NMA	2
NOX	14
NRS 445B.500	17
offset program	14
oversight	15, 16, 18, 20
penalties	7, 22-24, 26
permit	3-7, 9-11, 13, 21, 22, 24, 28
Petition 98008	1, 2
Petition 98009	2, 4
Polystyrene	9, 10
public notice	20
rationale	25
RCRA	2
regulation	2-4, 6, 21
Robinson	9
Rosse	27
Stewart, Archibald and Barney	15, 16
Taxer	5-13
Trenoweth	1, 2, 4-6, 8, 11, 18, 20, 21
Trent	1, 2
Truckee River Corridor	27, 28
Turnipseed	1-6, 8-14, 16, 21-28
Uhalde-Lease	13
Violation # 1307	9
Violation # 1316	11
Violation # 1320	5
Violation # 1330	13
VOC's	14
workshops	1, 3