NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF October 3, 1995

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES	**REGULATORY**
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

A G E N D A

NEVADA STATE ENVIRONMENTAL COMMISSION
PUBLIC HEARING

The Nevada State Environmental Commission will conduct a hearing commencing **9:00 a.m., on Tuesday, October 3, 1995** at the Grant Sawyer State Office Building, Fourth Floor Conference Room 4412-1, 555 East Washington Avenue, Las Vegas, Nevada.

This agenda has been posted at the Grant Sawyer State Office Building in Las Vegas, Nevada; the Washoe County Library in Reno, Nevada; the Nevada State Library and the Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this hearing was published on August 31, September 6, September 12, 1995 in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

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

I. Approval of minutes from the June 20, 1995 meeting. * ACTION

II. Regulatory Petitions * ACTION

Petitions 95003, 95006, 95008, 95009, 95010, 95011, 95012, and 95013 have been previously adopted as temporary regulations.

1. **Petition 95011 (R-033-95)** permanently amends the Nevada Administrative Code (NAC) 445B.875 to 445B.897 "Practice Before the Commission" to add a new provision to clarify procedures and establish the conditions for rehearing or reconsideration of Commission appeal hearings.

2. **Petition 95008 (R-030-95)** permanently amends NAC 444.570 to 444.7499 the solid waste regulations to extend the date by which disposal sites must obtain financial assurance from April 9, 1995 to April 9, 1997. In addition, reference to incorrect citations of the Nevada Administrative Code in NAC 444.684, 444.6852 and 444.731 are corrected. NAC 444.692 is amended to remove a inappropriate reference to the term "solid sewage". NAC 444.711 and 444.7481 are also proposed to be amended to clarify the criteria to comply with ground water monitoring requirements for Class II disposal sites.

3. **Petition 95013 (R-035-95)** permanently amends Nevada Administrative Code 444.570 to 444.7499 "Disposal of Solid Waste". The proposed regulation grants a two year extension of the general effective date for new landfill standards for Class II solid waste landfills from October 9, 1995 to October 9, 1997.
4. **Petition 96001 (R-027-95)** permanently amends the hazardous waste regulation NAC 444.8427 to 444.948. NAC 444.8427, 444.84275, 444.850, 444.8632 and 444.9452 are amended to update the effective date of federal provisions to July 1, 1995. The proposed amendments modify the regulations pertaining to polychlorinated biphenyls (PCB's) to repeal the state code numbers and the requirement for submission of an annual report to the state by PCB generators. NAC 444.9455 and 444.948 are proposed to be repealed. (A new petition.)

5. **Petition 95006 (R-028-95)** permanently amends NAC 445A.243 and 445A.244 of the water pollution control regulations to be consistent with current federal regulations. NAC 445A.243 is proposed to be amended by deletion of the requirement that effluent limitations be expressed by weight in discharge permits. NAC 445A.244 is proposed to be repealed and supplanted with amendments to provide specific authority for the water pollution discharge permits to include compliance schedules. NAC 445A.297(b) is amended to delete the requirement that U.S. EPA's Regional Administrator provide prior approval of point source discharge mixing zones.

6. **Petition 95009 (R-031-95)** permanently amends NAC 445A.070 to 445A.348 to revise and establish water quality standards for the lake and tributaries of the Nevada portion of the Lake Tahoe Basin. The new standards prescribe the beneficial uses and numeric criteria for: total nitrogen; nitrite; temperature; a biological "escherichia coli" value; total dissolved solids; sulfates; turbidity; sodium absorption; ph; total phosphates; ammonia; and chloride. NAC 445A.122 amended to add extraordinary and aesthetic value and enhancement of downstream waters as standards applicable for beneficial uses.

7. **Petition 95003 (R-025-95)** permanently amends Nevada Administrative Code 486A.030 to allow the Administrator of the Division of Environmental Protection to determine whether fuels not previously adopted by Commission meet the clean alternative fuel definition. The regulation also adds new language to NAC 486A that defines the standards to determine whether a fuel is a clean alternative fuel.

8. **Petition 96002 (R-104-95)** permanently amends NAC 486A.030 by making the definition of alternative fuels consistent with NRS 486A.030. The petition deletes language that qualifies reformulated gasoline and reformulated diesel as having to exceed standards for gasoline or diesel fuels commonly available to the general public. (A new petition.)

9. **Petition 95012 (R-034-95)** permanently amends 445B.400 to 445B.735 to eliminate the requirements and references for the vehicle emission "enhanced inspection" program previously adopted by the Commission scheduled to be implemented in the Las Vegas Valley. NAC 445B.730, 445B.732 and 445B.733 is repealed and 445B.592 is amended to exempt new motor vehicles from the requirements of an emissions inspection until the third registration.

10. **Petition 95010 (R-032-95)** permanently amends NAC 445B.001 to 445B.395, the state air pollution regulations. This petition consolidates temporary petitions 95001, 95002, 95004, 95005, and 95010. The petition modifies the effective dates of Nevada's Air Quality Operating Permit Program by extending the date of implementation from November 14, 1994 to a date in the future based on the U.S. EPA Administrator's approval of program. In addition, references to Permits to Construct are being deleted and supplanted with references to Operating Permits. The petition amends NAC 445B.221 by the adoption by reference of the provisions of 40 C.F.R Part 72, the acid rain provisions of the Clean Air Act. Also amended is NAC 445B.362 and 445B.363 by changing the formula for calculating emissions of particulate matter (PM_{10}). The proposed amendments modify and clarify references to "air contaminant" or "air pollutant" to address "regulated air pollutant". In addition, references to "source" are proposed to be changed to "stationary source" or "major source". The term portable source in NAC 445B.137 is proposed to be deleted and substituted with "temporary source". The reporting of excess emissions in NAC 445B.232 is clarified and various provisions in the regulations are extended beyond current sunset dates. NAC 445B.327 is proposed to be clarified such that service and maintenance fees are charged by emission units and not by permitted sources. NAC 445B.295 is proposed to be amended to provide authority to the Director to establish a list of insignificant activities based upon "de minimis" emissions.

III. Settlement Agreements on Air Quality Violations * ACTION

A. Hycroft Resources & Development,Inc.: Notice of Alleged Violation # 1177
B. Cind R Lite Block Company: Notice of Alleged Violation # 1183

IV. Diesel regulatory program update and general direction * ACTION

V. Revisions to Form #1 of Commission (Petitions to Commission) * ACTION

V. Discussion Items

A. Legislative Update
B. Small Business Program Update and Compliance Advisory Committee
C. Status of Division of Environmental Protection's Programs and Policies
D. Past and Future Meetings of the Environmental Commission
E. General Commission or Public Comment

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 extension 3118, no later than **5:00 p.m. September 28, 1995.**

NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:00 a.m. on Tuesday, October 3, 1995**, at the **Grant Sawyer State Office Building, Fourth Floor Conference Room 4412-1, 555 East Washington Avenue, Las Vegas, Nevada**.

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

Petitions 95003, 95006, 95008, 95009, 95010, 95011, 95012, and 95013 have been previously adopted as temporary regulations.

1. **Petition 95003 (R-025-95)** permanently amends Nevada Administrative Code 486A.030 to allow the Administrator of the Division of Environmental Protection to determine whether fuels not previously adopted by Commission meet the clean alternative fuel definition. The regulation also adds new language to NAC 486A that defines the standards to determine whether a fuel is a clean alternative fuel.

There will be no anticipated adverse economic impact to business in the short or long term. The benefit could be substantial to the company introducing a new fuel if it gains wide spread acceptance. This would present a long term economic benefit with no short term economic benefit expected. The public should not experience any long or short term economic adverse impact. In addition there would not be any short term benefit, however, the long term benefit could be substantial. Benefits on long term could be great if the company is Nevada based in regards to economics to the state. The benefit of cleaner air would mean a reduction in air pollutants. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

2. **Petition 95006 (R-028-95)** permanently amends NAC 445A.243 and 445A.244 of the water pollution control regulations to be consistent with current federal regulations. NAC 445A.243 is proposed to be amended by deletion of the requirement that effluent limitations be expressed by weight in discharge permits. NAC 445A.244 is proposed to be repealed and supplanted with amendments to provide specific authority for the water pollution discharge permits to include compliance schedules. NAC 445A.297(b) is amended to delete the requirement that U.S. EPA's Regional Administrator provide prior approval of point source discharge mixing zones.

The only economic effect upon the regulated community is that the compliance schedule allows the permittee a period of time to come into compliance with permit conditions. This, could possible eliminate the need for enforcement actions which could include fines. There is no estimated economic impact on the public, either adverse or beneficial, nor immediate or long-term. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

3. **Petition 95008 (R-030-95)** permanently amends NAC 444.570 to 444.7499 the solid waste regulations to extend the date by which disposal sites must obtain financial assurance from April 9, 1995 to April 9, 1997. In addition reference to incorrect citations of the Nevada Administrative Code in NAC 444.684, 444.6852 and 444.731 are corrected. NAC 444.692 is amended to remove a inappropriate reference to the term "solid sewage". NAC 444.711 and 444.7481 are also proposed to be amended to clarify the criteria to comply with ground water monitoring requirements for Class II disposal sites.

   By potentially decreasing the cost of meeting the financial assurance requirements for Class I sites, the adoption of this amendment may help to reduce the public costs of solid waste management. There is no anticipated economic impact on the public. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

4. **Petition 95009 (R-031-95)** permanently amends NAC 445A.070 to 445A.348 to revise and establish water quality standards for the lake and tributaries of the Nevada portion of the Lake Tahoe Basin. The new standards prescribe the beneficial uses and numeric criteria for; total nitrogen, nitrite, temperature, a biological "escherichia coli" value, total dissolved solids, sulfates, turbidity, sodium absorption, ph, total phosphates, ammonia, and chloride. NAC 445A.122 amended to add extraordinary and aesthetic value and enhancement of downstream waters as standards applicable for beneficial uses.

   The proposed revisions are not expected to have any anticipated immediate or long term economic impact on the regulated community. There is no estimated economic impact on the public, either adverse or beneficial, nor immediate or long-term. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

5. **Petition 95010 (R-032-95)** permanently amends to NAC 445B.001 to 445B.395, the state air pollution regulations. This petition consolidates temporary petitions 95001, 95002, 95004, 95005, and 95010. The petition modifies the effective dates of Nevada's Air Quality Operating Permit Program by extending the date of implementation from November 14, 1994 to a date in the future based on the U.S. EPA Administrator's approval of program. In addition, references to Permits to Construct are being deleted and supplanted with references to Operating Permits. The petition amends NAC 445B.221 by the adoption by reference of the provisions of 40 C.F.R Part 72, the acid rain provisions of the Clean Air Act. Also amended is NAC 445B.362 and 445B.363 by changing the formula for calculating emissions of particulate matter (PM_{10}). The proposed amendments modify and clarify references to "air contaminant" or "air pollutant" to address "regulated air pollutant". In addition references to "source" are proposed to be changed to "stationary source" or "major source". The term portable source in NAC 445B.137 is proposed to be deleted and substituted with "temporary source". The reporting of excess emissions in NAC 445B.232 is clarified and various provisions in the regulations are extended beyond current sunset dates. NAC 445B.327 is proposed to be clarified such that service and maintenance fees are charged by emission units and not by permitted sources. NAC 445B.295 is proposed to be amended to provide authority to the Director to establish a list of insignificant activities based upon "de minimis" emissions.

The proposed amendments to the NAC are anticipated to have a short-term beneficial economic impact on the regulated community by delaying the implementation of the air quality operating permit program. This deferral will eventually require a substantial effort on the part of the regulated community to prepare and submit appropriate Title V applications. The proposed amendments to the NAC will allow regulated facilities will pay less fees in FY 1996 and FY 1997 than currently projected. Each regulated facility will pay approximately the same fee in each of these fiscal years as was paid in FY 1995, depending upon changes in the respective facility's operations, emissions and permitting requirements. The proposed amendments only impact those sources which emit pollutants acid rain pollutants (sulfur dioxide and oxides of nitrogen) in significant quantities and will result in increased monitoring efforts on the part of the affected sources. Applicability is generally limited to fossil fuel fired electric generating units. Since the acid rain provisions are requirements of the federal Clean Air Act, these sources will be subject to these provisions at the federal level if no action is taken by the State regulatory agency. The amendments may result in increased rate costs to electricity consumers as implementation costs may be passed along by the electric generating companies. However, because this is already a federal requirement for electric utilities subject to the acid rain provisions of the Clean Air Act, no additional impact is expected as a result of this regulation amendment. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

6. **Petition 95011 (R-033-95)** permanently amends the Nevada Administrative Code (NAC) 445B.875 to 445B.897 "Practice Before the Commission" to add a new provision to clarify procedures and establish the conditions for rehearing or reconsideration of Commission appeal hearings.

   Since this regulation changes the rules of practice of the State Environmental Commission no adverse or economic beneficial economic impact is expected. There is no estimated economic impacts on the public, either adverse or beneficial, nor immediate or long-term. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

7. **Petition 95012 (R-034-95)** permanently amends 445B.400 to 445B.735 to eliminate the requirements and references for the vehicle emission "enhanced inspection" program previously adopted by the Commission scheduled to be implemented in the Las Vegas Valley. NAC 445B.730, 445B.732 and 445B.733 is repealed and 445B.592 is amended to exempt new motor vehicles from the requirements of an emissions inspection until the third registration.

   This regulations repeals a stringent and costly vehicle emission program. The adopted amendments will provide an economic benefit to stations offering services in the Las Vegas Valley. The I/M 240 equipment, currently required by regulation, will cost about $ 130,000 per lane. The proposed program will require stations to purchase equipment costing an estimated $ 20,000. Additional saving will be realized by not incurring costs of additional land and equipment or building modifications. The inspection stations will be more available and the overall cost to the public will be greatly reduced. The public will also benefit by the certification of mechanics through more competent vehicle repairs. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

8. **Petition 95013 (R-035-95)** permanently amends Nevada Administrative Code 444.570 to 444.7499 "Disposal of Solid Waste". The proposed regulation grants a two year extension of the general effective date for new landfill standards for Class II solid waste landfills from October 9, 1995 to October 9, 1997.

   Adoption of the Class II extension for landfills will have no economic effect on the regulated businesses. Cost to comply with existing regulations will be deferred for an additional two years. Adoption of the Class II extension will lessen the short-term economic burden of compliance with new landfill standards within rural communities. There is no additional cost to the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. This regulation does not impose a new fee or increase an existing fee.

9. **Petition 96001 (R-027-95)** permanently amends the hazardous waste regulation NAC 444.8427 to 444.948. NAC 444.8427, 444.84275, 444.850, 444.8632 and 444.9452 are amended to update the effective date of federal provisions to July 1, 1995. The proposed amendments modify the regulations pertaining to polychlorinated biphenyls (PCB's) to repeal the state code numbers and the requirement for submission of an annual report to the state by PCB generators. NAC 444.9455 and 444.948 are proposed to be repealed.

There is no anticipated economic short or long term adverse impact on business. The regulation should make it easier for affected businesses to comply by the simplification of requirements. The public should not experience any anticipated long or short term adverse economic impact. In addition there would not be any long or short term anticipated economic benefit. No additional cost for enforcement is anticipated. The proposed amendments are consistent with those of the federal government and will allow the State to implement the RCRA program in lieu of the federal government. There are no other state or government agencies which the proposed regulation overlaps or duplicates. This regulation does not impose a new fee or increase an existing fee.

10. **Petition 96002 (R-104-95)** permanently amends NAC 486A.030 by making the definition of alternative fuels consistent with NRS 486A.030. The petition deletes language that qualifies reformulated gasoline and reformulated diesel as having to exceed standards for gasoline or diesel fuels commonly available to the general public.

There is no anticipated short or long term adverse economic impact on business. Additionally no anticipated long or short term economic benefit is expected. The public should not experience any long or short term adverse economic impact. In addition there would not be any anticipated long or short term economic benefit. No additional cost for enforcement is anticipated. There are no other state or government agencies which the proposed regulation overlaps or duplicates. This regulation does not impose a new fee or increase an existing fee.

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

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

Persons wishing to comment upon the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada. 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, Carson City; the Division of Environmental Protection, 333 West Nye Lane - Room 128, Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas, Nevada 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. Listed below are the locations where the public notice and regulations will be available for inspection and copying:

Carson City Library, 900 North Roop Street, Carson City;
Churchill County Library, 553 South Maine Street, Fallon;
Las Vegas Library, 833 Las Vegas Blvd. North, Las Vegas;
Douglas County Library, 1625 Library Lane, Minden;
Elko County Library, 720 Court Street, Elko;
Goldfield Public Library, Fourth & Crook Streets, Goldfield;
Eureka Branch Library, 10190 Monroe Street, Eureka;
Humboldt County Library, 85 East 5th Street, Winnemucca;
Battle Mountain Branch Library, 625 Broad Street, Battle Mountain;
Lincoln County Library, 93 Main Street, Pioche;
Lyon County Library, 20 Nevin Way, Yerington;
Mineral County Library, First & A Street, Hawthorne;
Tonopah Public Library, 171 Central Street, Tonopah;
Pershing County Library, 1125 Central Avenue, Lovelock;
Storey County Library, 95 South R Street, Virginia City;
Washoe County Library, 301 South Center Street, Reno;
White Pine County Library, 950 Campton Street, Ely.

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, 89701, facsimile (702) 687-5856, or by calling (702) 687-4670 Extension 3118, no later than 5:00 p.m. on September 28, 1995.

Meeting of October 3, 1995
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:

Melvin Close, Chairman
William Molini
Mark Doppe
Russell Fields
Robert Jones
Fred Gifford
Russell Fields
Joseph Tangredi
Roy Trenoweth
Paul Iverson

MEMBERS ABSENT:

Marla Griswold
Michael Turnipseed

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

Chairman Close convened the meeting at 9:07 a.m. in Conference Room 4412-1 located in the Grant Sawyer State Office Building, 555 East Washington, Las Vegas, Nevada.

Chairman Close read the public noticing as defined in the agenda for October 3, 1995.

Chairman Close moved to Agenda Item I: Approval of minutes from the June 20, 1995 meeting.

Commissioner Fields made a motion to approve the minutes as presented. Commissioner Molini seconded the motion. The motion was unanimously approved.

Chairman Close moved to Agenda Item II. Regulatory Petitions.

> **Petition 95011 (R-033-95)** permanently amends the Nevada Administrative Code (NAC) 445B.875 to 445B.897 "Practice Before the Commission" to add a new provision to clarify procedures and establish the conditions for rehearing or reconsideration of Commission appeal hearings.

David Cowperthwaite, Executive Secretary, State Environmental Commission explained Petition 95011 originated from the office of the Commission Secretary and was adopted on June 20, 1995 as a temporary regulation. The petition purpose was to create a procedural process so the Commission would be able to rehear or reconsider matters that would come back before the

them after an appeal hearing. As a temporary petition we consolidated reconsideration and rehearing but the Legislative Counsel Bureau (LCB) split those functions back out again in Section 1, subsections 1 and 2. LCB also deleted the word "calendar" days, explaining to me that everything that functions off of NRS 233B is by calendar days so that was language that was not necessary. The petition addresses the issue of evidence not available at the time of the hearing. The process also allows for determining adequate cause for rehearing or reconsideration and procedures are defined to take more evidence. The total length of the reconsideration appeal process sits within a 30 day time period. The appellant has to be able to go from appeal to the court and sand-wiched in that period of time are established cut dates so the Commission can get an appeal of reconsideration or rehearing in place but still not keep the appellant from being able to go to the court.

Chairman Close called for comments or questions from the audience. No comments were received.

Chairman Close asked for additional comments or questions from the Commission.

Commissioner Fields asked, in Section 5, does the word "Commission" mean the 3-member panel represents the Commission, or do we have to bring this back to the whole Commission?

David Cowperthwaite replied, it is the panel that was sitting "en bloc" at that time. Deputy Attorney General Jean Mischel explained the Commission, by statute, may delegate hearings to a 3-member panel so the Commission's delegation of that hearing would still be in effect.

Commissioner Tangredi asked what happens if the 30-day appeal period is over. Deputy Attorney General Mischel explained, procedurally, there are many different dates. The appeal is received and within 10 days, unless there is an extension, a hearing is set. Within 30 days of the conclusion of the hearing a decision is made, always in writing, by this Commission. Then the appellant has 30 days from the date of the written decision to appeal that to district court and that is the 30 days that we are working within for reconsideration. You might think the time-lines here are fairly short because we have to work within that 30-day appeal period. A motion for reconsideration or rehearing does not extend the appeal date unless the Commission issues a stay. Commissioner Tangredi asked, there is one 30-day period for appeal, then if the written decision is negative, the appellant then can ask for another appeal for 30 days? Ms. Mischel

explained the appellant may appeal the written decision of the Commission, within 30 days, to the district court, but this is an interim step, if they want the Commission to reconsider their own decision.

Commissioner Molini noted Sections 7 and 8 are an exact duplicate with the exception that 20 is spelled out in one and not in the other. Deputy Attorney General Mischel replied Section 8 is supposed to read "rehearing" instead of "reconsideration". That language will be corrected. Originally, we had reconsideration and rehearing in the same paragraph but LCB split it out.

Commissioner Molini asked, do I understand that the petitioner for rehearing or reconsideration may simultaneously file for judicial review or does their 30 day tolling period begin after the decision on rehearing or reconsideration? Jean Mischel replied it does not. The appellant may file simultaneously. They typically prepare the petition for judicial review and hold it until there is a decision on the rehearing or reconsideration. If they win the rehearing or reconsideration, even if it is just to amend the order, they get a new appeal period and the old petition would no longer apply. If the order is amended or if the entire appeal is dismissed, then the petition becomes moot. Rather than filing it simultaneously and then having to dismiss it in district court, good lawyers will prepare it in anticipation of losing rehearing or reconsideration. They then have 5 calendar days from the date of the rehearing or reconsideration to file that appeal.

Chairman Close called for additional comments. No comments were received.

Chairman Close called for a motion.

Commissioner Molini made a motion that Petition 95011 be approved as presented and as amended with the change of the language in Section 8. Commissioner Fields seconded the motion. The motion unanimously carried.

Chairman Close moved to Item 2, Petition 95008.

Lew Dodgion, Administrator of the Division of Environmental Protection, informed the Commission staff members that were to present the next item were delayed in traffic and asked Chairman Close to skip to Item 10 because staff presenting Petition 95010 were in the room. Chairman Close replied, if there was no objection he would move to Item # 10. No objections were voiced.

Petition 95010 (R-032-95) permanently amends NAC 445B.001 to 445B.395, the state

air pollution regulations. This petition consolidates temporary petitions 95001, 95002, 95004, 95005, and 95010. The petition modifies the effective dates of Nevada's Air Quality Operating Permit Program by extending the date of implementation from November 14, 1994 to a date in the future based on the U.S. EPA Administrator's approval of program. In addition, references to Permits to Construct are being deleted and supplanted with references to Operating Permits. The petition amends NAC 445B.221 by the adoption by reference of the provisions of 40 C.F.R Part 72, the acid rain provisions of the Clean Air Act. Also amended is NAC 445B.362 and 445B.363 by changing the formula for calculating emissions of particulate matter (PM-10). The proposed amendments modify and clarify references to "air contaminant" or "air pollutant" to address "regulated air pollutant". In addition, references to "source" are proposed to be changed to "stationary source" or "major source". The term portable source in NAC 445B.137 is proposed to be deleted and substituted with "temporary source". The reporting of excess emissions in NAC 445B.232 is clarified and various provisions in the regulations are extended beyond current sunset dates. NAC 445B.327 is proposed to be clarified such that service and maintenance fees are charged by emission units and not by permitted sources. NAC 445B.295 is proposed to be amended to provide authority to the Director to establish a list of insignificant activities based upon "de minimis" emissions.

Commissioner Molini asked staff if they knew if members of the public or affected industry who wished to testify on this agenda item were in the audience. Chairman Close stated testimony would be taken now but the vote could be delayed until later in the day if anyone else appeared, they would be given the opportunity to testify.

Gay McCleary, Supervisor of the Permitting Branch, Bureau of Air Quality explained petitions were presented to the Commission on November 9, 1994 and on February 16 and April 4, 1995 in the form of temporary regulations and were adopted at those hearings. Air Quality has been operating under those temporary regulations for several months.

Ms. McCleary explained the basic changes made throughout the regulations.

We now refer to all our sources as "emission units" where we used to refer to them as "sources or

single sources".
We have modified the reference in our regulations from "source" to "stationary source" or "major source" to be more consistent with the federal regulations.
We changed our definition of "single source" to that of "emission unit".
The reference to "air contaminants" or "air pollutants" needs clarification. The definition in statute and in our regulations was very loose where "air contaminant" was anything emitted to the atmosphere except water, vapor, or water droplets and we do not regulate that in any air contaminants or air pollutants, we only regulate those that have an ambient air quality standard or an emission limitation established either by the federal government by our regulations. We ask that you modify those definitions to "regulated air pollutant".
Chairman Close asked Ms. McCleary to indicate, in the regulation, the first time that you make that change. Ms. McCleary stated that most are repetitive changes but the first change from "source" to "stationary source" appears in the definition of allowable emissions, 445B.013, page 2, where the former language, "allowable emissions" means the emissions from a source. It now reads "allowable emissions" and means the emissions from a "stationary source". Stationary source refers to an entire facility, facility-wide emissions. This amendment now occurs throughout the regulations where every reference to "source" has been modified to "stationary source".
Chairman Close asked how "source" would be interpreted without "stationary" - Ms. McCleary replied that in the past "source" was considered as an individual piece of equipment but the new language clarifies it from both the Bureau's point of view and our facility's perspective because definition of "source" was rather vague - where "source means any property, real or personal, which directly emits or may emit any air contaminant". The new definitions of "stationary source" and "emission unit" tighten up exactly what is being referred to throughout our regulations and takes the ambiguity away.
Ms. McCleary continued, the first occurrence of "regulated air pollutants" is on page 3, section 9, 445B.014, in the definition of alteration. "Air contaminants" was previously referred to and has been changed to "regulated air pollutants". There is also a definition of regulated air pollutants that is very specific about the types of emissions that we can review, issue permits for,

and take enforcement action on. As stated, the definition of "air contaminant" includes everything but water and we do not regulate that broadly.

Ms. McCleary continued, Section 24, 445B.059, page 9, is actually a definition for "emission unit" that is a permanent regulation. The temporary amendments modification merely cleaned up and verified that all references to emission units were correct and in their proper place.

We are also deleting all reference to "permit to construct" in our regulations and have gone to a one-step permitting program where we do issue "operating permits" to facilities. These "operating permits" must be obtained by new facilities prior to construction. This has streamlined our permitting process so we propose to delete any reference to "permit to construct" because we no longer issue them. There is one section of our regulations where we still do need to reference "permits to construct" as being valid because we do have some sources who still have that type of permit and probably will not be issued operating permits for up to two years, at which time we would come back to the Commission and request that last reference be deleted.

Commissioner Jones asked, are we changing the definition of "air pollutants" to mean that what we are talking about now is the federal listing of air pollutants? Ms. McCleary replied the definition includes the federal and state ambient air quality standards, any pollutant to which a standard or emission limitation applies and it includes, under Title III of the Clean Air Acts Amendments of 1990, the list of 189 hazardous air pollutants which are also included in the Nevada Revised Statutes as regulated air pollutants. Commissioner Jones asked if it automatically incorporated any changes that occur within those lists or if the Commission has to note any additions to the list. Ms. McCleary stated because the statute reads the list becomes part of the statute as it existed on November 1, 1993, we would have to come back to you for any modification to that particular list. Deputy Attorney General Jean Mischel explained the list Mr. Jones is referring to is found in NRS 445.411 and it does refer to the 1993 Act. The legislature would have to re-address the issue.

Ms. McCleary continued, the next requested modification is on page 14, item 5. In the temporary regulation, Title 40 C.F.R., Part 72 is adopted by reference. Part 72 are the acid rain provisions for affected facilities under Title V of the Clean Air Act Amendments of 1990. This section had to be adopted by reference in conjunction with the submittal of our operating permits

program to EPA. Part 72 would be adopted as a permanent reference.

Ms. McCleary noted one other requested change, the repeal of the definition of "portable source" and the adoption of the definition for "temporary source". Ms. McCleary explained there were provisions in our regulations where it was unclear if they did, or did not, apply to a portable source. This change clears up that inconsistency whereby all of our regulations do apply also to what we now call "temporary sources". The new definition for "temporary source" occurs on Page 1, Section 3. "Temporary source" means any building structure, facility or installation which emits or may emit any regulated air pollutant, may be moved from one location to another and is located or operated in a location for period of less than 12 months.

Mc. McCleary explained the last requested sweeping change. Originally, many of the provisions in our regulations, required for us to implement Title V of the Clean Air Act Amendments of 1990, were to become effective on November 15, 1994, the date we originally anticipated approval of our Title V Program. On November 9, 1994, we appeared before the Commission to request all references to that particular effective date be modified to "become effective upon approval of the program by the Administrator of U.S. EPA" and you did adopt that reference as a temporary regulation. We now need to make that a permanent regulation because we are not anticipating approval of our Title V Program until the end of November or early December which would mean all of these provisions would expire on November 1, 1995 as temporary regulations. We had originally requested the Commission to repeal those sections effective upon program approval, namely: Sections 445B.233; 445B.238; 445B.239; 445B.240; 445B:241; 445B.242; 445B.250; on and 445B.273. We ask the Commission to not only adopt the amendments to those sections but also to not take action to repeal those sections. These sections were slated to essentially go-away upon approval of our Title V Program by the Administrator of U.S. EPA. During recent weeks we discovered that if these particular sections did go away, then there would be no provisions covering our Class II sources, our minor sources, and the regulations would afford them no protection regarding excess emissions, filing applications, etc. We propose that the Commission not act to repeal these sections. We have promised the LCB we would come back to the Commission with amendments to these sections to make them specifically apply to our minor sources only. There are currently other provisions that will apply

to our major facilities. Commissioner Jones asked if that would present a conflict in the interim period? Ms. McCleary explained, the staff at LCB asked us if we anticipated any problems if there was a month of over-lap, if these regulations were still in effect and could apply to all facilities. We preferred to have a short time-period of over-lap of the regulations to having no regulations available to our minor sources. Because of the short time-period involved, LCB was not uncomfortable with that situation.

Chairman Close asked for additional questions.

Deputy Attorney General Jean Mischel explained, in reply to Commissioner Jones' question if the regulated air contaminant list would have to be revised when new pollutants are added to the list, NRS 445.431 makes it on-going. It applies to any amendments made to the Clean Air Act after a certain date so is pretty inclusive. With respect to 445B.411, air contaminant has the same definition the old regulation, 445B.010 had. LCB must have felt it redundant language and they wanted to keep it consistent with the statute in the event that the statute was ever changed so it is an on-going definition. Ms. Mischel noted there is a list of hazardous pollutants that would have to be added to by the Commission, through DEP, by regulation.

Ms. McCleary continued, at the February 16, 1995 hearing it was proposed, and the Commission adopted, modifications to the formulas in our regulations whereby we would calculate actual maximum PM-10 emissions for facilities. On February 16 we proposed the deletion of the multiplying factor of .6 to convert our previous particulate equations to PM-10. Since that time more is known about PM-10 emissions and the factor of .6 as a multiplier, across the board, is somewhat inconsistent. We are re-proposing, to become a permanent regulation, that the .6 multiplier for PM-10 emissions be removed from our regulations permanently. That is on page 71, Section 104, NAC 445B.362 and on page 72, NAC 445B.363. Commissioner Gifford asked Ms. McCleary to explain the .6 multiplier. Ms. McCleary explained the State of Nevada adopted, several years ago, ambient air quality standards for PM-10 and repealed the ambient air quality standard for total suspended particulate. At that time the .6 multiplier was proposed to be placed on the formulas for calculating maximum particulate emission limits for facilities. The .6 was actually supposed to be a conversion to a maximum PM-10 emission limit. Since that time, based on information from facilities and actual tests that were performed, the .6 factor does not

apply evenly to all sources, depending on what kind of facility you are and on what your PM-10 emissions will be. We propose to remove the .6 multiplying factor and leave the formulas as they were in the past and that will be the formula for calculating maximum PM-10 emissions. Commissioner Gifford asked, before, the old equation predicted not PM-10, but total particulate matter, but now you are saying that the old total is equal to PM-10? Ms. McCleary explained, in there are some facilities where it actually is, their emissions being considered total particulate matter in the past. When the new PM-10 was developed it was discovered that their emissions actually were PM-10 or less in diameter, so there are some facilities where that is the case. The formulas in our regulations are only used, at this point, to set an actual maximum limitation at a source based on its designed capacity to emit. There is a provision in our regulations where we are allowed the ability to establish emission limitations for facilities on their individual permits and they are enforceable. Commissioner Gifford remarked it would seem that you are increasing your PM-10 allowable limits, depending on the kind of operation. Do you have any statistics that you could give to the Commission to enlighten us as to how well this .6 did, or did not work? Tom Porta, with the Bureau of Air Quality explained the Bureau had found that most all of the power plant emissions, when conducting simultaneous TSP and PM-10 tests, the numbers show that they are very close, 90% or better of their emissions are PM-10 size with the power utilities or any kiln-type, combustion sources or asphalt batch plants. We do not have hard statistics on the other facilities such as rock-crushers, comparing to PM-10 to TSP. In the compliance field, when we are looking at their emissions and they are complying with the PM-10 emission standard, many facilities opt to conduct a Total Suspended Particulate test and count that all as PM-10. It depends on specific conditions of your pit, your operation, on how much PM-10 is a fraction of that TSP. We know that the sources we have emission tested show very high PM-10 number in their emissions, 90% or better. Emissions in that equation is the maximum that would ever be allowed. Typically, when we go through the permitting process, that number is backed down. Only on very rare occasions do we ever allow that actual emissions from a facility and if we do, it would have to be a very small facility. Most facilities have other components which add to their total particulate which could cause a violation of the ambient air quality standards, so we have to back that emission limit down on their permit. Commissioner Gifford noted that

.6 is quite different from a 1 which is what you are advocating. Mr. Porta reported that EPA did extensive studies and found that basically, it is all over the board. 20% of the emissions of some facilities are PM-10, other facilities are 100% of PM-10. EPA took an average of this very broad spectrum and said it was .6 and now other states are finding, as we are, that is not the case, it is not fair, and it is not equivalent to just set one emission factor for the PM-10 emissions. Commissioner Gifford asked if we would be favoring one group by changing that, depending on the operation? Are there some operations that are going to benefit immensely from that kind of change and others that will not benefit? Mr. Porta explained it would not be a benefit. The whole intent of the .6 factor was to simply make a conversion from total suspended particulate to PM-10. We are saying that conversion factor is not accurate, not fair, and it penalizes more sources than anything. There are sources that have been operating 20 years within the emission limits and the ambient monitoring data shows that there is no exceeding the standard. When we apply a .6 factor to them it was extremely penalizing and was not consistent. Commissioner Gifford noted that the formula on Page 71, Section (c) has a decimal point error, it should be 0.6.

Gay McCleary noted the particular sections affected:
Page 71, 445B.362(a), 0.36 be changed back to .6; 445B.362(b) .6 be removed; 445B.362(c) the .6 be removed.
Page 72, 445B.363, # 2 and #3, .6 be removed. # 3 on page 72, there appears to be a repetition of the "e equals" and there should be a bracket before the .6, that then closes the bracket where it appears after the 40.

Chairman Close called for a 15 minutes break at 10:00 a.m.

Chairman Close reconvened the hearing at 10:15 a.m.

Chairman Close asked the Commissioner's if they all understood the action being taken by the changes in this amendment? Commissioner Gifford stated, the main point he was making, the agreement between predicted values and observed values, a correlation coefficient, was it high or was it low? It sounds like shotgun approach in terms of the relationship. Your comment was that the .6 tended to discriminate in some cases where it should not, therefore you are asking for it to be removed. Is that a fair summary? Tom Porta replied yes. Commissioner Gifford stated he

was satisfied with the answer that it may be discriminatory but if it is, I don't think we as a Commission want that. If it should be a .8 or .9 that would be appropriate. Tom Porta commented that the ambient air quality standard, when it was TSP, was 150 micrograms per cubic meter. EPA did not change that when they switched to PM-10.

Chairman Close asked for additional comments.

Ms. McCleary noted two additional individual significant changes adopted as temporary amendments and requested the Commission to adopt them as permanent.

Page 31, Section 67, 445B.293, contains a list of sources or emission units which are exempt from the permitting requirements of our regulations based upon their size.

Page 32, a new section added, Section (m), allows the director to establish what is called a list of insignificant activities. This applies specifically to major stationary sources that will be subject to Title V of the Clean Air Act Amendments of 1990. The thresholds for determining insignificant established here are the emission of a criteria pollutant, less than 4,000 pounds per year or emission of a hazardous air pollutant less than 1,000 pounds per year, may be considered an insignificant activity and would not require permitting under the regulations. There is also a provision to that, that does allow the Director the discretion to deem something to be not insignificant but rather significant if there are a large number of these small activities at one location where, in aggregate, they become quite significant.

Commissioner Gifford referred to the bottom of page 32, and asked the difference between Section 1 (I) and 1 (II). Ms. McCleary stated that there is a typographical error in Roman Numeral I, it should read "The operation of the emission unit will not result in emission of hazardous air pollutants that exceed 1 pound per hour or 1,000 pounds per year. The word regulated should be hazardous. Commissioner Gifford asked why 1,000 wouldn't be included in with the 4,000, i.e., why not put a period after "that exceeds one pound per hour" then strike the "or 1,000 pounds per year" because you have exactly the same statement underneath with "4,000 pounds per year". Ms. McCleary explained one is "hazardous air pollutants" and one is "regulated air pollutants".

Ms. McCleary continued, the last proposal we request you address today is in regard to our fee schedule. At the April, 1995 Commission hearing we proposed the Commission repeal the

increases to our fees that were to have occurred on July 1, 1995, and on July 1, 1996, and freeze our fee schedule as it existed on July 1, 1994. We just completed our annual fee assessments and the fees we charged our facilities this year were those established July 1, 1994. We ask that you make that a permanent regulation. Tom Porta commented, when Jolaine Johnson, Chief, Bureau of Air Quality, proposed this fee freeze she explained that we would be evaluating the fee structure. We are currently going through the work-shops to re-assess and to obtain comments from our regulated community. After the first of the year we may be coming back to you with a fee regulatory change.

Chairman Close asked for questions from the Commission.

Chairman Close called upon Aaron Mann, representing Sierra Pacific Power Company.

Mr. Mann stated that his comments had already been addressed with the Commission discussion of the 1 pound per hour and the 1,000 per hour trigger for hazardous air pollutants. We have been tracking Title V, seen various revisions by the federal government in terms of interpretation and policy, and find it is an extremely difficult, continually evolving, regulation and we appreciate the efforts of NDEP and the Commission to deal with trying to make it fairly enforceable yet still allow flexibility of the sources. I would add, just to make sure we are consistent and have not missed a section when we changed the definition of source to "stationary source", that the hazardous air pollutants trigger does not also change to 1 pound per hour for the entire facility. I may have an older version of the changes but in Section 81, 445.719, that was to change from source to "stationary" source, in effect, the facility would have the trigger of 1 pound per hour and I don't think that is the intent. That is my only comment.

Chairman Close asked for a response to that comment.

Gay McCleary replied the section Mr. Mann is referring to is Section 96 on page 67. 445B.341, line 23, the word "stationary" was inserted before source. Under the previous interpretation his concern is valid. Under the previous interpretation we looked at individual sources for application of this particular threshold. In changing the definition of source to "stationary source" this one should have been changed to "emission unit". I have discussed this with Mr. Mann and we have agreed that we will review this and develop language or propose an amendment to the Commission to clear up the unintended mis-interpretation that has resulted.

Chairman Close asked if the Commission could clarify that situation today. Ms. McCleary stated she was not sure that could be addressed at this hearing without causing problems because it was not specifically listed in the notice. Deputy Attorney General Jean Mischel explained, the Attorney General has determined that the hearing is for purposes for reviewing proposed regulations and that changes may be made as long as they are within the public notice that was provided. If you are just talking about changing "stationary source" to "emission unit" that is within the public notice for this regulation. Commissioner Molini asked what the practical effect of that would be, if a power plant has several emission units and if you change stationary source would that refer to the entire facility, all of the respective units combined? Are you proposing to change "stationary source" to "emission unit"? Ms. McCleary replied yes. Commissioner Molini asked Mr. Mann if that change to "emission unit" addressed his concern. Aaron Mann replied, yes. Ms. McCleary requested that 445B.341(1) "stationary source" be amended to read "emission unit". Commissioner Tangredi asked if that took into consideration a unit having multiple sources? If there are 8 sources, can they all be grouped together to make an "emission unit"? Deputy Attorney General Mischel stated that it was the other way around, sources can have multiple emission units. Ms. McCleary explained that an emission unit is actually the smallest portion of a stationary source or a facility. Commissioner Doppe asked if the change to "stationary source" fundamentally changes it from the way it is now, effectively at the "emission unit" level in this particular sentence. When we say "source" without this change we are referring to "emission unit". So fundamentally, by changing "stationary source" back to "emission unit" aren't we simply leaving it the way it is now. Gay McCleary replied, correct. Commissioner Jones asked if changing the word required changing the rest of the paragraph? Ms. McCleary replied that it would just be "emission unit". Line 25 would read "permit for any emission unit". The first part of that sentence in paragraph A does actually refer to each individual emission unit which emits at least 1 pound or an equivalent amount of a hazardous air pollutant per hour but that the stationary source, as a whole, must still be below the 10 ton per year or the 25 ton per year threshold. Deputy Attorney General Mischel suggested on line 29, adding, where it reads hazardous air pollutants for any stationary source, semi-colon, and on line 28 because it is an or, but less than 10 tons per year of any single hazardous air pollutant for any stationary source or

25 tons per year of any combination of hazardous air pollutants for any stationary source. Chairman Molini asked if, on line 27, after "but" could we insert "for any stationary source of less than 10 tons per year". Deputy Attorney General Mischel stated grammatically, it is a little less clear. Commissioner Jones asked if referencing two definitions, both source and emission units, in one paragraph would work. Deputy Attorney General Mischel explained, because we are using emission unit in place of stationary source we are distinguishing between the old "source" or "emission unit" and "stationary source". In the past it was essentially the same, it read very similarly because it was a 1 pound or equivalent amount of the hazardous pollutant per hour or, but less than. There was a cap. So the cap is the same but you are clarifying the use of the word source.

Chairman Close asked if the Commission and staff were happy with the language change.

The Commission and staff agreed with the change.

Chairman Close asked for additional public comment. There were no comments.

Chairman Close reviewed the amendments:

Page 18: Delete sections 51, 52, 53, 54, 55, and 56

Page 27: Delete section 60, 445B.273

Page 32: Line 27, delete the word "regulated", insert "hazardous"

Page 67: Line 25, eliminate "stationary source" and insert "emission unit"

Line 28, after the word pollutant add "for any stationary source"

Line 29, after the word pollutant add "for any stationary source"

Page 71: Line 28, we are putting a period after "0" so it reads 0.6 but it is in brackets so the entire section is deleted.

Line 24, bracket 0.6, bracket 1.02x-0^{231}, bracket, bracket. That comes out.

Line 28, delete the brackets.

Page 72: Delete the bracketed material on line 11.

Line 15, deleted one of the "E's" =, as well as the bracketed material.

Chairman Close asked if there were additional changes.

Ms. McCleary asked if the Commission was taking no action to repeal Sections 233 through 250 and Section 273 and they will remain in our regulations. They were supposed to be deleted.

Commissioner Molini asked, if we adopted this the changes we just reviewed, would those sections be repealed? Deputy Attorney General Mischel replied yes. You are taking Sections 50 through 56 and Section 60 out of your proposed amendments so that there would be no change to those regulatory sections that are listed. In other words, you are not repealing anything.
Chairman Close asked for additional questions. There were no questions.
Chairman Close asked for a motion.

Commissioner Molini moved for adoption of Petition 95010 as amended, with the amendments that were just reviewed. Commissioner Iverson seconded the motion. The motion unanimously carried.

Chairman Close moved back to the regular agenda, Item # 2.

> **Petition 95008 (R-030-95)** permanently amends NAC 444.570 to 444.7499 the solid waste regulations to extend the date by which disposal sites must obtain financial assurance from April 9, 1995 to April 9, 1997. In addition, reference to incorrect citations of the Nevada Administrative Code in NAC 444.684, 444.6852 and 444.731 are corrected. NAC 444.692 is amended to remove a inappropriate reference to the term "solid sewage". NAC 444.711 and 444.7481 are also proposed to be amended to clarify the criteria to comply with ground water monitoring requirements for Class II disposal sites.

Les Gould, Supervisor of Solid Waste, Bureau of Waste Management, explained Petition 95008 was adopted as a temporary regulation at the April 4, 1995 hearing. The main change is to extend the date requiring financial assurance for municipal solid waste landfills by 2 years from April 9, 1995 to April 9, 1997. This will make the Nevada regulations consistent with the federal requirements. U.S. EPA published this extension on April 7, 1995. Corrections of other technical, cross-reference errors in Section 1, Section 2 and Section 9, and references to Nevada Administrative Code sections which do not exist. Mr. Gould continued, Section 10, 444.7481 is changed by deleting the phrase "in a Class I site" to clarify that this section also applies to Class II sites. The adopted temporary regulation also included a change in NAC 444.711 to clarify ground water monitoring requirements. Because there was over-lap with Petition 95013, the LCB draft has deleted this portion from the petition and incorporated into Petition 95013.

Chairman Close asked Mr. Gould if the changes in this petition language make any substantive changes from the temporary regulations previously adopted. Mr. Gould replied no.
Chairman Close asked for questions from the Commissioners. There were no questions.
Chairman Close asked for public comment. No public comments were received.
Chairman Close asked for a motion.

Commissioner Fields made the motion that Petition 95008 be adopted as a permanent regulation. Commissioner Molini seconded the motion. The motion was unanimously approved.

Chairman Close moved to agenda Item 3.

> **Petition 95013 (R-035-95)** permanently amends Nevada Administrative Code 444.570 to 444.7499 "Disposal of Solid Waste". The proposed regulation grants a two year extension of the general effective date for new landfill standards for Class II solid waste landfills from October 9, 1995 to October 9, 1997.

Les Gould, Supervisor of Solid Waste, Bureau of Waste Management, explained Petition 95013 was adopted as a temporary regulation at the June 20, 1995 hearing. The petition grants a 2 year extension of the general effective dates for new landfill standards for Class II solid-waste landfills from October 9, 1995 to October 9, 1997. Mr. Gould explained that Class II solid-waste landfills are the small, less than 20 ton volume per day, in arid climates, and there are a few other criteria. The Commission may recall this petition was adopted in anticipation of a corresponding extension to be proposed by U.S. EPA. EPA proposed the extension on August 10, 1995, with a 30-day public comment period. I learned this morning that the EPA Administrator signed the extension yesterday (October 2, 1995). Mr. Gould explained LCB's technical changes to the original adopted petition. A change in Section 3 to stipulate that ground water monitoring requirements become effective at all sites on October 9, 1997. When we read the proposed rule that EPA published we found that their rules proposed a singe effective date rather than a phased-in date so we wanted to make sure that our rule reflected the federal requirements. That one change was made in the petition since you last saw it. This section also carries forward the language from the previous petition which allows the exemption from ground water monitoring at Class II sites.

Chairman Close called for questions from the Commissioners.

Commissioner Molini asked Mr. Gould for an example of a Class II site. Mr. Gould replied Jarbidge would be a Class II site, a small one at the bottom of the scale, Winnemucca, Ely, Tonopah, and Hawthorne may be approaching Class I status by virtue of their size, being close to 20 tons per day, but they are still Class II sites. The only Class I sites in the State are the Lockwood Landfill near Reno, the Apex Landfill in Southern Nevada, Boulder City, Elko and Carson City.

Commissioner Jones asked Mr. Gould if any ground-water monitoring had been done to find out what is going to happen when you finally initiate these. Mr. Gould replied ground-water monitoring tests have been conducted at the Elko landfill, a Class I site. There are no indications of contaminants there and the Carson City landfill has ground-water monitoring with no contaminants indicated. The Class II landfills are not doing ground-water monitoring at this time but the new standards will be required in October, 1997. We expect several of the new Class II landfills will be in compliance with the new standards prior to that date, will submit permit applications, and will meet the requirements of the new regulations. We have flexibility to offer waivers in certain cases so some landfills may not be performing ground-water monitoring.

Commissioner Gifford asked if the 1999 date on page 2, line 15 was correct. Mr. Gould replied the Commission has the flexibility to put in a date that works within the abilities of the Division to issue permits. The federal requirements do not necessarily require that the Class II permits be issued within a specific time and we believe, for the Class II landfills, the 1999 date will work for us. We are scheduling the Class II landfill permit applications as best we can. It is difficult for us to determine when they will all be received and when we will have time to complete final review and issue permits on all of these applications, so the 1999 date is reasonable.

Commissioner Gifford asked if the date should be 1997 on page 2, line 26. Mr. Gould explained that date is at the end of the brackets on page 3, line 6.

Commissioner Doppe asked if our requirements for Class I sites were going to be somewhat tougher than EPA's, for at least for a year or two during the phase-in period, because we are asking them to step-up to those new requirements as opposed to jumping up to them in 1997? Les Gould replied that a phased-in ground-water monitoring requirement exists for the Class I

landfills. This petition does not change that. It has been in the regulations and is consistent with the federal regulations as they exist. The Class II landfill standards are the ones that are changing and because the federal government is granting the two year extension for all the requirements they did not feel that an additional phase-in allowance would be necessary for the Class II landfills also.

Commissioner Molini asked, is it because these regulations have been so troublesome that some of the Class II landfills are not going to continue to operate but are going to transfer stations? Les Gould explained, when the regulations establishing new landfill standards for all landfills across the country were first adopted at the federal level they were to go into effect in 1991, and for the small arid sites in 1993. This federal extension has been granted for these small arid landfills and part of the reason for the extension has been the recognition, at all levels, that it is not easy to change these landfills overnight, to close the ones in rural areas that have been in use for years and to pay for the more expensive programs. Additionally, there was confusion because ground-water monitoring was an issue that, originally, EPA wanted to exempt entirely. EPA recalled there was a lawsuit, which the Sierra Club won, and a resultant a court order requiring EPA to re-establish ground-water monitoring requirements for the small landfills.

Commissioner Molini stated he understood that the City of Fallon will no longer operate a landfill and all Churchill County will go to the transfer station at Lockwood. Les Gould replied that is the case in Churchill County. They have a limited landfill for so-called inert waste, certain special wastes. It was determined that the landfill in operation at the time was one that would have to close because of proximity to ground-water. So they established a transfer station and it is operating under temporary approval at this time. Churchill County is struggling with the various options of either hauling to Lockwood or establishing a new landfill. There are many things a community has to consider to do that. Generally, these regulations have brought about a regionalization of solid waste disposal and the establishment of transfer stations at outlying areas, if they are not to distant from larger regional landfills. Commissioner Jones asked, if some of the small landfills decide the regulation is to onerous economically, and they choose to go to a transfer station, is there any monitoring required for an abandoned site? Les Gould explained, it is not a requirement in the regulations. If there is reason to believe there is contamination of the

site we would want to have it investigated to make a determination. Currently, we have been reviewing the plans a community submits. Unless there is evidence showing that there is likely to be contamination at the site we allow them to close, to put on a cover, which will reduce infiltration, to add more leachate in the landfill and we call it closed if they do that before the 1997 date.

Chairman Close called for additional questions from the Commissioners. There were no additional questions. Chairman Close called for questions or comments from the public. No comments or questions were received. Chairman Close called for a motion.

Commissioner Molini made a motion that Petition 95013 as presented. Commissioner Files seconded the motion. The motion unanimously carried.

Chairman Close moved to agenda item 4.

> **Petition 96001 (R-027-95)** permanently amends the hazardous waste regulation NAC 444.8427 to 444.948. NAC 444.8427, 444.84275, 444.850, 444.8632 and 444.9452 are amended to update the effective date of federal provisions to July 1, 1995. The proposed amendments modify the regulations pertaining to polychlorinated biphenyls (PCB's) to repeal the state code numbers and the requirement for submission of an annual report to the state by PCB generators. NAC 444.9455 and 444.948 are proposed to be repealed. (A new petition.)

Colleen Cripps, Supervisor of Program Development, Bureau of Waste Management reported that the regulatory changes proposed serve two purposes:

1) To adopt new federal regulations by reference, and

2) To make some changes to the existing PCB requirements.

With respect to the federal hazardous waste regulations, we are proposing to update our State hazardous waste regulations to incorporate all of the federal regulatory changes that have taken place since July 1, 1994 through July 1, 1995. This is my annual visit. As you know, we are required to make these changes annually to maintain our program delegation. The changes contained in this petition include:

1. Federal changes promulgated between July 1, 1994 and March 1, 1995 that were adopted as temporary regulations at the April 4, 1995 Commission hearing;

2. New federal changes that were promulgated between March 1 and July 1, 1995.

Ms. Cripps explained, to adopt federal regulations by reference we need only to change the date in Sections 1 through 5 of the petition. Rather than adopting the temporary regulations as permanent, which would change the date to March 1, 1995, and submit another petition to add the changes between March 1 and July 1, thereby changing the date to July 1, 1995, we decided to allow the petition referencing the temporary regulation to expire and to adopt, as permanent, all of the regulatory changes that have occurred since July 1, 1994, as part of a single petition. You will recall, the temporary regulations adopted included changes to the treatment standards required under the land disposal restrictions; organic emission standards designed to reduce the organic emissions from hazardous waste management activities; updates to EPA's Test Methods Manual; a regulation which eliminates the exemption from RCRA hazardous waste regulation; certain slag residues from high-temperature metal recovery processes; and a number of technical corrections and clarifications. Between March 1 and July 1, 1995, EPA promulgated a number of additional corrections and clarifications but they also finalized two major rule-makings. The first, and most important to Nevada, is the Universal Waste Rule, EPA's first attempt to streamline regulations governing the collection and management of certain widely generated or universal waste. These regulations allow those waste streams to be properly handled without subjecting them to all of the hazardous waste management regulations. The regulations, as promulgated, apply specifically to batteries, pesticides and mercury containing thermostats. However, these regulations also provide the ability for authorized states, through a petition process, to add additional waste streams to the Universal Waste Rule provided they meet certain criteria which are outlined in that rule. Ms. Cripps explained, our long-term goal in adopting these regulations is to be able to provide the same type of regulatory relief for generators of a number of other universal wastes including antifreeze, fluorescent light tubes and contaminated wipers and rags, to name a few.

Ms. Cripps noted she had received numerous phone calls, and one letter from Union Pacific Railroad, in support of adopting this rule. Chairman Close asked that Exhibit # 5, the letter dated August 28, 1995 from Ken Welch, Union Pacific Railroad Company, be included as part of the record.

Exhibit #5:

Mr. Lew Dodgion, Administrator
Nevada Department of Environmental Protection
Capital Complex
333 Nye Lane
Carson City, NV 89710

Dear Mr. Dodgion:

I'm writing to express Union Pacific Railroad's (UPPR) support and encouragement of your state in adopting in full the Universal Waste Rules published at 60 FR 25492 on May 11 of this year. The rules (new 40 CFR 273) lay out a truly functional and cost effective means of safely collecting waste alkaline signal and other batteries of various applications used in the Railroad Industry.

Waste alkaline signal batteries are UPRR's single largest hazardous waste stream, for which source reduction options are extremely limited absent of any major innovations in track circuitry. Managing batteries generated from normal maintenance and major construction projects in compliance with all administrative requirements federal and state hazardous waste regulations across 23 states has been, and continues to be, a challenge to our field personnel.

Over the past couple years, UPRR has also initiated collection of "office and household - like" batteries for proper recycling or disposal such as lantern and communications batteries. Though largely unregulated due to nonhazardous characteristics or conditional exemption at most of our facilities, we have established this program in an effort to reduce landfilled wastes and to increase employee awareness and involvement in our pollution prevention efforts.

The benefits under 40 CFR 273 to UPRR, as well as other industrial generators of waste batteries, are numerous in the extended volume and storage allowances. Not only will transportation and service fees be substantially reduced by less frequent battery pickups, we will also be able to more cost effectively accommodate employee participation in those communities which do not have established public collection programs for "household - like" batteries.

All-in-all, the environment will benefit as will the bottom line of commercial and industrial generators if states such as yours adopt the Universal Waste Rules in full. I urge you to consider adoption of these rules at the earliest possible timeframe to maximize environmental and economic benefits. I welcome the opportunity to discuss adoption of the rules as well as UPRR's battery collection programs with you at your convenience.

To get an accurate forecast on how many states will be adopting the rules and in what fashion, I would appreciate some feedback on your state's intentions and timeframes for adoption. I will also commit UPRR resources to assist states in drafting legislative or regulatory language (as applicable) if so requested. I once again urge you to consider adoption at the earliest possible timeframe and sincerely appreciate your feedback on this common sense initiative. If you have any questions, please call me at (402) 271-4856 or Frank Uhlarik at (402) 271-5853.

Sincerely,
Ken Welch
Assistant Vice President
Environmental Management
Union Pacific Railroad

Ms. Cripps explained, the last major federal rule-making was a result of the President's Regulatory Reform Initiative in which a number of obsolete regulations were eliminated. These rules were no longer in effect because either they implemented statutory provisions that had been repealed, they had expired by their own terms or by the terms of the authorizing statute, or they had been vacated by a court as a result of a lawsuit.

Ms. Cripps continued, in addition to the federal regulatory changes, we are proposing to adopt two changes to our current state PCB regulations that will have the effect of reducing the reporting burden on the regulated community. These changes include the elimination of the requirement for generators of polychlorinated biphenyls to submit a copy of their annual report to the Division, and the elimination of a unique coding system for PCB's that is currently being used on manifests.

The final change to the PCB regulations will eliminate some duplication. The elimination of the coding system and the elimination of the duplicate regulation are the two regulations that are being repealed in your package. The generation and transport of PCB's is regulated by the federal EPA and it is not a program that is delegable to the states. Recent changes to the federal regulations make that federal program more comprehensive than it had been in the past and appear to provide sufficient protection. Therefore, we are no longer tracking PCB's at the level of detail that we once were, and do not feel that submission of the annual report and those specific codes that we had used in the past are necessary any longer.

Chairman Close called for questions from the Commissioners. There were no questions.

Chairman Close called for questions or comments from the public. There were no questions or comments.

Chairman Close called for a motion.

Commissioner Fields made a motion that Petition 96001 be adopted as a permanent regulation as presented. Commissioner Molini seconded the motion. The motion unanimously carried. Chairman Close moved to agenda item 5.

Petition 95006 (R-028-95) permanently amends NAC 445A.243 and 445A.244 of the water pollution control regulations to be consistent with current federal regulations. NAC 445A.243 is proposed to be amended by deletion of the requirement that effluent

limitations be expressed by weight in discharge permits. NAC 445A.244 is proposed to be repealed and supplanted with amendments to provide specific authority for the water pollution discharge permits to include compliance schedules. NAC 445A.297(b) is amended to delete the requirement that U.S. EPA's Regional Administrator provide prior approval of point source discharge mixing zones.

Jim Williams, Chief, Bureau of Water Pollution Control, explained, NAC 445A.243 was revised to provide specific language authorizing the Bureau to include compliance schedules in discharge permits. While amending the regulation we eliminated 20 year old, obsolete, language.

NAC 445A.297 was amended by deleting the requirement that U.S. EPA give prior approval to approve mixing zones and discharge permits. U.S. EPA has to review all of our permits that include mixing zones and the Bureau felt to require prior approval was a waste of time.

Chairman Close called for questions from the Commissioners. There were no questions.

Chairman Close called for public comment or questions. No comments or questions were received.

Chairman Close called for a motion.

Commissioner Molini moved for adoption of Petition 95006 as presented. Commissioner Fields seconded the motion. The motion was unanimously carried.

To accommodate members of the public, wishing to comment on specific items, so they would not have to return after lunch, Chairman Close moved to agenda item 7.

Petition 95003 (R-025-95) permanently amends Nevada Administrative Code 486A.030 to allow the Administrator of the Division of Environmental Protection to determine whether fuels not previously adopted by Commission meet the clean alternative fuel definition. The regulation also adds new language to NAC 486A that defines the standards to determine whether a fuel is a clean alternative fuel.

Tom Porta, Nevada Bureau of Air Quality, explained Petition 95003 allows for additional alternate fuels to be added to the list which previously were not allowed. This issue was heard by the Commission earlier this year and no changes or amendments, other than LCB's language correction have been made. This allows fuels to be included as alternate fuels provided they can

demonstrate they are lower-emitting than gasoline emission levels are right now. As a point of interest, a fuel company has submitted a regulation to us under this regulation and we will soon go to public notice with it.

Chairman Close asked what kind of fuel had submitted the petition. Tom Porta replied, the A-55 Limited Partnership, the water fuel. Their new fuel is called A-21 and the emission limits are very impressive. After the public comment period we will be moving for adoption of A-21 as an alternate fuel. This would be the first fuel designated by this regulation. Chairman Close asked if this was the site the Commission visited in Reno. Tom Porta replied yes.

Chairman Close called for questions or comments from the Commission.

Commissioner Molini asked if there are tax advantages to manufacturers or users of alternative fuels, what is the benefit of having a fuel determined as a "clean alternative fuel"? Tom Porta replied, I understand the reason A-55 Limited Partnership wants the designation is mostly public relations for their promotion to Caterpillar and other companies they will sell the fuel to. The designation gives justification that this is a clean burning fuel, cleaner than gasoline. We have some issues in regard to the cleanup of air quality that we will hear during the next petition. This particular fuel, A-55, wants to be deemed a clean alternate fuel by comparing the emissions to standard gasoline versus emissions from their fuel. Commissioner Jones asked if this definition gives them a "heads up" in meeting public criteria for having a larger percentage of their vehicles meet future requirements? Is it going to give them a market tool. Tom Porta replied, in talking with the folks at A-55 Limited Partnership, they were not interested in that, they have their own market interest elsewhere, throughout the U.S.

Chairman Close asked for additional questions or comments from the Commission. No

Chairman Close asked for questions or comments from the public.

Chairman Close called upon Jeff Harris.

Jeff Harris, Clark County Department of Comprehensive Planning, Manager of the Advanced Planning Division introduced Dennis Ransel, Clark County's Alternative Fuels Specialist.

Mr. Harris noted they wished to address Petitions 95003 and 96002 together. Mr. Harris called attention to a letter (Exhibit # 1) signed by Richard B. Holmes, Director of the Department Mr. Harris explained, The Board of County Commissioners, as the designated lead air quality

planning agency for the Las Vegas Valley non-attainment area, delegates that responsibility to the Department of Comprehensive Planning and we do the State implementation planning on behalf of the Board of County Commissioners. We have been involved with alternative fuels, particularly compressed natural gas (CNG) for some. We have a strategy, blessed by the Board, as part of its over-all strategy to clean up the air, that calls for a number of vehicles to be converted to run on alternative fuels on an annual basis through the year 2,000. We are well into that program and we are ahead of the State's program as well. We presently have 85 vehicles running on CNG. I believe there are close to 800 vehicles running on CNG in the valley. We feel that it is very important for state and local governments to use clean burning alternative fuels and that is why we are here today. We would request, that in considering these Petitions, that you might direct staff to come back at a future date and include standards for clean burning fuels since not all alternative fuels are the same in terms of emission benefits. Some are cleaner than others. We would also ask, in doing that, you join a review and modification of the credits that you can obtain for using a particular alternative fuel and converting your vehicle or buying a vehicle to run on that fuel. Dennis Ransel will walk you through the chart, the third page of the handout that you just received (Exhibit 9). Dennis Ransel explained that the Emissions Benefits Chart is an extraction from the Clean Fleet Tests being done Southern California, a two-year test with Federal Express vehicles running on the fuels listed. The baseline is regular unleaded gasoline. This chart depicts how the alternative fuels performed under a controlled environment against regular unleaded gasoline. We are making the point that there are differences in how the emissions come from the varying alternative fuels. We have been looking at CNG as our major source of alternative fuel in the Las Vegas Valley for the primary purpose of reducing CO admission. We are in non-attainment for CO. According to this study we are getting a 73% reduction on average with CNG. This validates for us that there are differences in fuels. Our proposal is that we look at those difference in the alternative fuels, how we give credits, and how we credit agencies for meeting the State's standards. It does take a little extra effort to go to these fuels and we think the long-term benefit of these fuels could be significant as they become commercialized and available for more people.

Commissioner Molini asked Mr. Ransel to explain what M-85 and RFG were. Mr. Ransel replied

RFG is reformulated gasoline and M-85 is methanol, the 85 refers to 85% methanol, up to 15% regular gasoline. Mr. Ransel continued, in looking at the definitions in the next Petition, they all become the same and we have difficulty with that. Reformulated gasoline, low-sulfur diesel, CNG, LPG, M-85, regardless of the fuel, if it is classified as an alternative fuel it gets the same amount of value.

Commissioner Tangredi stated he thought the gases would receive 1 credit and the RFG would receive ½ credit. Mr. Ransel replied that is what we have concern with, as to how that would be done as far as giving credits because it identifies "an alternatively fueled vehicle gets a credit".

Commissioner Tangredi asked, including electric? Dennis Ransel replied, that is correct.

Dennis Ransel stated, as we look at emissions benefits, if we are going to try to push the envelope of technology to gain benefits of clean burning fuels then we ought to be looking at methods to recognize the cleaner burning fuels, particularly those that take some additional investment to establish the super-structure and to convert vehicles, versus pulling up to the pump, filling up, and getting credit. That is what we are doing with allowing RFG and low-sulfur diesel to become alternative fuels. I think there should be a distinction as to the investment and to the emissions value.

Commissioner Jones asked Mr. Ransel if he had done a cost analysis or comparison analysis on these fuels. Mr. Ransel replied, that is the problem. To get exact mileage costs we are running a lot of bi-fuel vehicles and it is difficult to exactly portray the cost from one or the other. The CNG itself is less expensive but you have the conversion cost so we are looking at about a 5-year pay-back on our investment on the vehicles in the county that we are converting. After a 5-year period, we expect to be in the black, having less expense each month for buying CNG versus gasoline.

Jeff Harris explained, by way of comparison, we are under contract to buy an equivalent gallon. CNG is costing the county 85¢ and at the pump we are paying between $1.10 and $1.20. The differential in cost is really the pay-back over time.

Commissioner Jones noted that air quality is the concern but to get a full picture I think a cost analysis on the schedule and miles driven per gallons is needed. Dennis Ransel replied, for governments the big ticket is the fueling station. If the governmental agencies purchase their

own station it is very difficult to pencil out a pay-back. Commissioner Tangredi stated that he did not think the RFG reached compatible levels, especially with carbon monoxide, in terms of the credit. Less credit is given for the RFG. Dennis Ransel replied Paragraph 1(a) of 486A.170 reads, "allocate one credit for each clean alternative fueled vehicle acquired or converted by a covered fleet". If we are defining RFG and low-sulfur diesel as an alternative fuel then it would fit that paragraph, everything is equal. If you read continue reading, it is giving credit for prior year conversions using low-sulfur diesel technology etc.. We get less credit for that but as we re-define RFG and low-sulfur diesel, in accordance with NRS, then we are making them all equal. That is our concern. I think we should review that and provide a graded credit system for the different fuels.

Commissioner Tangredi asked if Nevada is doing the same thing with RFG as California? Dennis Ransel explained, currently RFG is not available in Nevada. The California program will be effective in 1996 and I understand RFG will be available in the spring time-frame. If RFG were to become available in Nevada, it is like a 2% oxygenate with a few other chemical changes to it, that RFG would count as an alternative fuel if it were sold at the pump. In California, low-sulfur diesel has been the standard diesel, at the pump since 1993 but RFG is something that is coming to California. Commissioner Tangredi asked if suppliers in California are geared up for 1996 distribution? Dennis Ransel replied California planned to have it available in the spring of 1996. I don't know if we will be able to obtain RFG in Southern Nevada. Commissioner Tangredi stated that it is supposed to be 10 or 20 times better than the low-sulfur diesel currently at the pump. Dennis Ransel asked, should that be considered an alternative fuel? Emphatically, yes! It does give increased benefit over what you get at the pump now with low-sulfur diesel.

Chairman Close asked that Exhibit 1, a letter dated September 28, 1995 from Richard B. Holmes and Exhibit 9, a letter dated October 3, 1994 from Jeff Harris be included as part of the record.

Exhibit 1:

September 28, 1995

Melvin D. Close, Chairman
State Environmental Commission

333 W. Nye Lane
Carson City, Nevada 89710

NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING
PETITIONS 95003 AND 96002

Dear Mr. Close:

The 66th Nevada Legislature passed Assembly Bill 812 to establish the use of alternative fuels by state and local government agencies as a means to protect the state's environment, particularly the quality of its air. The Legislature found that converting public fleets in metropolitan areas to use cleaner-burning alternative fuels can reduce contaminants sufficiently to permit the private sector to continue use of conventional contaminants sufficiently to permit the private sector to continue use of conventional fuels in individually owned motor vehicles. The Legislature also directed the State Environmental Commission to adopt standards and requirements for alternative fuels and for levels of emissions form motor vehicles that are converted to use alternative fuels. (Reference NRS 486A.010).

Petition 95003 (R-025-95) gives provisions for adopting new alternative fuels. Petition 56002 (R-104-95) amends NAC 486A.030 by redefining alternative fuels to include reformulated gasoline (RFG) and low-sulfur diesel without qualification. These actions are reasonable in that they are in consonance with NRS. However, the call attention to additional issues that need to be addressed.

It is apparent that the State Legislature intended for state agencies to lead the way in reducing contaminants from motor vehicle sources by directing the conversion of public fleets to use alternative fuels that are cleaner-burning than the conventional fuels available to individual vehicle owners.

In Clark County, where over 60% of the state's population resides, air pollution caused by motor vehicles is a major concern to the health of residents and to the strength of our fragile tourist based economy. The Las Vegas Valley does not meet national ambient air quality standards for carbon monoxide (CO) and particulate matter of 10 microns or less (PM-10). Eighty-five percent of the carbon monoxide pollution is caused by gasoline powered motor vehicles, while both gasoline and diesel engines contribute to the PM-10 and visible urban haze problem. The continued rapid growth of the Las Vegas area can only serve to further exacerbate mobile source pollution in the future. These facts support the need to continue efforts to expand the use of alternative fuels that are cleaner-burning, particularly in terms of Co and PM-10 emission reduction, than commonly available conventional fuels.

Clark County, with the cooperation of numerous federal and local governmental entities. has implemented an alternative fuel program to help improve air quality in the Las Vegas Valley. We have made a long term commitment to expand the use of clean burning alternative fuels through both public and private sector fleet participation. This program also hold significant

potential to support federal energy policy objectives for improving energy independence.

In order for the State Environmental Commission to further the objectives in NRS for governmental fleets to convert to cleaner-burning alternative fuels, and to enhance the Clark County alternative fuel program, I recommend the following:

- Establish standards for levels of emissions for alternatively fueled vehicles per NRS 486A.150.
- Establish credit policy that vies less than full credit for vehicles that utilize conventionally available fuels, and increasing amounts of credit for conversions to cleaner burning fuels. For example: one-quarter credit for utilizing conventionally available low sulfur diesel and RFG; two credits for acquiring CNG, propane, or electric powered vehicles which have a higher initial investment and substantially greater emission reductions than conventionally available fuels.

I encourage your support of these proposals. The future health of our citizens and of our tourist based economy may depend on our actions to reduce harmful, unsightly air pollution. We must continue to lead the way, as our Legislature has directed, in developing new technologies that provide cleaner-burning fuels and improved air quality.

Sincerely,

Richard B. Holmes
Director
Clark County Department of Comprehensive Planning

Exhibit 9:

October 3, 1995

Melvin D. Close, Chairman
State Environmental Commission
333 W. Nye Lane
Carson City, Nevada 89710

NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING
PETITIONS 95003 AND 96002

Dear Mr. Close:
I appreciate the opportunity to meet with you today, and wish to make comments regarding Petitions 95003 and 96002. We support the adoption of these petitions with the inclusion of our recommendations for additional actions that would serve to strengthen the state's alternative fuel program while satisfying legislative requirements.

The explosive growth rate experienced in the Las Vegas Valley, the highest in the nation in the decade of the '90s, is constantly adding traffic to our already crowded roadways. The expanded use of clean-burning alternative fuels is deemed essential to our future ability to maintain air quality standards. Thus, we strongly support the State Legislature's intentions, as expressed in NRS 486, to have government agencies lead the way in converting fleets to run on cleaner-burning alternative fuels.

Clark County has undertaken an aggressive alternative fuels program that is intended in the long run to utilize the cleanest burning fuels available to reduce the air pollutants most harmful to the Las Vegas Valley environment. The emissions benefits derived from a variety of alternative fuels are depicted in the enclosed chart. The chart is based on data recently obtained from the report on the Clean Fleet demonstration conducted in Southern California form 1992 to 1994. As shown, the benefits derived on the various pollutants vary significantly between the alternative fuels.

In his September 29[1], 1995 letter to this Commission, Richard B. Holmes, the Director of the Clark County Department of Comprehensive Planning, described his perspective of the state's alternative fuels program efforts, and recommended SEC actions. I would like to further address the two recommendations made in the director's letter.

We feel it is important that state and local government agencies in Nevada continue to expand the use of the cleanest burning alternative fuels. To support this effort, we recommend offering agencies more credit for investment in cleaner fuels to encourage the utilization of a variety of alternative fuels in order to achieve the greatest emissions benefits possible.

We also feel it is important to establish emission standards for alternative fuels as provided in NRS 486A.150. The Clean Air Act Amendments identify varying tailpipe standards that could be applied. An example are the California Pilot Program standards for 1996 model year vehicles that were designed to encourage production of clean fuels as well as clean vehicles.

Thank you for your attention and consideration of our proposals. The staff of Comprehensive Planning would appreciate the opportunity to participate with DEP staff to develop proposals, as recommended, for future consideration by this commission.

Sincerely,

Jeff C. Harris
Manager
Clark County Department of Comprehensive Planning

[1] Recording Secretary's note: Date of letter is actually September 28, 1995.

Chairman Close called upon Dan Hyde.

Dan Hyde, Vehicle Services Manager, City of Las Vegas, stated that he wished to take a step farther the issue Jeff Harris and Dennis Ransel alluded to. We are in active support of, and participate in the Clean Air Strategy that has been advocated and written by Clark County. We have 120 vehicles converted and operating on natural gas, 8 of which are dedicated. The issue has to do with the actual benefit achieved in emission reductions. This particular region, being in non-attainment for CO, is a key issue and natural gas has, by far, the most dramatic and immediate impact on the reduction of that pollutant. RFG does have a characteristic that will impact it as well, but nowhere near as favorable. What we are addressing, in alignment with what the County is saying, is that the statute or regulation should be based upon emissions levels that are achieved, the reduction in those levels, and the subsequent credit that is a given for those reductions. Since 80% of all the CO in this region is generated by the automobile, natural gas having on average 73% reduction in that pollutant. The City of Las Vegas is committed, and over the last 3 years has put $500,000 of the taxpayers money into the technology of trying to get our CO within attainment levels. We are asking for the parity. To be fair, RFG certainly has its place, as does the whole plethora of alternative fuels that are on the market. We are asking for a graduated scale of credit based upon the most benefits achieved. Chairman Close asked that Exhibit 3, the prepared text, be made a part of the record.

Exhibit 3:

TESTIMONY OF DAN HYDE
CITY OF LAS VEGAS
VEHICLE SERVICES MANAGER

NEVADA STATE ENVIRONMENTAL COMMISSION
REVISIONS TO NEVADA ADMINISTRATIVE CODE
#486A PETITION R-025-95 & R-104-95

Good Morning members of the Commission.
My name is Dan Hyde and I am the Division Manager of Vehicle Services for the City of Las Vegas and am here to comment on the proposed changes to **NAC 486A FLEETS: USE OF ALTERNATIVE FUELS.** Of particular concern to me are Petition #95003 (R-025-95) and 96002 (R-104-95) which redefine type of fuels that qualify as "alternative fuels" so as to be in alignment with Nevada Revised Statutes (NRS) 486A and are to include reformulated gasoline (RFG) and low-sulfur diesel fuel.

Reformulated gas (RGF) and low-sulfur diesel do have their place and their use should be encouraged where their benefits can be maximized. However, insofar as the greater Las Vegas valley is a non-attainment area for carbon monoxide (CO) as defined by the federal Environmental Protection Agency (E.P.A.), on an emissions reduction basis, RFG and low-sulfur diesel do NOT achieve comparable results in reducing this pollutant that other alternative fuels do. For example, the City of Las Vegas has been actively engaged in converting fleet vehicles to compressed natural gas (CNG) which as proven technology in reducing (CO) by 75 - 90%. Consequently, RFG and low-sulfur diesel, which do not have similar emission reduction characteristics, should receive proportionate credit based on the levels of emission reductions actually realized. In other words, you should be comparing "apples with apples".

Since 80% of all carbon monoxide is generated by the automobile, it seems reasonable that we should focus our efforts convincingly and methodically at reducing it in the most effective manner that current technology allows. Natural gas is, by far, the best alternative available at accomplishing this objective! The statute should address standards for emissions and apply credits based on the degree of pollution reduction(s) achieved. However, the regulation, as currently written, establishes no criteria specifically addressing those concerns. The argument that RFG is a start and has some impact on reducing air pollution with no change to the engine apparatus of existing vehicles; that the incremental cost difference is relatively negligible in comparison to CNG or other alternative fuels requiring vehicle modifications and, as such, its use should be encourages, appears, in and of itself, a convincing argument. We are not saying they should be avoided. As a matter of fact, we are an advocate of attacking air pollution from **all** fronts; CNG, RFG, low-sulfur diesel etc. What we **are** asking for is to receive full credit for our fuel of choice because it works the best. Since RFG has significantly lower impact on CO reduction, it should receive something less than the full credit CNG should receive.

Also, since the City began its fleet vehicle alternative fuel conversion program over three years ago (120 vehicles converted to CNG), we were given assurances by the State that our bi-fueled vehicles would receive full credit for having converted them well ahead of the statutory requirement. Now we are told that this may no longer apply unless those same vehicles are **dedicated** to an alternative fuel or that these conversions may be grand-fathered in. This is inappropriate and unfair!

For the State to change direction in mid course, **after** the commitment of money and manpower has already been made, is precisely the one thing that will undermine all incentives for staying with technologies that work which are just now showing results.

The City of Las Vegas has made a substantial investment, over $500,000 in the last three years, to introduce "clean-fueled" vehicles on a large scale. It is, in my opinion, essential that the State should encourage further investment NOT change the rules by creating a dis-incentive.

The City has resolved in taking a leadership role in actively pursuing CLEAN AIR STRATEGIES and then aggressively implementing them. We respectfully request that you consider our position and write a regulation that is in support of it.

Thank you for your time and consideration. I would be happy to answer any questions you may have.

Chairman Close asked for questions from the Commission.

Commissioner Tangredi asked Mr. Hyde if dedication presented a problem? Mr. Hyde replied no, and explained why. The truck I drive is a dedicated unit. The infrastructure is developing rapidly and we do not have a fueling problem because of the partnership that has been developed over the last two years with private enterprise investment. A company called FleetStar has built three public fuel sites at their expense, $1 million, that would otherwise would had come from the taxpayer. I don't have a problem with that at all. Commissioner Tangredi asked what problem the investors fear when they hear dedication. Mr. Hyde replied, is there payback to get their money back over a period of time and that is where the commitment comes from. If the city says we are committed and our usages are going up, they are saying "we will walk that path you and we will stay with you as long as you continue on that path". If I was a city councilman looking at economy of scale, I would say "if RFG gives us the same credit that CNG does, go with RFG". We are not saying we are not going to use the other alternative fuels, we are exploring everything we can to attack the air pollution problem and attacking it from all fronts, but we know that CNG has the most dramatic impact in reducing that pollutant and we will stay the course, as the figures to date show.

Commissioner Tangredi stated, CNG is far superior in regards to the reduction of air pollution levels right now and I just wondered what the business background fears in regard to dedication. Mr. Hyde replied, if I understand it correctly, it is the money. They need to make a profit, they are not in it just to be altruistic. We realize that government cannot do it alone and the only way we have a chance to reduce pollution is if we work together. I have been asked by my superiors, what is our commitment, what are we willing to do to support that so that they will realize a return and stay the course? When I started working here two years ago, this city had 15 vehicles using about 10 gallons of CNG a month. We now have 120 vehicles averaging 2,500 gallons of CNG a month. In a short period of time, we have made an impact. Their payback is not going to be on 2,500 gallons but at the current rate of conversion we are going to achieve that in a relatively short period of time. Chairman Close asked what other entities in Clark County

presently use CNG. Mr. Hyde replied, the City of North Las Vegas, City of Henderson, Prime Cable, Nevada Power, Southwest Gas, and Raytheon is beginning to get involved. The taxi's use propane. Nellis Air Force Base just opened its own fueling site on the Base and they are in the process of converting 200 vehicles. There is a substantial coalition of support of that program. Chairman Close inquired into the costs to convert a vehicle to run on CNG. Mr. Hyde replied, There is a one time substantial investment and right our incremental cost is $3,200 per unit. Our payback on that is within about 4 years, based upon the use of the vehicle and that we can interchange, take this canister and put it on another vehicle for a life of 15 years. We are very positive about it. Commissioner Molini asked if all you have to do is change the fuel tank, you have to have a canister but you do not have to make any engine adjustments? Mr. Hyde replied you have a converting device, like a regulator, like a computer, that goes into the part of the engine that tells when the gas is engaged. The device injects CNG into the engine, regulating precisely the mixture needed in order to function. It is a fairly simple process. Commissioner Molini asked if that unit is transferrable to other vehicles? Mr. Hyde replied yes. Commissioner Molini asked what kind of fuel economy is realized with CNG. Mr. Hyde replied that they are getting parity, miles per gallon, performance using CNG versus conventional fuels. Rumor has it that you only travel half as far on a gallon equivalent CNG that you do on unleaded gas. Our experience in the fleet does not corroborate that. I have been getting near parity with the S-10 pickup I drive which used to be an unleaded vehicle. It was averaging about 20 miles to the gallon and I am currently averaging 19.6 miles to the gallon on CNG.

Commissioner Jones inquired into the vehicle life expectancy and asked if motor damage occurred because it runs hotter? Mr. Hyde replied, CNG actually runs cleaner and maintenance costs are going down. As an example, the last time the oil was changed in my truck was 9 months ago. If you were to pull the dip stick today, the oil looks like it was changed yesterday, it is that pure. From a maintenance function, you are actually extending the life of the vehicle and reducing the maintenance costs.

Commissioner Tangredi stated the approximate $4,000 cost for the change-over would be a large sum for the average citizen and could be a blocking mechanism. Can Nevadan's look forward to reduction of the cost of that changeover in the future? Mr. Hyde reported Chrysler Corporation

was at a National Queen Cities event in St. Louis that he a recently attended and they are actively involved in producing CNG vehicles on the assembly line, both dedicated and bi-fuel. Chrysler reported their incremental costs went down $750 per unit over this last model year so it is headed in the right direction. I think the most impact will be in the fleet application of CNG. It is the most readily available, easy to incorporate and it actually gives you a greater payback on that dollar. We want to extend the life of that vehicle as far as we can because we don't want to spend money frivolously. The fleets will end up getting a higher return than the average citizen. There is a way that over time the average citizen will get pay-back, depending upon how long the vehicle is kept. There are little devices, called fuel-makers, which can be hooked up to your gas line at home. They are like a time-fill and you can plug it into the vehicle and it will fill itself. The cost per gallon and the cost per mile is going to diminish over time. I you keep a vehicle an average of 5 years it won't be on parity with unleaded fuel but it will probably be about half that cost. Commissioner Tangredi noted, so there are economic benefits plus health benefits because that population is now breathing cleaner air.

Commissioner Jones noted it appears to me like a natural marriage, if companies having a vested interest in selling the fuel would come up with some type financing for the general public to eventually to be able to get into a loop at a lesser cost per application. Mr. Hyde agreed.

Mr. Hyde suggested the way we might be able to make this palatable to the oil companies is to show that local governments like Clark County and the City of Las Vegas and the other entities mentioned are committed to staying the course. That would be their incentive for something to support. I was asked that question in St. Louis, how committed are you? It goes back to the investment and the return on that investment.

Dennis Ransel, Clark County Comprehensive Planning, noted they had applied for, and it is being processed to us, a $75,000 grant from the Department of Energy for that specific purpose, to encourage commercial fleets, again looking at fleets rather than individuals, to pay about 65% of the cost of conversion. We have been given approval for the grant and when the money arrives we will be using it to provide incentive for fleets to convert vehicles to natural gas. We are trying to get the infrastructure established and now we will to try to bring other fleets on-board.

Chairman Close asked if the County has its own fueling station. Mr. Ransel replied, no. The Regional Transportation Commission does. They have their small RTC para-transit buses, that are 100% dedicated CNG vehicles, but that facility is not available to the public and is under exclusive use, primarily for RTC, at this point. The County gets our fuel from the three FleetStar stations established. We are anticipating FleetStar building a new site on our government center and looking at other sites around town where they could build. Also, they are ready to start construction at a site at the airport. The airport has a large number of vehicles, some dedicated, some bi-fuel. They have a long-term program to convert a large number of vehicles and will use their own fueling site. Mr. Hyde noted the 3 existing FleetStar sites are public access sites, so there are public accessible sites. Commissioner Jones remarked another one of the big players in this might be Southwest Gas. One of the big costs of the developing infrastructure would be the large fuel stations but it seems to me Southwest Gas should be looking into the future to be able to tap into the residential delivery of CNG to each homesite, developing a safe way of tapping that supply for fueling vehicles. The CNG would be going through the meter so they would be paid at the same rates and it would do away with a lot of the infrastructure. Mr. Ransel agreed. The pipelines are already in place. Mr. Ransel continued, I mentioned the Fuel-Maker System that currently exists. We have two of those on our site and I fill my truck with a slow-fill. You could just plug it right into the existing pipeline and it would be a one-time cost, like $3,500, but it would last forever. If you drove 15,000 miles a year you would probably pay that back in 3½ years. Commissioner Jones asked what could possible cost $3,500 about the slow-delivery? The gas infrastructure already delivers it to the home? Mr. Ransel replied the cost would be the device, the transfer compressor.

Chairman Close asked for additional questions.

Chairman Close asked for comments from the public.

Ken Platt, Special Projects Manager, Nevada State Energy Office stated that he had submitted testimony and asked to emphasize a couple points:

1. When this legislation was initially passed it was modeled after the Clean Air Act but it was passed before that was all finalized. The Clean Air Act contained their definition of clean alternative fuel. Within that definition you included petroleum products like RFG and diesel. The

goal of the Clean Air Act was to reduce emissions, a two-pronged approach where you use a cleaner fuel but you also use a vehicle technology. It was not necessarily what was going into the vehicle but what was coming out of the tailpipe. The Clean Air Act established emission standards that define acceptable levels for all fuels that are considered clean alternative fuel. I think that might be one way we can explore this and we would like to sit down with the NDEP and representatives from the Las Vegas region to see if we can come up with something that would be equitable and put all fuels on equal footing and the ones that reduce emissions the greatest should be encouraged. 2. Another issue happening at the time was the Energy Policy Act that we also need to consider because State vehicles in Las Vegas will be under that mandate. That will begin this model year and that Act does not include some of the fuels that are included within our State mandate and the Clean Air Act, specifically petroleum products. If there is a possibility that might be expanded to the State and local fleets within Las Vegas, I think that would be important to do. I think we should clean this up and make it consistent with the statute. What Las Vegas and Dan Hyde have proposed would be consistent with 486A.150. I want to emphasize, the intent of this legislation was for the government sector to lead the way. We would like to meet with you and see if there is something that we could bring back to the next hearing, possibly in a petition forum.

Chairman Close asked if there were questions.

Commissioner Gifford noted Petition 96002 is essentially what we are talking about in Section 2 but not everything is included in 96002. Is that a problem? Tom Porta explained that Petition 95003 was previously adopted as a temporary regulation and it simply expands the definition to allow other fuels, which can demonstrate low emissions, to be included as an alternate fuel. Petition 96002 deals with the issue of being consistent with the statute. Deputy Attorney General Mischel stated that it was not a problem.

Jeff Harris, Clark County Department of Comprehensive Planning reviewed language that might serve both your purpose and our purpose. It would read, in Section 1 (1): "The administrator of the division of environmental protection of the department may designate a fuel as a clean alternative fuel" - delete the period and insert a comma -and add "establish emission standards, and an alternative fuels credit program". Tom Porta reported that the Bureau had been in touch

with Clark County, Washoe County and the Department of Energy Office to discuss this issue. Our first goal at DEP was to straighten out the definitions as best we could and then to look at the credit program. We would like to sit down together and discuss how we can work within the framework of the statutes and then come back to the Commission with a comprehensive program that puts these fuels on equal footing through the credit program and I feel that would be better addressed at a later Commission hearing. Deputy Attorney General Jean Mischel supported that statement by pointing out that the agenda item, as written, does not address the credit program which is, as Mr. Harris stated, found in a separate NAC section. That could be misleading to someone who is interested in the credit program, but not necessarily concerned about whether the administrator has been delegated the authority to list different fuels. Commissioner Jones stated that he understood the distinction with the noticing problem but just so the record is clear, I think it is important that we understand the crediting process and that it may be different in some communities, dependent on which pollutant you are trying to solve. I would like to have the record clear that what we would like to do is look at this again, meeting criteria and noticing. Deputy Attorney General stated, to give the Commissioner's heads-up, and I think Tom is going to address this at the next petition level, the Commission is somewhat constrained by its statutory authority when looking at this credit issue. That is contained right in the statute that petroleum products cannot be discriminated against. Whether or not more credit or less credit is construed as discrimination is a separate issue. Just so you understand that there are some constraints. Commissioner Jones asked, if that is true, how is it we put a requirement and a criteria on government to have to adhere to using a certain amount of alternative fuels in their fleets within the next few years? That is in fact, a discrimination in fuels. Deputy Attorney General explained that the legislature did that, the legislature said "any county with a population of 100,000 or more, the government entities have to start converting by a certain date" so the regulation gives them a little leeway in terms of the percentage that is converted by a certain date so that it is not a sudden impact to any government entity. The legislature established the jurisdiction or the authority for conversion of government fleets. So there is no real discrimination, the legislature gave these government fleets the option of alternative fuels or a broad definition and now this Commission is more clearly defining what an alternative fuel is and what the Administrator can

establish as an alternative fuel. Commissioner Molini asked Ms. Mischel, in your interpretation, do you see flexibility to do what we are talking about here and not set some criteria for these various fuels. That makes sense to me but if the statute does not provide us with a broad enough authority to do that then we probably should not charge the Division to go back and work up some regulation that would place us beyond our statutory authority. Deputy Attorney General Mischel replied, without looking at the legislative history and why the use of the term discrimination, obviously it was a petroleum industry amendment. However, there are ways to comply with the statute but allow for some recognition of the emission variations. I think the word discrimination may not have been carefully used but without seeing the minutes on the hearings one possible interpretation is that discrimination may not occur if you are using an objective criteria such as emissions of certain air pollutants. In other words, you are not discriminating on some arbitrary basis. Ken Platt, Nevada State Energy Office, stated that it appears Section 446.150 of NRS does give you the flexibility because it says "you must set standards on levels of emissions from motor vehicles that are converted to use alternative fuels" and also it says "including but not limited to", so it seems to me you would have the flexibility within that section, not only where you must adopt these emission standards but that you can possibly develop a credit system.

Chairman Close asked for additional comments from the public. No comments were received.

Chairman Close asked for additional comments from the Commission.

Commissioner Doppe stated it struck him that we are looking at two parts of a three part issue to the extent that if you acted upon either of the first two parts, without knowledge of what that third part is, you could conceivably set some standards or do some damage. I am wondering if it does not make more sense to consider all three parts at the same time at a future meeting. I pose that for discussion. Chairman Close asked Mr. Porta how he would feel about postponing this issue.

Tom Porta replied that he felt the first step is to straighten out the definitions in accordance with the statute, that was our goal. Once that was approved by the Commission the next step would be to re-evaluate the program, acquire legal opinions on how we can work within the statutory framework and try to place these fuels on an equal footing, that is our intent. These petitions are

proposed to you as the first step in this process of trying to make sure we don't discriminate against petroleum-based products and that we strive to give some incentive for people to burn cleaner fuels. Chairman Close asked Mr. Porta if he saw any harm to the State in taking these two steps at the present time. Tom Porta replied, certainly not the first one because it is expanding the definition of alternative fuels to allow people like A-55 Limited Partnership to come in and demonstrate to incredible results on emission levels through their fuel. This opens it up to these people to be an alternative fuel. I do not see any problem with going ahead with that and making it permanent because there is no discrimination against anybody on that one. Commissioner Doppe agreed, ultimately you need this Petition 95003 but I don't think, having approved A-55 Limited Partnership, you now know where to put them, by way of credits, and that is the issue. Deputy Attorney General stated that there is a credit system currently in the regulations but the credit system is not based upon the type of alternative fuel that you are using, which is what the County and City is advocating today, so the proposal would not change anything with respect to the existing credit system. If you did not adopt Petition 95003 as permanent regulation it also would not change the existing credit system. Petition 95003, in and of itself, does not include the current regulation on credits. Petition 95003 is currently the law but if you don't adopt it today, before November 1, it will expire. DEP is currently functioning under the proposed language and, while it is relevant to the credit system, it does not directly impact the credit system. Commissioner Gifford stated that it appears that you would need to have these to form a basis for later discussion of whatever might be done with the credit system. Chairman Close called for additional comments. There were no comments.

Chairman Close asked Commissioner Doppe if his statement was in the form of a motion or just for discussion? Commissioner Doppe replied that his statement was made as a matter of discussion for the Commission.

Chairman Close called for a motion.

Commissioner Molini made a motion that Petition 95003 be adopted as presented, and added to the motion that we charge the Division of Environmental Protection, under a given that there is statutory authority after that review, to work on a more equitable, even, clean, credit system and that they come back to us at a future meeting, either with a

proposed amendment to the regulation on the credit system or with a response as to their limitations by the statute. So it is a two-part motion. Commissioner Jones seconded the motion. The motion was unanimously approved.

Chairman Close requested, as part of the testimony to include the letter from Ken Platt, marked as Exhibit 4, in the record.

Exhibit 4:

TESTIMONY OF KEN PLATT
SPECIAL PROJECTS MANAGER
NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY
NEVADA STATE ENERGY OFFICE (NSEO)

Nevada Environmental Commission
Petition 95003 and 96002
October 3, 1995

Good morning members of the Commission.

I am here on behalf of the Nevada State Energy Office (NSEO) to provide comments pertaining to petition 95003 and 96002. Our office has met with staff from the Department of Environmental Protection on several occasions to discuss these two petitions. We would like to thank DEP for their assistance and cooperation during our discussions.

NSEO is charged with the responsibility under NRS 523 to "encourage the development of any existing and alternative sources of energy that will benefit the state." In regard to alternative sources of energy available for transportation, there are few. The transportation sector is 99% dependent on petroleum for fuel needs. In addition, Nevada spends over 45% of its $2.5 billion energy tab on transportation, with foreign oil satisfying over half of our current petroleum use. Should a supply crisis occur, Nevada will have no mobility options to implement.

More important is the price we pay for our dependence. According to the Rocky Mountain Institute and the U.S. General Accounting Office, if the total hidden costs of protecting our foreign oil supply were included in the cost of petroleum, it would triple the price of a barrel of oil. This does not even consider the harder to quantify environmental costs, such as air pollution, which was the primary reason for creation of NRS 486 (one other crucial factor during 1991 was the Gulf War).

This legislation was drafted and adopted before the passage of two very important federal laws, the Clean Air Act Amendment (CAAA) and the National Energy Policy Act (EPACT). The CAAA was concerned with air pollution in our metropolitan areas, whereas EPACT's emphasis is energy security and reducing our dependence on foreign oil. These Acts provide the nation

with two goals pertaining to motor vehicles; 1) dangerous pollutants should be reduced through use of cleaner burning vehicles and fuels and 2) our dependence on foreign oil should be reduced through use of non-petroleum motor fuels. Regarding motor vehicles, the main difference between these Acts is their definition of alternative fuels. EPACT does not allow for us of products "substantially" petroleum based, while the CAAA does allow for cleaner burning petroleum fuels such as reformulated gasoline. Only state vehicles in Las Vegas will be effected by EPACT and there is a strong possibility municipal fleets in Las Vegas could be included in the program at the end of this century (this will be determined by the Secretary of Energy if the nation is not meeting established petroleum displacement goals). Nevada is not effected by the clean alternative fuel provisions of the CAAA.

NRS 486 was patterned after the CAAA and uses the "clean alternative fuels" definition which includes petroleum derived fuels. The CAAA is fuel neutral, as is NRS 4886. It does not matter which fuel you use to reach the Act's clean fuel vehicle emission standards as long as you do not exceed the levels specified (enclosed is a copy of section 243 of the Clean Air Act). In effect, you can't be considered a clean alternative fuel vehicle unless you are able to achieve the specified emission reduction. This level of reductions is identical to California's Transitional Low Emission Vehicle (TLEV) and Low Emission Vehicle standards.

The primary intent of AB 812 (original bill) was for the governmental sector to lead the way through use of cleaner burning vehicles and fuels. Specifically, 486A.010 section 3 states, "conversion of these fleets {state, local} to use cleaner-burning alternative fuels can reduce contaminates sufficiently to permit the continued use of conventional fuels in individually owned motor vehicles." Furthermore, this legislation was designed to reduce the contaminates resulting from the combustion of conventional fuels in motor vehicles.

NRS 486 does not specify the emission reduction level necessary to implement this mandate; that responsibility was delegated to the Environmental Commission, notably through NRS 486A.150 section 4. This section reads, "the Commission shall adopt regulations necessary to carry out the provision of this Chapter, including, <u>but not limited to</u>, regulations concerning standards for levels of emissions from motor vehicles that are converted to use alternative fuels.: Currently, emission standards for alternative fueled vehicles have not been established. Since NRS 486 is patterned after the Clean Air Act, I would suggest using the emission levels for Clean Fuel Vehicles Fleets as defined in either the CAAA or use standards (LEV, TLEV) adopted in California.
Adoption of these standards will:

1. Not discriminate against any product that is petroleum bases, since you are regulating what comes out of the tail pipe, not what goes in the fuel tank.
2. Allow for the government sector to lead the way in mitigating air pollution in Nevada through promotion of cleaner burning alternative fuels.
3. Place all fuels on an even playing field by adopting emission standards and providing performance incentives to encourage the cleanest burning vehicles and fuels.

Vehicles using fuels, like low sulfur diesel, that do little if anything for our carbon monoxide

(C0) problem, should not receive the same credit as vehicles using fuels that reduce CO significantly. One way this could be accomplished is through credit system where vehicles that reduce CO significantly receive additional credit. This will provide the fleet managers with flexibility when it comes to how best to meet this mandate in the most cost effective manner and reward innovative fleet managers.

In summary, NSEO would agree that regulations currently adopted to implement NRS 486 need to be modified to be consistent with the statute. Modification should include developing an implementation program to utilize government fleets as a means to lead the way. This can be accomplished through emission standards. In addition, we must be cognizant of the possibility EPACT might be expanded to include municipal fleets in the Las Vegas valley. If this were to happen, most fleets using some NRS defined alternative fuels would not meet EPACT's mandate. Encouraging fuels meeting both the CAAA and EPACT definition would not only reaffirm two very important goals, but put Nevada on a proactive course to meet any future expansion of EPACT's alternative fuel program.

Our office would appreciate the opportunity to sit down with DEP staff and develop an equitable credit system where the "cleanest" alternative fuels are encouraged over fuels that do little or nothing for our current air pollution problems related to motor vehicles. This issue could be brought up at the next Environmental Commission Hearing at the Commission's request.

Thank you for your time and consideration. I would be happy to answer any questions you may have.

Chairman Close moved to agenda item 8.

> **Petition 96002 (R-104-95)** permanently amends NAC 486A.030 by making the definition of alternative fuels consistent with NRS 486.030. The petition deletes language that qualifies reformulated gasoline and reformulated diesel as having to exceed standards for gasoline or diesel fuels commonly available to the general public. (A new petition.)

Tom Porta, Nevada Bureau of Air Quality, reminded the Commission the purpose of this petition is to get things squared away with the statutes. I have provided copies of 486A.030 and 486A.150 (Exhibit #6) to the Commission. 486A.030 is a definition from the NRS for alternative fuels. It clearly states that the term includes low sulfur diesel fuel and reformulated gasoline which comply with regulations adopted by U.S. EPA pursuant to Standards for Control of Emissions of Motor Vehicles which were established in the Clean Air Act Amendments of 1990. The NAC definitions we had basically stated that these two fuels, low sulfur diesel and

reformulated gasoline, were alternate fuels until they become commonly available, i.e., when they show up at the retail pump. So in essence, we have eliminated low sulfur diesel as an alternate fuel. Our petition today is to delete that term "until commonly available" but I would like to make an amendment to our deletion. We would also like to include the language that says "which comply with the regulations adopted by U.S. Environmental Protection Agency pursuant to the Standards for the Control of Emissions from Motor Vehicles established in the Clean Air Act Amendments of 1990, Publication L. No. 101-549, November 15, 1990." I would like to apply that for reformulated gasoline as well. Reformulated gasoline is presently not available at our retail pumps but it could be as early as June of 1996. If it does become available at the retail pumps, the NAC definition would eliminate reformulated gasoline as an alternate fuel. Deleting the term "which exceeds the standards for gasoline commonly available to the general public in this state" and adding "which complies with the regulations adopted by U.S. Environmental Protection Agency pursuant to the Standards for the Control of Emissions from Motor Vehicles established in the Clean Air Act Amendments of 1990, Publication L. No. 101-549, November 15, 1990" will straighten these regulations out and will be our first step. Then, we will be able to consult with the Attorney General's Office, determine our boundaries and determine how we can work within these statutes to come up with a credit system for these fuels and some type of ranking.

Commissioner Molini asked, if you delete the language on RFG might there be a risk that you could be accused of discriminating against petroleum products? Tom Porta explained, with the current definition in the NAC, RFG is an alternate fuel right now. If, in June, 1996 RFG becomes available at AM/PM and 7-11 pumps, then by this definition, it would no longer be considered an alternate fuel and people would no longer be given credit for using it as an alternate fuel. Commissioner Molini agreed but if you leave that language in it still happens, so why delete it? Tom Porta explained, if you look in NRS statute 486A.030 it says "the term includes low sulfur diesel and reformulated gasoline which comply with the regulations adopted by U.S. EPA". Since those were very similar to low sulfur diesel, and there are no conditions on the statutory definition, I thought it appropriate to make those two equivalent and make them in accordance with the statute.

Commissioner Jones asked Tom Porta if this language altered what was presented for noticing purposes? Tom Porta replied no.

Chairman Close asked for questions or comments from the public. There were no questions or comments. Chairman Close asked for questions or comments from the Commission. There were no additional questions or comments.

Chairman Close called for a motion.

Commissioner Gifford made a motion that Petition 96002 be adopted with the amendments presented in Exhibit 6. Commissioner Jones seconded the motion with a caveat, the same as Commissioner Molini's two-part motion on Petition 95003. Chairman Close stated, the Bureau has the message and they understand what they are going to be doing. The motion was unanimously approved.

Chairman Close asked that Exhibits #1, #2, #3, and #4 become a part of the record on Petition 96002.

Chairman Close called for a 1 hour break for lunch.

Chairman Close reconvened the meeting reconvened at 1:45 p.m.

Chairman Close moved to agenda item 6:

> **Petition 95009 (R-031-95)** permanently amends NAC 445A.070 to 445A.348 to revise and establish water quality standards for the lake and tributaries of the Nevada portion of the Lake Tahoe Basin. The new standards prescribe the beneficial uses and numeric criteria for: total nitrogen; nitrite; temperature; a biological "escherichia coli" value; total dissolved solids; sulfates; turbidity; sodium absorption; ph; total phosphates; ammonia; and chloride. NAC 445A.122 amended to add extraordinary and aesthetic value and enhancement of downstream waters as standards applicable for beneficial uses.

Wendell McCurry, Chief, Bureau of Water Quality Planning, reminded the Commission they had adopted Petition 95009 in April, 1995 as a temporary regulation. Petition 95009 establishes beneficial uses for Lake Tahoe and the tributaries that were inadvertently omitted several years ago when LCB codified the regulations; establishes water quality standards for all the tributaries and requires the tributaries in the Incline Village area to maintain existing standards for higher quality. This petition makes modifications to the water quality standards for Lake Tahoe itself

by adding in 8 or 9 additional parameters. In the area of beneficial use, we added "waters of extraordinary ecological and/or aesthetic value" which was our way of addressing the federal issue where they call it "outstanding natural resource waters". We also added beneficial use to the tributaries of "enhancement of water quality". Mr. McCurry noted that no substantive changes have been made in the petition before you to the temporary petition adopted in April, 1995. All comments received were addressed at the April meeting.

Commissioner Gifford reminded Mr. McCurry, according to the minutes of the April, 1995 meeting, the Division was going to provide a protocol, in terms of sampling, to go along with the passage or discussion of standards of water quality for tributaries for Lake Tahoe and asked for a report. Wendell McCurry explained, the Bureau had met twice with Tahoe Regional Planning Authority (TRPA), U.S. Geological Service (USGS) and the Tahoe Research Group regarding the sampling. TRPA provides approximately $250,000 a year to USGS and $100,000 per year to the Tahoe Research Group for analysis. They routinely sample 9 stations, several on each end of the lake, Third Creek in Incline, Glenbrook, Loganhouse Creek, Edgewood Creek and Eagle Rock Creek. Sampling depends on the time of year and run-off conditions. Mr. McCurry gave their sampling schedule:

September - February:	Once a month - one sample per visit;
March:	Every 2 - 3 weeks, depending on run-off conditions - one sample per visit;
April, May, and June:	Once a week - one to three samples per day - depending on the run-off; peaks, to try to get obtain the more representative of what is going into the lake in terms of the diurnal variation.
July and August:	Once every 3 weeks.
During storm events:	They measure for flow and sediment load with one to three samples per event.
During the run-off:	There are 12 sites sampled to try to characterize what is going into the lake.

The main reason for the sampling program is to characterize the loads that are going into the lake and to determine if the thresholds that have been adopted by TRPA are being met. As a result of

meeting with these entities we will be changing our monitoring, we will be reducing duplication and will sample other places where their program is not covering heavy metals. We will be coming back again with recommended RMHQ's, (Requirement to Maintain Existing Higher Quality) numbers for the other streams like Glenbrook, Loganhouse, Edgewood and Eagle Rock Creeks. Commissioner Gifford remarked, what you are describing at this point is essentially the USGS sampling? Mr. McCurry explained it is a coordinated effort between USGS, TRPA, and Tahoe Research Group. The state effort is separate but coordinated with those sampling schedules to eliminate duplication of sampling.

Commissioner Gifford asked what happens with the streams that are currently entering the lake but don't really have a baseline defined? With respect to phosphates and nitrates, most of the streams contributing probably are much better quality than what your proposed standards are. To me that is a problem because I have a tendency to read into those degradation rather than any kind of enhancement, especially with nitrates being 10 milligrams and phosphates being .05. Reviewing the Table on page 4, Standards to Maintain Higher Water Quality Values, your nitrogen for example, even those values are often-times a bit high for single values or annual averages. To me, the streams that do not have a baseline and are not defined as part of this table fall back under these standards for water quality which you are proposing. But, because I think some of these values are excessive, that translates to me the latitude for degradation. Wendell McCurry explained the Bureau feels we covered that under Section 5 where we added, Requirements to Maintain Higher Quality Waters, Lake Tahoe Tributaries, "any tributary of water to Lake Tahoe whose quality is higher than the applicable standards will be maintained at that high quality" - Commissioner Gifford interjected, except your last sentence says "at the following control points" and the ones you have defined here certainly are not all the tributaries on the Nevada side so everything that isn't in this table has to go by the standards of water quality under Section 4. Mr. McCurry explained that is not the intent. The intent is that any tributary which has water quality that is higher than the beneficial use number of the water quality standard shall be maintained at that higher quality. All Douglas County streams would fall under that criteria, even though there are no numbers established for those streams at this time.

Commissioner Gifford asked, in terms of coming up with numbers in the future for these other streams, what requirements are you looking at to get the baseline information? If you take a single reading on one of these streams without any baseline information, does that become the standard or are you talking about a two-year period or a full season's worth of sampling to establish these standards? Mr. McCurry explained, in meetings with those agencies, our staff looked at the data they have generated and we feel there is sufficient data now for Glenbrook, Loganhouse, Edgewood and Eagle Rock Creeks in Douglas County. We will proceed with evaluating that data and come back before the Commission next year with numbers for those 4 streams.

Attorney General Mischel declared the language may be misleading to the average person. LCB re-worded Section 5 and rather than saying "the following requirements to maintain existing higher quality waters" which makes it sound like that is the only list, or control points, where higher quality water standards apply. The first statement in Section 5 "it applies to any tributary" is the intent. It might help to re-word the Petition. Instead of "the following requirements to maintain existing higher quality waters apply at the following control points" add the word "standards" and it would then read "the following standards required to maintain" because the table is just a list of standards that are known today. Wendell McCurry explained, those are requirements to maintain existing higher quality versus what is normally referred to as beneficial use standards and they are higher standards. Deputy Attorney General Jean Mischel interjected, the table was previously "Standards to Maintain Higher Quality Waters" - LCB changed that to "Requirements To Maintain Higher Quality Waters . In my opinion, "requirements" is too broad. I think you should use the word "standards" in the second sentence, not on the table because the table already uses the word "standards". This is not a major change. Commissioner Gifford stated that he did not have a problem with the table but I think that every stream on the Nevada side should be listed in the table. For example on nitrates, under the standards of water quality you have 10 milligrams per liter and I know that value is 10 to 100 times higher than what you actually find out there in the water. Given this charge of "water of extraordinary ecological or aesthetic value" kinds of qualities out there that 10 is not a good value. Likewise the phosphates. The phosphates, in terms of milligrams per liter, are about ½ of the .05 in a range of .01 - .03.

The total dissolved solids, not more than 500 on page 3, run in the category of 20 to 80 for the streams that are dumping into the Lake. I realize the Commission deals with this all the time, but to have those values, and some are treated as a special case because you have data available, but no data is available on other streams then those other streams, by not being listed, seem to me to fall back under the standards then of water quality. I don't agree with all the values that are there so making each individual stream a part of the table on Page 4 would be extremely important. We know the table is incomplete but given the resource, it seems to me it would be premature to pass this. I would like to see an approach on a stream-by-stream basis and the table completed. Wendell McCurry asked, regarding the statement "any tributary water to Lake Tahoe whose water quality is higher than the applicable standard will be maintained at that higher quality at the following control points", would it help if the word "for" was used instead of "at"? If it said "for the following control points". Commissioner Gifford replied no. The table infers that it will apply to all tributaries but this table does not list all of them and I have a problem with that. I do think that given time and a chance to interact with USGS, TRPA, and the California Research Group out of Davis, a much more complete table could be put together that would address what we have discussed. Commissioner Jones stated I read it that as you obtain more data you will add to the chart. In addition to that, we don't have the criteria yet on how you accumulate data so you couldn't put those streams on any chart until you accumulate the data. I don't think there is anything wrong with this chart as it is as long as we all understand what we are talking about. As soon as you accumulate the data that you are looking for, then whatever criteria you come up, it could then be added to this list. Attorney General Jean Mischel stated the problem may be theoretical. If someone wanted to put some industrial outflow at one of the tributaries that is not listed in the table, they could potentially argue that the second line in Section 5 makes it seem as though those are the only tributaries that NDEP, or now the Commission, requires having the higher water quality standards. That is not the intent, but somebody could probably make that argument. I think you should re-word the second sentence in Section 5 to make it clear that it is an on-going table. Commissioner Jones noted the first sentence says that very clear. I think we are fighting windmills because no one is going to put an industrial site on a Lake Tahoe tributary. Commissioner Gifford asked Mr. McCurry how long it took to establish a standard for

the values on Page 4. Wendell McCurry replied, the standards on Page 4 are the result of data collected, varying from 14 to 26 years. We don't have that many years of data on the other streams but we feel there is enough data. We intend to evaluate it the same way we did the Incline streams and we will extend this table to include those other 4 streams. Chairman Close asked Mr. McCurry when the information would be compiled and when would the Bureau expand this list. Wendell McCurry replied next year.

Commissioner Molini referred to the table on page 4, Standards to Maintain Higher Water Quality, and asked if data was unavailable on Incline Creek for total phosphorous, and on some of the various drainage's in total, on suspended solids? Do you have data but the beneficial use standard is sufficient? Wendell McCurry explained, most places where there is a blank means the existing quality is near or exceeds the beneficial use standard. So in that case, we don't have a number to put there. Commissioner Molini asked, if you had this table complete for every Nevada tributary to Lake Tahoe, do you need the beneficial use standard? Could you just put the RMHQ table in and include the beneficial use standard where applicable for things like phosphorous or solids? Wendell McCurry explained, when the legislature changed the law in 1979, we held hearings. The result was the legislative commission did not disapprove, but they would not approve until we worked out a compromise on how the standards would be stated. After 1979 we listed the beneficial use numbers then the list of numbers that were to protect the higher quality. That is how we got from the one column to two columns.

Mr. McCurry explained, the Lahontan Regional Water Quality Control Board was concerned with the fact that we were just going to have this one table that only applied to those streams, all of the other streams would be left naked with just meeting the beneficial use number, which they are. As a result of their concerns, the language in the first sentence "so any tributary would have to be maintained at the higher quality if that quality was better than what the beneficial use number is" was accepted.

Commissioner Gifford explained, the reason I am picking on the nutrients, phosphorous and nitrogen - primarily the nitrates, is that Lake Tahoe is a nutrient starved system. If there were ever two values in a table of standards for a system like Lake Tahoe, you should be shooting short, not long, on phosphorous and nitrogen. Given the history of the Lake with decreasing

clarity, it seems like the State is doing a disfavor to that complex up there. I think that as a Commission we should be concerned about that, with a nutrient starved system. The rest of this may not vary to the point that we need to worry about it, but certainly the clarity of the Lake is related to the availability of the nutrients that are going into that Lake. I am having a difficult time with it, especially since I still don't know what the sampling scheme is from the State's standpoint. You informed us about TRPA and USGS sampling but what is the State doing? I don't know if violations are based on what USGS, TRPA, or the group at Davis does and reports to you or whether they even report their values to you. I believe it lacks the kind of clarity and definition that I think that resource really deserves. I am certain you operate under some parameters up there and I don't mine tabling this for another 3 or 6 months. This petition was temporarily approved for a 12 or 6 month period at our last meeting but I would like for the Commission to request:

1) we have a sampling scheme defined;

2) if there are values available where a standard can be established on a tributary, and especially a higher quality water standard, that we do that.

Commissioner Iverson stated we have gone through a lot of discussion getting to this point. If we table this, that means we start all over because on November 1 we have zero. In my opinion, the Commission needs to approve something, or what you have worked so hard for is gone. Commissioner Gifford replied he was not suggesting we throw it all out, I am just suggesting that it is incomplete at this point, and we are passing something in ignorance, it needs to be revisited with more details available. Commissioner Iverson suggested Mr. Gifford make a motion, specifying that you want the Division to provide more detail after which the Commission would revisit this issue. The Lake is a resource that we cannot afford to lose or impact anymore than we have to and I think Mr. Gifford's comments are good.

Chairman Close asked for an explanation on page # 2, lines 23 and 26, one value is 10 and one is .06 and why the difference? Commissioner Molini replied that is nitrite as opposed to nitrate and that is correct.

Chairman Close questioned the standards on page 4, the headings do not comply with the standards that you have on pages 2 and 3. Should they not be compatible? The table says "total

nitrogen" as opposed to the beneficial use standard that breaks down the nitrogen.
Deputy Attorney General Mischel asked why total nitrogen is the standard for some tributaries and why is it broken down into nitrate and nitrite for the remainder of the tributaries.
Chairman Close note one is for the tributaries and then we have a different set of standards for Lake Tahoe tributaries. One is where you have actually performed all of the studies and you have come up with ph 10, total phosphates, sp, and total nitrogen. But then you go back over to the other standards, which also apply to Lake Tahoe tributaries, and you don't have the same headings nor the same categories so the two are not comparable. For example, chloride dissolved does not appear on page 3 or page 4. Wendell McCurry explained that it is listed just as Chloride, milligrams per liter, single value. Chairman Close asked if that was the same as Chloride Dissolved? Wendell McCurry replied yes.
Chairman Close asked if ph single units and pH standard units were a comparable designation? Wendell McCurry replied both of them say standard units but the one says single value within a range of 6.5 - 9, but it is still pH standard units. Under that column, each of those is single value with a range, so they are the same.
Chairman Close asked, if the nitrates are excessively high, as Commission Gifford suggests, should that be reduced or do you feel comfortable with leaving it at 10 at this point in time? Wendell McCurry replied that it should stay at 10 because that is the beneficial use standard number. When we finish evaluating the data and arrive at the numbers necessary to maintain existing higher quality, whatever number falls out is the number we will use. We would put it in a format like we presently have, total nitrogen, so we are looking at all the nitrogen species. In the Incline area we have an annual average of .4, .5, 1.2. The order of magnitude is less than the 10 for nitrates, as a standard. Commissioner Gifford remarked, given the values for the creeks that they do have the standards established for, again you are looking at 2's and 5's and 6's, incredibly low values compared to what the proposed standard is. Commissioner Molini asked if the beneficial standard is based on the most demanding beneficial use? Mr. McCurry replied yes, it depends on the parameters to which is the most demanding, like TDS and Chlorides, those that protect drinking water. The nitrate number is for drinking water and nitrite is a toxic value to protect aquatic life. We are proposing that all tributaries, listed on the table or not listed,

having better standards than necessary to protect the beneficial use, has to be maintained at that standard. Chairman Close asked, if somebody were to develop on a tributary of Lake Tahoe, they could not contribute to a lessening of the quality of the water by whatever they did. Is that a true statement. Mr. McCurry replied, that is correct. Chairman Close asked, regardless of what the standard is, if I came in to develop a factory up there, you would take a sample of the water from that tributary and I could not do anything that would reduce that quality. Mr. McCurry replied that is correct. Chairman Close asked, so the standards on pages 2 and 3 do not apply to a new development on those tributaries because they could not do anything that would lessen the quality of the water in that tributary by their activity? Wendell McCurry stated the only standards that would apply would be the ones where the existing quality is already up to that level - Chairman Close asked, if the existing quality was higher, then those standards on pages 2 and 3 would be all they would have to meet? Wendell McCurry replied yes.

Commissioner Molini asked if you add the Douglas County streams to the table would that be all inclusive then of the primary tributaries within Nevada to Lake Tahoe? Wendell McCurry replied Glenbrook, Loganhouse and Eagle Rock Creeks are the major streams.

Chairman Close asked what California is doing. Wendell McCurry explained, years ago California established individual standards for tributaries into the Lake. We adopted identical numbers for the Lake several years ago, then we revised our standards putting in the tributary rule where the standards on the lake, if you do not have standards on the streams, apply up the tributary. An evaluation shows California is in compliance and Nevada is in non-compliance because those numbers in the Lake are so small with respect to what is in the streams. The streams will always be showing non-compliance and we are trying to correct that situation.

Chairman Close noted that the goal to obtain a standard for every stream on the Nevada side has not been accomplished, only particular streams listed. If any business or entity was to be developed up there they could not do anything to diminish the quality that exists so what is the purpose of the standards set forth on pages 2 and 3?

Lew Dodgion, Administrator, Division of Water Planning explained, the State Water Pollution Control Law was amended in 1979 to attempt to bring it into someone's concept of compliance with what the Clean Water Act required. The Federal Clean Water Act says that you protect

surface waters and they roll three things into what they call the Water Quality Standard:

1) Designation of beneficial use;

2) Numbers or criteria to protect the beneficial use; and

3) A criteria to prevent degradation.

Our statute was amended to make it very clear that the Water Quality Standards were those numbers that are required to protect the beneficial uses and not to prevent degradation and that there was a second element to prevent degradation. The Clean Water Act allows the Commission to allow the degradation between the higher quality water up to the beneficial use number provided certain things are done. There is a laundry list in the Clean Water Act of 10 or 12 steps that have to be taken. One, it requires the Commission to make a finding that there is some outstanding social and economic benefit for allowing that degradation. In order to be in compliance with our law and the Clean Water Act we have to have the beneficial uses designated, the numbers to protect them, and the requirement to maintain higher quality. Mr. Dodgion continued, some members of the Commission will recall going through that exercise of allowing some degradation of the requirement to maintain higher quality for the cities of Reno and Sparks and the discharge of their sewer treatment plant into the Truckee River for certain parameters - chloride, sulfates and total dissolved solids. But in order to be in compliance, we have to have those 3 elements.

Commissioner Molini stated those total dissolved solids really muddy it. Lew Dodgion replied, to muddy it a bit more, when we have a beneficial use for Lake Tahoe of "water of extraordinary ecological and aesthetic value" there are no tables published by EPA of standards to protect that beneficial use. This Commission has the ability and the authority to establish standards, those that appear in that first table that are causing you so much distress, to protect that beneficial use. They can indeed, be much lower than the drinking water standard of 250 for sulfates or 10 for nitrates. Commissioner Gifford explained that was part of the point he was trying to make because everybody is well aware that the clarity of the Lake is not increasing, it is decreasing at the rate of about 1.5 feet a year. It seems the State should be taking the position of leadership in defining whatever it takes to maintain the status quo.

Administrator Dodgion explained the State Department of Conservation and Natural Resources

and the Division have, over the last 15 years, put a lot of effort into the TRPA programs by serving on the governing board and on the advisory council and contributing grant monies through us to the TRPA staff. We have not ignored the situation that exists up there. Commissioner Molini asked, are the standards a set part of the criteria TRPA considers before it issues a permit for building, and do they also weigh the impacts of that disturbance against these standards? Wendell McCurry replied TRPA issues the permit and requires mitigation of whatever projected damage is going to occur plus mitigation fees to go into the fund that is used to build erosion control projects. Lew Dodgion interjected that the final responsibility for determining compliance with water quality standards is with us. We, as well as TRPA, review all plans and specifications. Commissioner Molini asked if TRPA issued a permit to a development, could DEP put a cease and desist order on it because you felt the activity did not meet the standards. Lew Dodgion replied "absolutely". Commissioner Jones asked if that is true and we have been getting mitigation for any development that occurs at Lake Tahoe, how can we explain the degradation of the Lake. Lew Dodgion explained a lot of research has been going into that and there are many theories. I have heard a number of the developers refer to the "Comstock era" as being the total problem with Lake Tahoe today. The response time of that Lake is very slow with the turnover rate of the Lake something like 700 years so what we are seeing now might very well be the result of activity of 100 years ago. Commissioner Gifford agreed that was one theory, erosion is another, and now they believe that perhaps dry-fall is of significant influence into the Lake. The storm fronts move this direction from California and whatever those air masses pick up are deposited as they move over the Sierra Nevada Range. Collectively, it could be all those things. Wendell McCurry noted recent data indicates some of the streams are improving in quality versus 15 years ago as far as the suspended material and the nutrients. The projection is that some of the worst load, in terms of nitrogen and phosphorus both, is coming in through the air. Commissioner Gifford reported, this was a record run-off year, 250% of normal snowpack. Everybody thought the gullies would carry a lot of sediments down to the Lake thus influencing the clarity but the last readings that were taken show that the clarity is up, or greater than it was before the heavy runoff period began. Lew Dodgion remarked, maybe we are showing some improvement due to the mitigation measures. Chairman

Close asked for additional questions.

Commissioner Gifford stated he had several more issues to address:

1) I want to know more about the sampling scheme at the Lake. Are the samples taken close to shore, at a certain depth and how often? I want to know the parameters used in sampling.
2) On page 8, under clarity, the vertical extinction coefficient. You are saying it must be less than .08 per meter. I translate that into 45 foot clarity whereas the current clarity is somewhere around 80 feet. I think it should be one-half or two-thirds of that.
3) On line 28, you talk about turbidity and what you have done is pretty well addressed regarding point sources. Is there anything in terms of non-point sources that should be in there from your standpoint, in terms of turbidity? A better question might be, is it feasible to address non-point sources.

Wendell McCurry responded to Commissioner Gifford's 3 questions.

1. We are sampling at Sand Harbor and the Tahoe Research Group has been sampling all over the Lake. When we set the original standards we had the reference point out in the Lake near Sand Harbor to monitor any changes that occurred over long time periods.

Commissioner Gifford responded, Sand Harbor is a meeting place of the masses, so if you expect some disturbance and cloudy water conditions that would be the place to sample but perhaps a more neutral, less impacted site might be preferable as a sampling point. Assuming the average clarity of the Lake is between 75 and 80 feet and assuming I am translating this extinction coefficient correctly, let's say into a 45 foot depth for discussion purposes, that allows for a lot of degradation out there in terms of this "extraordinary ecological and aesthetic resource".

2. .08 is the standard California and Nevada determined in 1966 as a number for anything greater than a meter depth. In 1966 the turbidity was 3 Jackson Units.
3. The three items under turbidity fall under point source but it does not matter whether it is point or non-point source. It prohibits the deposition of any of these materials washing into the Lake or tributaries. The Best Management Practices

(BMP's) Retrofit Program that TRPA is conducting addresses that issue also. Everybody is being required to go in and retrofit as far as BMP's. We introduced the language for that in the early 70's, under turbidity, to prohibit the dumping and we have used that for enforcement.

Commissioner Molini asked if Commissioner Gifford was interpreting the vertical extinction coefficient correctly. If so, when .08 was agreed to by both states years ago, was it designed to allow degradation. Wendell McCurry replied, it is not designed to do that. I am going to check California's standards to see if they have derived some other method of measuring that. They reviewed ours standards and never commented on that item.

Commissioner Doppe note, we have defined all of these standards based on the concept of beneficial standards but what we don't have is a real clear understanding of how that relates to this "extraordinary ecological or aesthetic value", which could well go past the text-book definition of beneficial standards. The Lake, in general, already significantly exceeds these definitions of beneficial standards. If we have the authority to define what the standards are for the "extraordinary ecological or aesthetic value" perhaps we need to have more information, in terms of things like sampling and where we are now, so we can take the option of setting that higher standard based on facts behind our decision. Wendell McCurry replied, as far as the Lake goes, the concept that you are talking about is exactly what we did. Rather than taking the normal numbers that would be plugged in as beneficial use, and since the goal is to protect the clarity of the Lake, we came up with numbers, like total nitrogen, that are more reflective of what is now in the Lake instead of using nitrates of 10.. The phosphorous value, the sub-micrograms per liter, is still there. The Lake is to be protected for clarity so we were coming up with numbers that are not your normal beneficial use standard numbers. Commissioner Gifford interjected, it comes back specifically to that point, the standards for water quality. Your total nitrogen milligrams per liter is only .25, but just adding your nitrate and nitrite together for your tributary standards totals 10.06, a lot of difference. And, for the Lake Tahoe nutrient started system, that additional increment of nitrogen, whether it comes in as nitrate or nitrite, is probably not a good idea. Wendell McCurry replied that is why the RMHQ's we have established for the Incline streams reflect those smaller numbers. Commissioner Gifford stated he appreciated that

but he would like to see something that would be a little more all-inclusive and on a stream-by-stream basis. Maybe you could leave some insignificant stream and apply the standards to it and then have these higher water quality standards for the main tributaries. I am not sure how you get out of that dilemma. Wendell McCurry replied, we plan to extend this table to include those other streams and whatever the numbers reveal is what we will present. Chairman Close asked Mr. McCurry when those other streams will be monitored. Mr. McCurry explained, they are being monitored now. We intend to come back to the Commission sometime next year with numbers for at least those four streams and we will see if there are others we can monitor. Chairman Close reiterated that was one of Commissioner Gifford's questions, when are these reports going to be made available back to us? Commissioner Gifford replied, I want to know

1) when they will be available; and

2) the sampling scheme that goes into making these kinds of determinations.

Commissioner Gifford stated he would phrase a motion, given the philosophy that we need to do something.

Commissioner Gifford proposed that we accept Petition 95009 for a 12 month period, with the provision that the Commission revisit the standards to maintain higher quality waters for the various tributaries on the Nevada side for Lake Tahoe; that we revisit the proposed extinction coefficient for the Lake, and that we have some kind of protocol developed in terms of sampling both tributaries and for the Lake that we can understand.

Commissioner Trenoweth asked Wendell McCurry if that gave the Bureau enough time. Wendell McCurry replied, we intend to be back before October of next year.

Commissioner Trenoweth seconded the motion.

Chairman Close called for additional comments or questions. Commissioner Molini asked, regarding sampling protocols, can you get that done? We need to clarify what we want. We want to know the sampling points and the frequency of sampling. Commissioner Gifford agreed and stated, philosophically, I do not think it makes sense to define a standard if we are not sure how it is being applied or what it is being judged against. It is informative for us to know how the actual sampling was done. Commissioner Trenoweth asked Commissioner Gifford if he wanted the Bureau to appear back before the Commission in 3 or 4 months to explain how they

are sampling. Commissioner Gifford replied, if someone wanted to add it as an amendment I would just include that in my 12 month motion. **Chairman Close suggested the Bureau might, in 3 or 4 months, report back to the Commission just to let us know what protocol you are using so that we would have an opportunity to make a modification of that protocol if we thought it would be appropriate. Wendell McCurry replied he could do that.**

Commissioner Jones noted, you said the numbers in the tributaries in Incline were established from 14 - 27 years of data collection. You will not have that much data for these other streams so will you be able to defend this new criteria in light of previous evidence that arrived at the other numbers? Wendell McCurry replied, if we don't feel that we have enough data to support what is being proposed, we won't propose it.

Chairman Close stated that we would vote on Commissioner Gifford's motion but after we vote Mr. McCurry can represent to us that he will come back with the protocol sometime in the near future, before coming back with the numbers. **Commissioner Trenoweth reminded Chairman Close that he had seconded Commissioner Gifford's motion. The motion was unanimously approved.**

Chairman Close reiterated, Mr. McCurry has made representation to us that he will come back with this protocol. Mr. McCurry replied that they would try to come back with everything at one time. Chairman Close stated, I presume you will have your protocol established fairly quickly and we could review that for our own information, just to make sure that we are comfortable that what is going to come out of that protocol is what we are going to be able to vote on.

Chairman Close moved to agenda item 9.

> **Petition 95012 (R-034-95)** permanently amends 445B.400 to 445B.735 to eliminate the requirements and references for the vehicle emission "enhanced inspection" program previously adopted by the Commission scheduled to be implemented in the Las Vegas Valley. NAC 445B.730, 445B.732 and 445B.733 is repealed and 445B.592 is amended to exempt new motor vehicles from the requirements of an emissions inspection until the third registration.

Tom Porta, Bureau of Air Quality explained this Petition will make permanent the deletion of the

I/M 240 Vehicle Emissions Test Program for Las Vegas. Because the State was able to demonstrate a more flexible emission test program, EPA has allowed the State and Clark County to go forward with the more flexible inspection and maintenance program.

Mr. Porta explained, these regulations for emission testing are intermingled together with the Department of Motor Vehicles (DMV) regulations, thus the gaps in the deletion, for instance 445B.730 and 445B.732. DMV has made the changes to their regulations so they can adopt the new vehicle inspection program.

Mr. Porta continued, Petition 95012 permanently erases the I/M 240 program from Las Vegas and also adds one benefit to the motorist. Whoever purchases a new vehicle will not be required to get a smog test until the third registration period.

Chairman Close asked for questions.

Commissioner Molini asked Mr. Porta if he could give an update on the negotiations between California or any of the other states and the EPA. Tom Porta reported the I/M 240 Program was very heavily contested throughout the U.S.. Originally, EPA said, if you are in a CO non-attainment of serious or moderate proportion, such as Las Vegas, not only will you meet the standard but this is how you will meet it, with I/M 240. A number of states resented that and questioned if the I/M 240 Program is as effective as EPA claims it to be because there seems to be a real lack of documentation towards the reduction of benefits that I/M 240 provided. California is now looking at the RG/240 (Repair Grade 240) test procedure. It is a little less stringent than I/M 240. They are still negotiating, but I have heard EPA will be considering accepting the RG/240 Program for California. Colorado implemented I/M 240 and met with a lot of public resentment because of the time and cost involved in the emission test and because land is so expensive in the Denver urban area, the nearest test station for a downtown resident is 40 minutes distant.

After Texas spent $10 million on the program the governor put a stop to it and now Texas is negotiating with a lesser form of vehicle inspection and maintenance program.

Chairman Close expressed pleasure that the I/M 240 program was not implemented in Nevada. Tom Porta explained the real litmus test will be this winter. Clark County did not experience a CO violation last year. If they do not experience a CO violation this year they can be eligible to

re-designate the area as being in attainment for CO. In addition to vehicle and maintenance inspection, Clark County has taken other steps to reduce CO. We are proceeding with a new program that includes certification of both emission testing people and the repair mechanics so vehicle emission testing is just one aspect of meeting the CO attainment problem in Las Vegas.
Chairman Close called for questions. There were no questions.
Chairman Close called for a motion.

Commissioner Fields moved for adoption of Petition 95012 as presented. Commissioner Molini seconded the motion. The motion unanimously carried.

Chairman Close moved to agenda item III. Settlement Agreements on Air Quality Violations

Hycroft Resources & Development,Inc.: Notice of Alleged Violation # 1177

Don Del Porto, Bureau of Air Quality, reported Hycroft Resources and Development operates a gold mine operation located at the Crofoot Mine in Humboldt County. An inspection on June 5, 1995 documented the operation of two crucible furnaces in excess of the 20% opacity. Notice of Alleged Violation 1177 was issued on June 16 for the violation of Nevada Administrative Code 445B.354. During an enforcement conference held on July 11, 1995, Hycroft stated that a substandard pump was in use during the inspection, a replacement pump was on site but had not been installed and Hycroft also indicated there was an operator error which added to the opacity problem. Hycroft agreed to, and implemented, corrective action by maintaining the correct size of pump on the water scrubber, revising the furnace charging procedures, and equipping the scrubber with additional sprays to improve collection efficiency. NDEP agreed that these actions were sufficient to bring the source back into compliance and an administrative fine of $1,000.00 was agreed to for the violation.
Commissioner Fields asked how long Hycroft had been operating in excess of the 20% opacity.
Don Del Porto replied the penalty is based on one day.
Chairman Close asked for additional questions. There were not questions.

Commissioner Molini moved for acceptance of this settlement agreement with Hycroft Resources and Development.

Commissioner Gifford seconded the motion. The motion unanimously carried.

Chairman Close moved to agenda item III.B.

Cind R Lite Block Company: Notice of Alleged Violation # 1183

Don Del Porto, Bureau of Air Quality reported Cind R Lite Block Company operates and cinder processing facility located at Highway 95 north of Lathrop Wells in Nye County. An inspection on July 24, 1995 documented operating the ElJay and Hartl screens without the required controls. Notice of Alleged Violation # 1183 was issued on August 3, 1995, for violation of Nevada Administrative Code 445B.275. During an enforcement conference on August 15, Cind R Lite Block Company stated that they were unaware that the violation had occurred but would do what is necessary to comply with all regulations. Cind R Lite Block Company agreed to, and implemented, corrective actions by providing the Bureau of Air Quality a written maintenance procedure for the water spray on the ElJay and Hartl screens. NDEP agreed that these actions were sufficient to bring the source back into compliance and an administrative fine of $1140.00 was agreed upon for the violation.

Chairman Close asked for questions.

Commissioner Gifford asked how the Bureau arrived at the $1140.00 fine. Don Del Porto replied the penalty matrix revealed a $1200.00 penalty. The Bureau is allowed to give them a 5% deduction for them showing due cause and for implementing this corrective action procedure immediately. Cind R Lite displayed much effort putting it together and getting it to me before the enforcement conference, and promptly addressed the problem. Thus, we deducted $60.00 off the $1200.00 bringing it down to $1140.00.

Chairman Close called for questions. There were no questions.

Chairman Close called for a motion.

Commissioner Molini made a motion for acceptance of this agreement with Cind R Lite Block Company. Commissioner Gifford seconded the motion. The motion unanimously carried.

Chairman Close moved to agenda item IV.

IV. Diesel regulatory program update and general direction.

Tom Porta, Bureau of Air Quality asked the Commission to refer to Exhibit 8, the Attorney General's opinion. Mr. Porta reminded the Commission of his presentation to them at the June

20, 1995 on the preliminary study, required by the regulation on heavy duty diesel and opacity. Since June, we have held 4 workshops on what our proposed cut-point was and what the standard would be for opacity on heavy duty vehicles. We have a written agreement from the Engine Manufacturers Association, and verbal agreements from the California Trucking Association and the Nevada Transport Association, on what we would like to present to the Commission as a cut-point. All the studies required by the statutes and regulations have been completed by the Division and staff is ready to make recommendations for the heavy duty vehicle cut-point opacity standard.

We ask your direction on one small problem that lies within the statute for the program which basically says "the program for heavy duty motor vehicles has to be substantially similar to the program in California". All the regulations and statutes are in place in California. However, the program is suspended because it has been under attack by the California Trucking Association which has legally stopped all enforcement actions and inspections until they complete a study on high altitude. We have met all the Nevada requirements, the studies, etc., and we believe we have all the players involved on board ready to support our cut-point for the heavy duty vehicle opacity. If we go forward with the cut-point proposal we will begin, almost immediately, to implement the program. Meanwhile, California's program is suspended. Therefore, we see this dilemma over the statute. The Attorney General's opinion (Exhibit 8) is broad, basically stating, if you are trying to accomplish the same goals of regulating smoke from vehicle emissions and you are proceeding down a similar path you are allowed a lot of latitude. If the program in California is suspended, where does that put us so we are asking for your direction on how you would like us to proceed.

Chairman Close asked, if we adopt the program, do we expect the same problems that California is having or have you prepared the way so that will not be happening? Tom Porta replied, the biggest opposition was from Nevada Transport Association and California Trucking who immediately threatened to sue us if we move forward with adoption of the cut-point. A letter from the Engine Manufacturer's Association, the people who build the engines that are put in the trucks that these lobbyists represent, agreed with the 70% cut-point we are going to propose. I received verbal agreement from the California Trucking Association, as well as the Nevada

Transport Association. I asked for their support in writing but have not yet received it, so I am cautiously optimistic that if we did come before you with a cut-point they would support it. I do have the message that they would support our proposal still saved on my voice mail. I do not expect much, if any, opposition if we do go forward with the standard but still there is this slight resolution with the statute. Commissioner Molini asked for the legislative history or why was this was intended to parallel California's program? Tom Porta explained, this whole set of regulations came about through Assembly Bill 812. When we were adopting vehicle emission regulations for cars, many constituents called their representative and said "what about those heavy duty diesel folks - you should be regulating those too! If I have to get my car smogged there had better be something on there to regulate smoke from buses". AB 812 directed the State Environmental Commission and the Division to adopt a program on heavy duty diesel and start regulating emissions from heavy duty diesel. Lew Dodgion, Administrator, Division of Environmental Protection, explained the intent of AB 812 being substantially similar to California was so the cross-country trucker did not experience exposure to two, three, or four different programs as he traveled across state lines.

Tom Porta continued, Utah has adopted the 70% cut-point we are proposing to adopt and I have a feeling what we do will influence what California's cut-points will be. They now have two cut-points on their books, 55% for new vehicles and 60% for older vehicles.

Chairman Close asked, if we adopt this cut-point what, visually, could we expect to see in the operation of diesels? Tom Porta explained, reviewing our data, federal test procedures, etc., there seemed to be a real leveling out after about 50% on the opacity. Trucks that were above 70% were vehicles that had a major engine problem, i.e., a plugged injector and those are the ones, if you were sitting behind them, you would get totally engulfed with smoke when the vehicle moved. That is what most people are concerned with. We feel that a cut-point of 70% would eliminate a lot of these complaints.

Commissioner Molini briefly took the chair for Chairman Close.

Deputy Attorney General Mischel inquired as to the reason for California's dissention. Tom Porta explained, the California Trucking Association got a stay issued because there were questions about the test method, especially altitude. Deputy Attorney General Mischel asked Mr.

Porta if the Bureau had addressed those issues. Mr. Porta replied yes, we accommodate for altitude in the test procedure. Commissioner Jones asked if the real issue was the difference between 55 and 70. Mr. Porta explained, altitude was the issue. 55% at altitude may be only 10% at sea level and California did not have any good proof if that was the case or not.
Mr. Porta continued, our proposal will be to adopt a new test method, J16-67. The Society of Automotive Engineers has just approved this more accurate test method and this will relieve a lot of the questions. California is also formulating regulations to adopt the more accurate test method, J16-67. The test method is the same but I am not sure about the frequency. We do random testing. Vice-chairman Molini stated it is dangerous to interpret legislative intent, but I can't believe the legislative intent would be, if California does a stay and is not moving on their program, that Nevada bring ours to a halt. If Utah has adopted a 70% cut-point and that is what we are proposing, that would tend to address this interstate issue or maybe start a trend. I feel we should move forward.
Commissioner Gifford asked if a motion was needed.
Commissioner Molini replied no. The direction of the Commission is for the Bureau to go ahead.
Vice-chairman Molini moved to agenda item V.
Revisions to Form #1 of Commission (Petitions to Commission)
David Cowperthwaite, Executive Secretary explained the revisions to Form # 1 are the result of Senate Bill 277, passed in 1995, that significantly amended the Administrative Procedures Act. Petition #1, one of 3 petitions that the Commission has, is used to provide information both for preparation, public notice, and follow-on statements that are required for submittal of regulations to the Secretary of State. I have transcribed language in Item 6 and added language to Items 7 and 8 that profiles the information of disclosure that is required under the Administrative Procedures Act. I have attached the language (Page 4, Section 7, Subsection 7) that is required by the legislature in terms of the bills that were passed and that language is now incorporated into Form #1.
Deputy Attorney General Mischel explained a motion is needed to adopt this revised form.
Commissioner Jones made a motion that the form be adopted as presented.
Commissioner Fields seconded the motion. The motion unanimously carried.

Vice-chairman Molini moved to agenda item V. Discussion Items:

Legislative Update

David Cowperthwaite reviewed Exhibit # 7, a partial review of what occurred in the 1995 legislative session.

< SB 277: There are additional aspects of SB 277, in terms of other disclosure items, explained in Exhibit # 7. SB 277 was a compromise bill, an outgrowth of SB 370 of the 1993 session that included very strong language regarding stringency of regulations and the Governor vetoed SB 370.

< AB 286: Requires disclosure information regarding economic impacts to be put in public notices. Public notices have expanded significantly. You will note the public notice

has gone from 2 pages to 6 pages. The newspaper public notice for this hearing came out to be about 46 inches long in very small type. I feel that we are in compliance with the requirements under the Administrative Procedures Act.

< AJR 19: Enhances the power of the Legislative Counsel Bureau to review regulations and evaluate whether they are within statutory authority.

< AB 602: Broadens the definition of open meeting by establishing three clear contexts for "action". They extended it to include voting on a matter, a decision made by majority of members, and lastly, a "commitment" or "promise" made by a majority of members. In terms of the agenda, if there is any doubt, an agenda item will be labeled as an action item so there will be no doubt in terms of conflict with the open meeting law.

Air Quality:

< SB 565: Requires a plan to be developed for alternative fuels. The Department of Business and Industry will be developing the plan and the Division will be working closely with Business and Industry regarding this plan.

< SB 269: Reduced the fuel tax from 23¢ to 20¢ per gallon for "clean alternative fuels".

< SB 173: Provides more flexibility to the Commission to start a diesel inspection program and it also dealt with the issue of the I/M Program in terms for making it difficult for experimental vehicles to be exempt from I/M.

Environmental Audits:

AB 591 and SB 533 allowed the environmental audit to be used to block investigations and

allow the public to remain in the dark about environmental violations. Both bills dies in committee.

One focus of the Small Business Program will be to try to get people to do internal audits, voluntary audits.

Hazardous Waste and Materials:

< SB 63: The Division's bill, had minor language in terms of the disposal of hazardous waste in the waters of the State, it may or may not require regulatory changes.

Mining Regulations:

< AB 429: Attempted to regulate aggregate or sand pits. That bill died very quickly in session.

Petroleum Cleanup:

< AB 717: Establishes 11 distinct criteria for reviewing petroleum clean up claims.

< SB 121: Will require risk based assessments of possible remediation sites requiring corrective actions. Of note, the petroleum clean up fund was augmented with a fee on fuels being raised from .6 cents to .75 cents per gallon. As a result, the Division will raise an additional $1 million dollars. I will expect some regulatory activating coming before the Commission regarding the risk based assessment.

Solid Waste:

< AB 470: If passed, would have gutted the State's RCRA program. A coalition coalesced to back this bill. Legislative intent was manifested on this issue in AJR 40. This bill urged Congress, EPA and the Division to resolve problems with small landfills.

< AB 449: A recycling bill. Previously counties of 40,000 and over were to have curbside recycling. That threshold was lifted to 100,000 people in a county so effectively only Washoe and Clark County will have curbside recycling occurring. The other counties have more flexibility but it means that Carson City, which has curbside recycling, no longer has to have curbside recycling. The population of Douglas and Elko counties was nearing the 40,000 threshold and they would have been

affected by those requirements. The Commission will receive a petition that will bring the regulations into conformity with the requirements of this legislation.

Water Quality:

< SB 489: Set a water planning and management framework for Washoe County. Sections of the bill allow for water quality remediation. The original bill stepped into the area of the Commission's jurisdiction and the Health Division's jurisdiction. This bill went through a number of amendments and those issues were worked out.

< AB 580: Sets in place very clear regulatory authority regarding water quality lab certification. This is a joint jurisdiction between the Commission and the Board of Health but that will be more clearly defined by statute now.

Vice-chairman Molini turned the meeting back to Chairman Close.

Chairman Close moved to agenda item V - B:

Small Business Program Update and Compliance Advisory Committee

David Cowperthwaite explained, a 7 member Compliance Advisory Panel, comprised of appointees made by the Governor, Legislature and NDEP Administrator, is a part of the Small Business Program, as required by the Clean Air Act. The 4 legislative appointees are in place and we are waiting for the Governor to make his last 2 appointments. We hope to hold a meeting with the Compliance Advisory Panel in late October or early November. The panel is established to provide advice, feedback on the effectiveness of the program and effectiveness of the literature, all those aspects, to the Small Business Program.

Mr. Cowperthwaite announced, the Small Business Assistance Program has received a grant of $150,000 from EPA, a two-to-three year multi-media grant for Small Business. We have designed it to work with the University's Small Business Development Center to have outreach regarding pollution prevention activities on a multi-media basis. There are two other aspects to the grant:

1) being able to publish a permitting manual or some work documents/publication work;

2) begin to ask hard questions regarding, if we are going to do technical assistance for

small businesses, what is the assistance they need?

We are going to focus on developing protocols that show the best, fastest way to deliver services toward any particular client or sector.

Chairman Close moved to agenda item V - C:

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

Lew Dodgion, Administrator, Division of Environmental Protection, reported the Division is approximately 40% funded through federal grants. Congress has passed the EPA budget with a 35% cut in EPA's programs and a similar measure in the Senate cuts EPA's programs by 25%. NDEP is in limbo as to how our grant funds are going to survive in fiscal year 1996-97. As a result of these probable budget cuts, I am holding all vacated and new positions vacant until we find out what our funding will be. Chairman Close asked how many dollars and how many vacant positions are we talking about. Lew Dodgion replied, $16 million is the overall Division operating budget and approximately 40% is state and federal grant monies. Loosing one-third of that 40% translates to 25 or 26 positions and we have 25 vacant at this time.

Commissioner Molini asked Mr. Dodgion, you recently had an audit and I understand the audit commented on the degree of consistency in how you assess and collect fines. Lew Dodgion replied, we had an LCB performance audit as opposed to a financial or fiscal audit. The audit team spent virtually 1 year in the Division with 3 members working part of the time and 1 member all of the time. They probed each of the 7 Bureaus. One of their lead-in questions to me was to define for them which one of the Bureau's was the most under-staffed, under-funded, and over-worked, and then they concentrated on that particular Bureau. In our program we lack documentation and it is a weakness in the procedures. It does not actually say "you will dot this i and cross this t" - but they want you to document all of your decisions and document why you made this decision instead of that decision. I quarrel with some of that. Do I need to justify a particular decision to an auditor as to why we fined this guy $5,000 and this guy $4,500. They complained that our files lack the documentation to explain why we did this instead of that. When you are under-funded and under-staffed, that leads to a lack of documentation. This audit

concentrated on Water Pollution Control, a Bureau with 3 people. The audit also chastised us for letting certain violations continue for long periods of time. One, a 5 year period before we lowered the hammer on Virginia City that was a violation of our enforcement manual. If we take an enforcement action against the small communities, that brings the federal EPA into the picture and we do our best to try to give these small communities enough latitude and leeway to get them to come into compliance without finding the violation and without seeking penalties which they can't pay. We would rather see them put the money into fixing the problem. That is what this audit was about. We will be tightening up procedures, more record keeping, and load completion will drop. But it will be documented.

Deputy Attorney General Mischel asked if the Division had a table where the fines are defined. Lew Dodgion replied, no. Each of the programs that has an enforcement action and negotiates penalties has some sort of guideline that lays out, weighing factors, what an appropriate penalty would be. We have that in the air program and in the water program and that is a guideline to the enforcement officer. We also have an enforcement penalty panel that convenes. Several Bureau Chief's will review the facts of the case, look at the matrix, determine weighing factors on each one, and decide what would be an appropriate penalty. That is a guideline to the enforcement officer who then contacts the violator and says "we have determined that you should pay a penalty for these actions and we think this is the appropriate penalty and we would like to sit down and talk to you about it". Then they negotiate. Getting $50,000 out of Virginia City for instance, is counter-productive. So we trade-off and say "if you will do some improvements to your sewer treatment plant, if you will do some environmental improvements for the community, then we will reduce this $50,000 to something less". We were criticized for that. Again, it was more in terms of documenting the decision and the reason for it than actually trying to second-guess the fact that we did it. When you are negotiating penalties, I don't necessarily want all of my thoughts, rationale, and the reasons from step a to b to c written down in a file that is open and accessible to the public. Commissioner Iverson stated he thought it was incumbent on all Commissions, whether it is an administrative, legislative, program, or fiscal

audit, to realize exactly where those audits are coming from. I think your negotiation approach in Virginia City , HyCroft Mine or with any entity, is a legitimate way for an administrator or a manager to deal with the general public and to try to compromise. Unfortunately, there are elements in this organization that do not believe that is the best way to go about it. I think any one of us in state government realize that we all get in the position where we have to do that in the best interest of the people of the State of Nevada. Lew Dodgion agreed. Our program is about achieving compliance rather than maximizing penalties paid. In dealing with you as a violator, for instance, I might be able to get you to come into compliance for a $500 penalty but Mr. Jones might be more recalcitrant and it might take $5,000 to get him in compliance. I could not get that intangible difference, between dealing with Company A and Company B, across to the auditors and I can't justify that in documentation. It is extremely difficult, but we will have better documentation.

Lew Dodgion reported the Tank Farm in Sparks lawsuit had been settled. A $10 million dollar settlement will be paid to us over a 10-year period in 11 equal payments and the first check was received yesterday. The defendants also agreed to clean up the plume and the soils to our satisfaction and to the standards established by the Commission. Lew Dodgion reported the money will be deposited in the Hazardous Waste Management Fund. That money is then available for use in our Hazardous Use Management Program and in our Corrective Actions Program where we hire a contractor to clean up contaminated sites when we can't find a responsible party, for investigation of those types of things, and to be used in our UST (Underground Storage Tank) Program. We are investigating if we might be able to use the money in our Water Pollution Control Program as well. The money goes into environmental programs as opposed to into the general fund.

The defendants in the case had appealed the judges order to take over the discharge pit. The plume from the Tank Farm leak is going into the Helms Pit, being pumped, treated, and discharged to the Truckee River. The defendants appealed to the State Supreme Court. As part of the settlement, they agreed to drop the appeal so that issue was settled. Deputy Attorney General

Mischel stated, technically. The appeal to District Court is what they dropped, however, the Administrative Appeal had three main issues and two of those were continued and were not technically part of the District Court action. Lew Dodgion replied it was his understanding that part of the settlement agreement was to settle all of the issues that we had. The matter before the Supreme Court was dismissed. Commissioner Jones asked if it was true the City of Sparks had settled for $12 million. Lew Dodgion replied he heard a settlement had been reached but I do not know details.

Commissioner Jones asked if these amounts of money are punitive damages and, in all phases they are going to do the cleanup? Lew Dodgion replied that he did not know the details of the agreement with the City of Sparks. NDEP was not involved in that lawsuit but we are concerned about the details of settlement in that they may impact the company's ability to clean up the plume to our satisfaction. The City of Sparks wants to get water in that pit as quickly as possible and we do have a concern about that. The monies that were paid to NDEP were not identified as far as damages or fines but it is totally separate from the cost of the clean-up.

Chairman Close asked for additional questions.

Chairman Close moved to agenda item V - D:

Past and Future Meetings of the Environmental Commission.

David Cowperthwaite reported the next meeting will be held on November 7, 1995, in Winnemucca. Two petitions relating to the Humboldt River Water Quality Standards and Toxic Standards have been submitted.

A meeting will be held on December 12, 1995, in Laughlin to revisit the opacity regulations that were passed by the Commission several years ago. Additional petitions will be forthcoming for this hearing.

General Commission or Public Comment

Chairman Close asked for other items to be brought before the Commission. No additional items were brought forth.

Chairman Close welcomed two new members, Mark Doppe and Paul Iverson.

Chairman Close adjourned the hearing at 3:40 p.m.

INDEX

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: October 3, 1995

Location: GRANT SAWYER BUILDING - LAS VEGAS, NEVADA

REGULATORY EXHIBIT LOG

#	Item	Item Description	Petition	Accepted Yes/No
1	Facsimile	Fax from Clark County Comprehensive Planning: Richard B. Holmes, Director	95003 and 96002	YES
2	Facsimile	Fax from Southwest Gas Corporation: Jay Taylor, Supervisor/Marketing	95003 and 96002	YES
3	Copy of Testimony	Testimony of Dan Hyde, Division Manager of Vehicle Services for the City of Las Vegas	95003 and 96002	YES
4	Copy of Testimony	Testimony of Ken Platt, Special Projects Manager, Nevada Department of Business & Industry, Nevada State Energy Office (Plus 9 pages of attachments)	95003 and 96002	YES
5	Letter	Letter of support from Union Pacific Railroad Company: Ken Welch, Assistant Vice President, Environmental Management	96001	YES
6	Nevada Revised Statutes Nevada Administrative Codes Part C - Clean Fuel Vehicles	NRS 486A.030 NRS 486A.150 NAC 486A.030	95003 and 96002	YES
7	Report	A Partial Review of Legislation Affecting the State Environmental Commission		YES

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8	Memo	Advisory opinion from Catherine Thayer, Deputy Attorney General	95012	YES

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14				
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17				
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