

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF November 3, 1993

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

AGENDA

NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing commencing **9:30 a.m.**, on **Wednesday November 3, 1993, at Cashman Field**, Rooms 205 & 206, 850 Las Vegas Boulevard North, Las Vegas, Nevada.

This agenda has been posted at the Clark County Sanitation District Offices, Cashman Field and Division of Environmental Protection Office in Las Vegas, Nevada, the Washoe County Library in Reno, Nevada, the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this set hearing was published on October 4, October 13, October 20, October 21 and October 27, 1993 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 September 22, 1993, meeting. * ACTION
- II. Regulatory Petitions - * ACTION
 - A. Petition 94002 by the Nevada Division of Environmental Protection is to permanently amend NAC 445.438 through 445.8435. This pertains to the air quality operating permit program and the regulations for hazardous air pollutants. The proposed amendments are to update the existing regulations and fulfill the requirements of the Title V of the Clean Air Act and Title 40 C.F.R. Part 70, Operating Permit Program. The proposed amendments include the establishment of emission based fees, enhanced application requirements, the repeal of toxic pollutants standards and the corollary inclusion of Title III Hazardous air pollutants.
- III. Settlement Agreements on Air Quality Violations
 - A. Nevada Goldfields, Inc.; Notice of Alleged Violation # 1062
 - B. Sierra Pacific Power Company; Notice of Alleged Violation # 1059
- IV. Discussion Items
 - A. Status of SB 127 Strategy
 - B. Status of Division of Environmental Protection's Programs and Policies
 - C. Future Meetings of the Environmental Commission
 - D. General Commission or Public Comment

The hearing scheduled for Wednesday November 3, 1993 may be continued to November 4, 1993 or to a later date to be determined by the Commission. The hearing, if continued to Thursday November 4, 1993 will be held in rooms 205 and 206 at Cashman Field located at 850 Las Vegas Boulevard North, Las Vegas, Nevada beginning at 9:00 am.

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 no later than 5:00 p.m. Thursday October 28, 1993.

NEVADA STATE ENVIRONMENTAL COMMISSION AMENDED NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:30 a.m. on Wednesday November 3, 1993**, in rooms 205 & 206 at Cashman Field located at 850 Las Vegas Blvd North, Las Vegas Nevada. **This amended notice changes the location of the hearing from the Clark County Sanitation District, Board Room, located at 5857 East Flamingo Road, Las Vegas, Nevada to Cashman Field.**

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

1. Petition 94002 by the Nevada Division of Environmental Protection is to permanently amend NAC 445.438 through 445.8435. This pertains to the air quality operating permit program and the regulations for hazardous air pollutants. The proposed amendments are to update the existing regulations and fulfill the requirements of the Title V of the Clean Air Act and Title 40 C.F.R. Part 70, Operating Permit Program. The proposed amendments include the establishment of emission based fees, enhanced application requirements, the repeal of toxic pollutants standards and the corollary inclusion of Title III Hazardous air pollutants.

The hearing scheduled for Wednesday November 3, 1993 may be continued to November 4, 1993 or to a later date to be determined by the Commission. The hearing, if continued to Thursday November 4, 1993 will be held in rooms 205 and 206 at Cashman Field located at 650 Las Vegas Boulevard North, Las Vegas, Nevada beginning at 9:00 am.

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 and amended will be on file at the Office of the Secretary of State, Capitol Complex, State Library, 100 Stewart Street, Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada, Division of Environmental Protection, 1515 East Tropicana, Suite 395, Las Vegas, Nevada for inspection by members of the public during business hours.

Additional copies of the regulations to be adopted or amended will be available at the Division of Environmental Protection for inspection and copying by 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, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 no later than Thursday October 28, 1993.

This public notice has been posted at the Clark County Sanitation District Offices and Cashman Field in Las Vegas, Nevada, Division of Environmental Protection, Clark County Public Library and Clark County Commission Chambers in Las Vegas, Reno City Council Chambers and Washoe County Library in Reno, Division of Environmental Protection, and State Library in Carson City, Nevada.

STATE ENVIRONMENTAL COMMISSION
Meeting of November 3, 1993
Las Vegas, Nevada
Adopted Minutes

PRESENT:

Chairman Melvin Close
Vice Chairman William Molini
Tom Ballow
Fred Wright
Roy Trenoweth
Russell Fields
Mike Turnipseed
Marla Griswold
Harold Ober
William Bentley, M.D.

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

Meeting convened at 9:30 a.m. at the Cashman Field, Rooms 205 & 206, 850 Las Vegas Boulevard North, Las Vegas, Nevada, Conference Room B.

Chairman Close read the public noticing as defined in the agenda for November 3, 1993.

Item I. Approval of Minutes

Chairman Close opened the meeting with a request for a motion to approve the minutes of the September 22, 1993 hearing as presented by staff. Commissioner Bentley made a motion to approve the minutes, with Commissioner Griswold seconding the motion. The motion unanimously passed.

Item II. Petition 94002

Chairman Close opened with a reading of agenda item petition 94002. Mr. Lew Dodgion, Administrator of the Nevada Division of Environmental Protection spoke to the Commission regarding petition 94002. He stated that in the past the adoption of federal programs has been a discretionary activity of the Commission, however, with changes in the national Clean Air Act of

1990, it mandates that the states establish a permitting program according to Title V of the Act. This is a mandate for the states to undertake inclusion of the program by November 15, 1993. Failure to adopt will result in sanctions being applied to the state. Mr. Dodgion alluded to written communication dated September 29, 1993 between him and Patty Becker, the Governor's Chief of Staff (exhibit 12). Chairman Close made the memorandum a part of the record before the Commission. The act provides for discretionary sanctions by the EPA Administrator, outside of the 18 month regulatory cycle imposed by the Clean Air Act.

Commissioner Molini asked what possible sanctions could be levied by EPA. Mr. Dodgion replied that the EPA could withhold on federal highway funds amounting to \$ 110 million, plus requiring 2 to 1 emission reduction offsets for new industrial facilities. Chairman Close asked about the status of California's efforts and whether other states have taken a position on the enhanced I/M program. Mr. Dodgion replied that the enhanced I/M is a separate hearing item scheduled for the following day, November 4, 1994. Chairman Close asked whether any other state has declined the federal operating permit program. Mr. Dodgion replied that to his knowledge no other state has refused to comply with the federal mandate, including California. Commissioner Ober asked that if the state adopted a program and it was not acceptable to EPA whether the sanctions would be applied against the state. Mr. Dodgion, replied Yes, if the application is incomplete they would notify us and begin the 18 month sanction clock.

Mr. Tom Fronapfel, Chief of the Nevada Bureau of Air Quality spoke to the Commission about petition 94002. Mr. Fronapfel discussed Senate Bill 347 of the 1993 Legislative session. This bill, stated Mr. Fronapfel is the basis of the regulations before the Commission. Public workshops have been held on the topic. Workshops were held on October 18, 20 and 22 in Carson City, Elko and Las Vegas, respectively. Individual meetings were also held with the Nevada Mining Assn. and the Nevada Manufacturers Assn. Comments have been received from the Sierra Pacific Power Co., the Nevada Mining Assn., Nevada Power Co., Southern California Edison, USEPA, Taiyo American, Alliance for Responsible CFC Policy, and ARMAX. Mr. Fronapfel stated his intentions to review the regulations before the Commission. Chairman Close asked about the status of the Legislative Counsel Bureau (LCB) version of the regulations before the Commission. Mr. Fronapfel stated that as of 5:15 pm on November 2, 1993 their version of the package was not completed. Chairman Close stated that this was not a normal process, since it is the LCB version that is the document to be acted upon. Deputy Attorney General Jean Mischel stated she had spoken with LCB staff and the Executive Secretary of the

Environmental Commission regarding this issue. A substantial amount of discussion with them has occurred and LCB cannot make substantive revisions. Chairman Close asked that if the regulation were to be adopted at the hearing, who will oversee and determine whether LCB makes substantive changes to actions taken by the Commission. Mr. Fronapfel stated it is incumbent upon the Division of Environmental Protection to protect the language adopted by the Commission. Chairman Close stated that if substantive changes were made by the LCB that those changes would have to return to the Commission for review and action. Ms. Mischel stated that Commission could make their action contingent upon DEP's review of the LCB language. Mr. Dodgion asked that the Commission take action to adopt, in light of the fact that LCB is restricted from making substantive changes. They cannot make a change and then force the Commission to respond. Mr. Dodgion further stated that it is the responsibility of himself, Mr. Cowperthwaite and Mr. Fronapfel to ensure that what the Commission adopts is filed by the LCB with the Secretary of State.

Chairman Close then instructed Mr. Fronapfel to proceed with review of the regulatory package. Mr. Fronapfel then proceeded to discuss petition 94002 and read into the record the new sections; 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.

Commissioner Wright asked requirements of Title V. Mr. Fronapfel stated that Class I sources are mandated under the act and that Class II sources can be regulated at the option of the State. Commissioner Wright asked about the word Commission, whether a definition exists. Mr. Fronapfel stated that there is presently a definition of the Commission within the existing regulations. Ms. Mischel asked what the term Administrator referred to and Mr. Fronapfel stated this meant the U.S. EPA Administrator and this was defined further in the proposed regulations.

Mr. Fronapfel then proceeded to read into the record sections 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42.

Commissioner Molini asked with due respect, that Mr. Fronapfel focus on the areas of concern. Chairman Close agreed and stated that the reading of the new sections would soon end and that it was important to review each item for the record. The Chairman asked Mr. Fronapfel about the department director's authority in granting and denying a permit in section 36. Mr. Fronapfel stated it referred to judicial review and they would continue using the existing administrative review, i.e. the Commission. This affects a general permit, which is an umbrella generic type of

permit for specific industries. An industry could appeal a denial but not the conditions of a general permit. Mr. Fronapfel continued his reading of the new sections, at section 38.

Commissioner Turnipseed inquired about sections 27(1.d) reporting of emergencies, and Mr. Fronapfel stated that this section was clearly defined in the Clean Air Act (CAA), Part 70. The other issue raised by Commissioner Turnipseed was section 33 (1.b) on record keeping, and Mr. Fronapfel replied that the clock begins when the records are established and when the measurements have been taken, which is within a 5 year period. Chairman Close asked about the criminal and civil fines; and Mr. Fronapfel replied that the criminal penalties deal with persons who knowingly violated the regulations. Civil penalties already exist stated Mr. Fronapfel. Ms. Leslie Guinan, an U.S. EPA employee detailed to the Division of Environmental Protection, responded about the intent of the criminal penalties. She stated that the federal law (Clean Air Act) requires that the States have sufficient criminal fines, and a specific statutory scheme was not required. Both civil and criminal fines are needed and this was added by Senate Bill 347. Chairman Close asked about the distinction between the two types of fines and Ms. Guinan responded that the standard of behavior is the major difference with a criminal fine having stricter requirements to be proven in a court. Ms. Jean Mischel stated that care has to be taken to not create a double jeopardy situation, a person could not receive a civil fine then receive a criminal fine. Ms. Guinan stated that a criminal fine can be sought against a responsible individual, whereas a civil fine can focus on a person or corporation. Criminal penalties have a higher standard. Commissioner Molini asked whether a criminal fine can be imposed against a corporation. Ms. Jean Mischel, replied that action by the state is more discretionary.

Ms. Mischel, asked about the issue of air contaminants, in section 39 (page 41) and section 68(2). Mr. Fronapfel stated section 26 defines toxic air contaminants, and section 68 is a more inclusive description of air toxins. Ms. Mischel felt the two sections should be linked.

Commissioner Fields asked about the major source of fugitive emissions. The commissioner wanted to know how to quantify fugitive emissions, in addition to the list of categories in 40 CFR. 52.21b. Mr. Fronapfel replied the list is for 28 major source categories and that if an industry is listed they must include fugitive emissions in their calculations. Mining is not specifically listed. Commissioner Fields wanted to know how fugitive emissions are included and Mr. Fronapfel stated the source was responsible and this affects differences between major and minor sources. The burden of proof is on the source.

Chairman Close had additional questions on Section 19, regarding emission reductions. Mr. Fronapfel replied the intent was nationwide. Chairman Close gave an example of a firm in New York using a control technology and whether a Nevada firm would have to also use the same technology. Mr. Fronapfel replied, yes for similar sources.

Mr. Fronapfel discussed section 43, regarding allowable emissions and federally enforceable permits. The purpose is to clarify an existing definition. Section 44 was discussed, and Chairman Close wanted to know why quantity was deleted. Sandy Carroll, a U.S. EPA employee detailed to the Division of Environmental Protection, stated that regulation comes into sync with Senate Bill 347 and federal requirements for confidentiality. Confidentiality focuses on monetary issues and not on company production amounts, stated Ms. Carroll.

Mr. Fronapfel continued with a discussion of section 45 which references excess emissions in a Title V operating permit, section 46 is amended to define an existing source and timely submission of applications; section 47 is amended to clarify emission limitations; section 48 is amended to deal with a definition of new source; section 49 is amended the existing operating permit to reflect Class I and II permits; section 50 is amended to redefine person; section 51 amended the potential to emit; section 52 amends the NAC to redefine the stop order; section 53 amends the NAC to clarify permit violations; section 54 deals with a reference to the US code and the federal code of regulations; section 55 deals with public disclosure provisions of permits; section 56 amends technical changes on written notices; section 57 deals with stop orders and under what circumstances they may be issued; section 58 amends the fine per day to \$ 10,000 per day, this affecting only Class I permits; section 59 deals with separate permits for each modification at a source; section 60 amends the citation to add sources exempt from certain requirements; section 61 deals with when an application is defined as complete.

Chairman Close questioned why section 62 increases the time, and why 50 more days is needed to make a decision. Mr. Fronapfel replied the time lines mirror the federal requirements of Title V. The complexity of review in the future will require more time by the Bureau of Air Quality to process the application and other public comment deadlines. Chairman Close asked why 18 months is needed and Mr. Fronapfel stated this is consistent with title V. Mr. Fronapfel offered that while the 18 months was consistent with maximum federal review period, that he would ask this to be amended to a 12 month period. Chairman Close expressed that even 12 months was to long a period. Mr. Fronapfel replied that 12 months was consistent with the PSD provisions.

Section 63 was discussed by Mr. Fronapfel; it deals with operating permits, as well as section 64 which deals with permit modifications. Chairman Close asked whether a provision exists to waive the date inherent in section 64 and Mr. Fronapfel replied that no mechanism had been established. This deals with the six month renewal period. Section 66 deals with the fee structure moving to emission based fees. Mr. Fronapfel is proposing to amend this provision making it effective on July 1, 1994. The fees will be \$ 7.00 per ton but emission data is needed to develop a more equitable amount. The revenues would meet existing Bureau budgetary targets. Commissioner Fields expressed concern about the Consumer Price Index (CPI) indicator. Mr. Fronapfel discussed when the Consumer Price Index (CPI) is applied, that it is EPA's presumptive minimum. Commissioner Field stated that over time the emissions will fall and resulting in reduced fees being receipted. Mr. Fronapfel stated that even with the escalator clause defined in the CPI the Commission would still have to agree to any changes in the fees. Commissioner Molini asked about the 6,000 tons per year ceiling. Mr. Fronapfel stated that there is no specific cap, and that EPA only wants the state to demonstrate that it can financially support the program. The mining companies most likely will not meet the ceiling, however the power companies could exceed that ceiling. Chairman Close asked whether the cost related to each pollutant and Mr. Fronapfel stated that yes, it would be for each pollutant with a cap of 6,000 annual tons per pollutant. Commissioner Molini asked about an example of the power company. Mr. Fronapfel replied that they would have 3 pollutants applicable to fees of the Commission. The calculations on the fees are based on the Bureau budgetary needs of the next biennium, stated Mr. Fronapfel.

Section 67 provides for reissuance of permits; section 68 deals with hazardous air pollutants, with it being effective upon adoption stated Mr. Fronapfel. Commissioner Bentley asked whether the Commission could add to the toxic list and Mr. Fronapfel replied that yes, the Commission could add to the list. Section 69 discusses Best Available Control Technology (BACT) and that an evaluation has to be done by the Bureau in the behest of the applicant, as stated by Mr. Fronapfel. Ms. Mischel asked whether Maximum Achievable Control Technology (MACT) was to be applied. Mr. Fronapfel explained that it was possible to use either BACT or MACT in making a decision. Ms. Mischel asked Mr. Fronapfel if, in Section 70, achievable emission rate had been defined. Mr. Fronapfel explained that it had not been defined. Ms. Guinan stated that it refers to either BACT or MACT. Sections 71 and 72 contain technical language cleanup, while section 73 deals with surface disturbance, that is outside of Class II and I permits, stated Mr. Fronapfel. The last sections are effective dates.

Commission adjourned for Lunch and reconvened at 1:30 pm.

Mr. Fronapfel stated he will suggest to the Commission that section 66 (3.c) dealing with CPI be deleted, and the effective date regarding the fees be delayed until 1995. Section 33, titled Operating Permit conditions, should be amended to allow existing facilities to continue operation stated Mr. Fronapfel. The permit shield provision was read into the record. Ms. Mischel commented that the general permit, in section 36 does not have an expiration period. The five year permit period is consistent with the Clean Air Act (CAA).

Mr. Fronapfel discussed the comments received from the public regarding petition 94002. Those commenting included; a letter from Sierra Pacific dated November 2, 1993 addressed to Mr. Dodgion was read into the record (exhibit 5). Commissioner Wright asked the impact of proposed changes to section 30 by Sierra Pacific Power Co. and Mr. Fronapfel replied it had already been adopted by reference and the issue was moot. Chairman Close asked Mr. Fronapfel to respond to the points raised by Sierra Pacific Power Co. Mr. Fronapfel stated that de minimis levels are not defined in the Clean Air Act; section 25 requires the responsible official to be approved by the director to ensure that the appropriate person is designated; section 27 is an emergency provision and unless the two day period is included the regulation will not be approved by U.S. EPA. This provision extends the reporting requirement from 24 hours to 2 days. Section 32 operating annual compliance certification does not have the leeway; the trading of emissions is subject to the operating permit provisions. A decrease would be a major permit modification. Section 66, the fees, would be based on actual emissions, and this is a better approach. Chairman Close stated the cap appears to benefit the largest source. Mr. Fronapfel replied that this will be an ongoing discussion to make an equitable fee structure. Chairman Close moved to make the Sierra Pacific Power Co. letter a part of the record of the hearing.

Ms. Mischel stated that all letters addressed to this petition 94002 should be made a part of the record, since the Commissioners had all received copies of the correspondence. Mr. Fronapfel briefly discussed the other letters from the Nevada Mining Assn dated October 28, 1993; Chairman Close asked whether the documents had been reviewed and comments made. Mr. Fronapfel replied that there were no comments made in writing, just a verbal discussion. Chairman Close discussed exhibit 1, letter from Parsons, Behle and Latimer, these are the comments of Barrick; exhibit 2 from the Nevada Mining Assn; exhibit 3 from Nevada Power Co.. Mr. Fronapfel stated they had reviewed and responded to exhibit 3 and Chairman Close

asked whether the public would like to respond to the exhibits.

Mr. Joe Squire of Nevada Power Co., stated he would wait for the regular public comment period. Chairman Close continued with exhibit 4, a letter from Taiyo dated October 29, 1993, a letter from Randy Doing, representing the Nevada Autobody Assn, a Vic Plessman, of the Fabric Assn, were also made part of the record. Mr. Fronapfel stated that Southern California Edison, in a letter dated October 29, 1993 has been discussed with staff. Copies of those comments are available from Mr. Fronapfel. ARMAX had concerns about VOC's and those concerns were addressed. Both items were made a part of the Commissions record on this petition. The final comments were from the Alliance for Responsible CFC Policy, dated October 13, 1993.

PUBLIC COMMENT

Chairman Close called Mr. Ray Bacon, Executive Director of the Nevada Manufactures Assn. Mr. Bacon stated that Mr. Fronapfel had addressed the majority of issues; however he had three remaining issues. The question is whether the definition of VOC's should be removed. The conflict was between existing state language and the required federal language. This could possibly affect a number of businesses in Nevada. This appears to have been resolved. The second issue was that the permit system should be flexible to allow issuance of permits based on the type of source emissions. Mr. Bacon then gave an example of Kerr-McGee's magnesium dioxide process and another plant making ammonium perchlorate. The need to make the permits flexible is the intent. Chairman Close asked whether the state had addressed these concerns and Mr. Bacon replied that it appears that this is part of the public record and it is understood that the permitting process will be flexible. Mr. Bacon continued with a discussion on section 69 of the 1 pound per hour of emissions. Mr. Bacon explained that many small operations worked only for a few hours per day and that the standard is designed for 24 hours. Chairman Close stated that the regulation was clear that there was a cap of 1 lb per hour, and that this is not discretionary. Mr. Bacon wanted to see more flexibility in the section. Chairman Close replied that this was an attempt to put something on the record, that was not actually occurring. Chairman Close again pointed out that there was not flexibility, and Mr. Bacon asked for an amendment adding the term "equivalent" and that this change would be acceptable. Mr. Fronapfel replied that this issue is dual, in that it deals with BACT, 1 lb per hour and less than 10 tons per year. There is flexibility already in the language stated Mr. Fronapfel. Ms. Mischel, asked whether the issue in

hand was flexibility in making permit conditions during the evaluation. Mr. Bacon replied that the concern was that permits not be "hungup" on the 1 lb per hour limit. Companies will meet the 24 hour limit, but the 1 lb per hour limit will prove to be difficult to meet. Mr. Bacon again proposed the term "equivalent" of 1 lb per hour.

The last item was of general concern to Mr. Bacon was focused on Section 66 regarding the small business program funding and fees. The concern is that the permit process is a nightmare for a small business, and that there is a need for a small business assistance program, as defined in the State Implementation Plan (SIP). This program is to be started on July 1, 1995, but the permits will be due November 15, 1995. Small business will have a window of 4 months, with the possible result of many being out of compliance. Mr. Bacon stated that with proper assistance early on, businesses can go to alternative materials and processes. All that is needed is a little help to make the transition, since small businesses don't have the resources to comply with the act.

Chairman Close reviewed Mr. Doings letter, and how it addressed the issue of small business assistance. The Chairman requested a status report on the aforementioned issue. Mr. Fronapfel replied that there is currently in existence a small business assistance program operated by the University of Nevada, Reno. The division is already being funded by nominal amount of funds from the Bureau of Air Quality, and more substantial amounts from the RCRA program. The Bureau of Air Quality only has authority to pass through \$ 15,000 during each year of the biennium. Mr. Fronapfel agreed with the need, however he pointed out the role of Clark and Washoe county and how all three must work together. Chairman Close asked about Clark Co., and Mr. Fronapfel replied that the county is moving ahead to setup an assistance program and this has been built into the fee structure of the Health District's program.

Chairman Close called upon Mr. Chris Ralph, an engineer with the Washoe County District Health Department. Mr. Ralph stated that they were also concerned about the need for a small business program. The concern is that it will take months for the funds to be made available and a program to start up most likely in early 1996. Business will be required to submit the necessary documents, and there are no consultants available to do the required paperwork. This will be a burden for business people. The funding needs to begin in 1994 for a technical center. It will take time to start up a center, stated Mr. Ralph. Commissioner Ober asked what the solution is, beyond raising fees. Mr. Ralph stated he agreed, and that Washoe Co. hasn't been working closely with the state in this regard. The program as designed is geared to the state

level, not the local level. Mr. Dodgion replied that Mr. Ralph is requesting that the Commission assess fees in the rural areas to fund a urban technical assistance program. Most of the effort will be in Clark and Washoe county and that this does need to be a joint effort. The division supports such programs, and has a proven track record in developing this type of program, however the Commission needs to be cautious of subsidizing with states permit fees, the urban county air quality program. Chairman Close inquired about the conversations between the state and local health districts on this matter. Mr. Dodgion replied that a major decision had not been initiated, but he had discussions with the counties.

Mr. Curt Taipale, the regulatory rules specialist for Clark Co. District Health, spoke to the issue of small business assistance. He is writing equivalent local air quality regulations. The state has submitted a committal SIP to the U.S. EPA that assumes responsibility for the assistance program. The state has formally committed to the effort, stated Mr. Taipale.

Mr. Ralph stated he agreed with Mr. Dodgion that it needs to be a joint effort. Mr. Michael Naylor, Director of the Air Pollution Control Division of the Clark County Health District spoke to the Commission. Mr. Naylor stated that the District Board of Health was moving ahead to address the requirements of the Title V program, and they were also looking at the emission fees, and had held hearings in August, 1993. They are proposing to phase in a fee of \$ 11 per ton in 1994, to \$ 22 per ton in 1995 and \$ 33 per ton in 1996. The commission should look to increasing fees to pay for a small business assistance program. Mr. Naylor stated that the state has a smaller emission base, although this is somewhat offset by the state's regulation of coal fired powerplants. The counties can fund for urban small business program, however it will cost approximately \$ 3 per ton to sustain such a small business program. The county is looking at investing \$ 60,000 in the first year, with potential revenues in the area of \$ 80,000 to \$120,000 annually.

Chairman Close expressed the concern about what the bottom line was going to be in setting up a small business program and how the state and locals are going to work together. Mr. Dodgion replied that Mr. Fronapfel will work with the counties and if necessary return to the Commission for a fee increase to support the program.

Mr. Joe Squire, the air programs administrator of the Nevada Power Company spoke to the

Commission. His comments were regarding minor concerns about the fee structure. In section 33(5), they are concerned about the heat inputs or processing inputs, and Mr. Squire proposed language change from "maximum" to "actual" capacity. The division has done a good job in developing very complex rules. The fee structure needs to be reviewed very carefully, Mr. Squire stated, and the whole issue is one of funding that focuses on adequate budgeting of the state's program. The design of the fee structure results in the power industry footing the regulatory bill. Most emissions come from the powerplants, but revenues will decline if a major change in emissions occurs. The fee structure is designed to penalize industry, since if they are aggressive about reducing emissions, the loss of revenues will result in the state raising fees to pay for the operation of permitting programs. The proposed fee structure will place the burden of supporting, to the tune of 60 percent upon the power industry. The power industry has a minor impact on regulatory resources. Mr. Squire was concerned that the regulated community would not have access to the rules being adopted, since the Legislative Counsel Bureau had not provided a copy of the final draft before the Commission. Mr. Squire wanted to comment on the final rulemaking, and allow for more changes prior to the program going into effect. Title V allows certain permitting requirements to be deferred. This may be a means for relief on the small business issue.

Commissioner Wright asked if the division had a response. Mr. Fronapfel reiterated the need for a equitable fee structure and small business program.

Chairman Close called Lynn Giurado, an environmental engineer with Barrick Goldstrike mines to testify before the Commission. Ms. Giurado commended the division for its public input process and development of regulations. Barrick has submitted extensive comments (Exhibit 1). The major issues needing to be addressed, stated Ms. Giurado, is the transition of this program from federal to state authority. Ms. Giurado then proceeded to review exhibit 1, going section by section through the exhibit.

Chairman Close called upon Michelle Nuttal of Southern California Edison. Ms. Nuttal reviewed her correspondence with the Commission dated October 28, 1993 (Exhibit 8). Her comments addressed the need for a clear differentiation between federally enforceable permit conditions and conditions governed by state law and regulations. Additionally Ms. Nuttal stated that section 25(4) be amended to allow for an alternate designated representative; section 32 should be amended to allow owners of existing sources to have their permits move through a

drafting process without submittal of an application; section 32(6)(c) should be amended allow forecasting of fuel usage on an annual basis. Ms. Nuttal also requested that the permit processing period be reduced from 18 to 12 months. Ms. Nuttal stated that the fee structure proposed by the state was not fair to power utilities and that the bulk of permittees will not be paying their fair share of the permitting process. A conversation developed on the marketability of emission reductions and Ms. Guinan stated that US EPA was actively considering an emission trading and marketing program.

Chairman Close called upon Mr. Mike Seikas of Nevada Cement Company. Mr. Seikas' comments focused on the 18 month provision of agency permitting review. Mr. Seikas stated he would like to see a shorter required review period.

Chairman Close questioned the need for such a long permit review period and Mr. Fronapfel responded that the Division would be requesting that the provisions be reduced from 18 to 12 months, and that the bulk of the permits would be processed in a more timely fashion. The intent of this provision, stated Mr. Fronapfel, is to create a maximum time frame for the agency to respond to the application. Commissioner Molini asked whether the time frames to process a application could be "tiered" based upon the complexity of the permit. Mr. Fronapfel replied that the Class II permits will require a much shorter period to process, however the problem in the near future will be managing the increased workload due to the expansion of the application by the regulation. An attempt will be made to accommodate the applicant and process permits in a timely fashion.

Chairman Close called upon Carol Vilardo, of the Nevada Taxpayers Assn. Ms. Vilardo objected to the use of the Consumer Price Index defined in section 66(3)(c). Ms. Vilardo stated that the permitting process needs to be "user friendly" and that the state needs to have an aggressive small business assistance program. Mr. Fronapfel replied that the CPI provision will be recommended to be deleted from section 66.

Chairman Close closed the public comment period.

Chairman Close stated that the Commission should now begin the process of deliberations. Chairman Close stated his concern about need for the fee schedule being held in abeyance until 1995. Commissioner Molini stated his concern that the agency's budget had been based upon the

fees. Mr. Fronapfel replied that the agency's budget was substantially based upon fees, and that the change from the existing fee method of using process inputs to emissions would require time to resolve.

The Commission then began a process of amending the proposed regulations. The Commission first focused on section 18 with the addition of a new subpart 4 relating to the oil and gas industry. The Commission added the following language; **4. Notwithstanding paragraph 2 of this section, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from similar units, whether or not such units are in a contiguous area or under common control.**

Section 26 was proposed to be amended per the suggestion of Barrick Goldstrike Mines (exhibit 1). The change was to add language linking the section to section 68. The amended language includes the following; **and as further defined in section 68.**

Section 29 was proposed to be amended per the suggestion of Barrick Goldstrike Mines (exhibit 1). Term "major" source was added and the language "including an area source" was excluded in subpart 1(b)&(c). Additionally a new subpart 3 was added to the section. The language includes; **3. All permits to construct and operating permits issued under the regulations in effect prior to the effective date of the operating permit program to existing sources which are required to file a Class I-A operating permit application under this section shall remain in effect until the director has issued or denied the application as provided in NAC 445.846.**

Section 30 was proposed to be amended per the suggestion of Barrick Goldstrike Mines (exhibit 1). Term "major" source was added and the language "including an area source" was excluded in subpart 1(b)&(c).

Section 33 was proposed to be amended per the suggestion of Barrick Goldstrike Mines (exhibit 1). The section was amended to add a new subpart 2(j). The language includes; **(j) A statement that compliance with the conditions of the operating permit shall be deemed to be compliance with any applicable requirements as of the date of permit issuance, provided that :**
i. Such applicable requirements are included and are specifically identified in the operating permit ; or

ii. The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the operating permit includes the determination or a concise summary of the determination.

Section 36 was proposed to be amended to add a new subpart 8 to place a limit on the duration of a general permit to 5 years. The language includes; **8. A general permit may be issued for a period not to exceed five years.**

Section 43 (NAC 445.438) was proposed to be amended to expand the scope of the definition for "allowable emissions" by adding the following language; **or actual operating capacity whichever is greater.**

Section 60 (NAC 445.705) was proposed to be amended by deleting language in subpart 1 "**[, or is subject to a standard or requirement under section 111 or 112 of the federal Act,]**

Section 62 (NAC 445.707) was proposed to be amended in subpart 7 to reduce the State's review period from 18 to 12 months.

Section 66 (NAC 445.7135) was proposed to be amended by deleting subpart 3(c) relating to the CPI index; **[(c) The dollars per ton amount shall be adjusted annually by the percentage change in the Consumer Price Index, which is the average for all urban consumers, published by the United States Department of Labor after the close of each 12-month period ending August 31.]**

Section 69 (NAC 445.719) was proposed to be amended to add the term "equivalent amount" in subpart 1(a).

To stagger implementation of the fees defined in section 66 the Commission proposed to add two new sections - 88 and 89 to allow for implementation beginning 1994 and again 1995. The new sections are; **New Section 88. The effective date of section 66(2) is July 1, 1994.**
New Section 89. The effective date of section 66(3) is July 1, 1995.

This concluded the proposed amendments to Petition 94002.

Commissioner Molini asked about the necessary time frames to meet the federal deadlines. Mr. Fronapfel replied that the Bureau would immediately prepare a SIP submittal package based upon the Commission's action today. Commissioner Molini complimented the staff for the fine work they had done in preparing the petition.

Chairman Close called for a motion to adopt petition 94002. Commissioner Molini made a motion to adopt petition 94002 as amended during the deliberations, and his motion was seconded by Commissioner Bentley. The motion was unanimously adopted by the Commission.

Chairman Close moved to agenda item III; Air Quality Settlements

Mr. Fronapfel discussed the Nevada Goldfields, Inc. Notice of Alleged Violation # 1062 settlement. Mr. Fronapfel stated that the settlement called for a fine of \$ 1,000 for operation of a jaw crusher without the required water sprays at Nevada Goldfield's facility located at Aurora, Nevada. Commissioner Molini moved to accept the stipulation and settlement and his motion was seconded by Commissioner Bentley. The motion was adopted by the Commission.

Mr. Fronapfel discussed the Sierra Pacific Power Co., Notice of Alleged Violation # 1059 settlement. Mr. Fronapfel stated that the settlement called for a fine of \$ 6,000 for the failure to perform, on numerous occasions, a daily zero/span calibration drift check on its continuous emission monitors (CEMs) at the Valmy Power station. Commissioner Bentley moved to accept the stipulation and settlement and his motion was seconded by Commissioner Ballow. The motion was adopted by the Commission.

Chairman Close moved to agenda item IV; Discussion items.

Executive Secretary David Cowperthwaite spoke to the Commissioners about the status of the strategy to implement Senate Bill 127 (SB 127) which requires the Commission to coordinate regulatory activities relating to underground storage tanks. Mr. Cowperthwaite stated that the Commission at it's September 22, 1993 hearing had concurred with the Division of Environmental Protection's strategy to implement the bill. Mr. Cowperthwaite stated that the focus was currently on Assembly Bill 153 (AB 153) and that Mr. Dodgion was taking the lead in surveying the state agencies as to their forms, fees and regulatory processes. This effort will dovetail with the SB 127 activities of the division. Mr. Dodgion discussed AB 153, stating that

since the Department of Conservation & Natural Resources had such extensive regulatory activities that it was clearly in the interest of the Division to shape the direction of the project and ensure that a quality product would be produced by April 1, 1994.

Commissioner Molini asked Mr. Dodgion about the status of water quality standards and he stated that water quality issues regarding standards for the Walker and Humboldt Rivers will be coming before the Commission in the spring of 1994. Mr. Dodgion also reported that the Triton Air Holding appeal hearing on the groundwater contamination at the Hughes Air Terminal, located at the McCarran International Airport was scheduled for November 15, 1993 in Las Vegas.

The Commission then adjourned.

As prepared by David R. Cowperthwaite, Executive Secretary.

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: November 3, 1993

Location: Cashman Field, Las Vegas, Nevada

EXHIBIT LOG

#	Item	Item Description
1	Letter from Parson's Behle & Latimer, Salt Lake City, Utah	Comments on Petition 94002/request of Barrick Goldstrike Mines
2	Letter from John Barta, Chairman, Nevada Mining Assoc.	Letter backs comments of Parson's Behle & Latimer
3	Nevada Power Company Fax	Comments on Petition 94002
4	Letter from Taiyo, America, Inc., Carson City, NV	Letter to Sandra Carroll, comments on Petition 94002
5	SPPC Letter	Letter to Lew Dodgion from Sierra Pacific Power Company
6	Randy Dewing	President of Nevada Autobody Assoc./Comments
7	Vic Plassman	Fabric Association/ Comments
8	October 28, 1993 Letter	Southern California Edison/ Comments
9	ARMAX - Fernley, NV	Petition 94002/Comments

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10	October 13	Alliance for Responsible CFC'S
11	Letter/October 27	Coeurd'Alene Mines Corporation Comments to Petition 94002.