

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF November 4, 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 **9:00 a.m., on Thursday November 4, 1993**, at the Cashman Field second floor rooms 205 & 206 located at 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, 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. Regulatory Petitions - * ACTION

- A. Petition 94003 by the Nevada Division of Environmental Protection is to permanently amend NAC 445 by adding a new section establishing a decentralized program for the inspection and maintenance of motor vehicles in an enhanced mode in the Las Vegas Valley. This proposed regulation fulfills the requirements of the Clean Air Act as amended in 1990 and establishes a program which replaces the existing program for inspection of emissions from motor vehicles.

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 NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning **9:00 a.m. on Thursday, November 4, 1993**, in rooms 205 and 206 at Cashman Field located at 850 Las Vegas Boulevard North, 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.

1. Petition 94003 by the Nevada Division of Environmental Protection is to permanently amend NAC 445 by adding a new section establishing a decentralized program for the inspection and maintenance of motor vehicles in an enhanced mode in the Las Vegas Valley. This proposed regulation fulfills the requirements of the Clean Air Act as amended in 1990 and establishes a program which replaces the existing program for inspection of emissions from motor vehicles.

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
PUBLIC HEARING
THURSDAY, NOVEMBER 4, 1993
ADOPTED MINUTES**

Members Present:

Chairman Melvin Close, Jr.
Harold Ober
William Bentley
Thomas Ballow
William A. Molini
Fred C. Wright
Marla Griswold
Michael Turnipseed
Roy Trenoweth
Russell Fields

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

The meeting convened at 9:12 a.m. in Room 205 at Cashman Field, 850 Las Vegas Boulevard North, Las Vegas, Nevada.

Chairman Close opened the meeting by affirming that the public posting for today's meeting was valid as defined in the meeting agenda.

Item A. Petition 94003 by the Nevada Division of Environmental Protection is to permanently amend NAC 445 by adding a new section establishing a decentralized program for the inspection and maintenance of motor vehicles in an enhanced mode in the Las Vegas Valley. This proposed regulation fulfills the requirements of the Clean Air Act as amended in 1990, and establishes a program which replaces the existing program for inspection of emission for motor vehicles.

Chairman Close explained the order of presentation and stated that, due to the significant number of people who have requested to speak, testimony from the public would be limited to a period of 5 minutes and requested that comments be succinct and not repeated.

Lew Dodgion, Administrator of the State Division of Environmental Protection, explained that in Clark County the Department of Comprehensive Planning is responsible for developing the air quality plans, the non-attainment plans and developing the strategies for bringing the county into attainment. The regulatory functions and implementation of the programs are the responsibility of the County District Board of Health and the County District Health Department. The State Division of Environmental Protection and the Environmental Commission have jurisdiction over the coal-fired power plants. The State Environmental Commission is charged with designating

areas of the State that are required to have the automotive inspection and maintenance programs and adopting the rules and regulations. The Commission sets out what these rules are and to oversee that the actual programs are implemented and operated by the State Department of Motor Vehicles. Mr. Dodgion explained that the Las Vegas Valley is in non-attainment, exceeding the carbon monoxide ambient federal standard of 12.7 parts per million (ppm). The State is mandated by the Federal Clean Air Act and the Federal Environmental Protection Agency Rules and Regulations to have an enhanced automotive inspection and maintenance program. This program must meet certain specifications required by the Clean Air Act and the Federal Regulations. The program must be in place by January 1, 1995. States are required to submit their programs to the Federal Environmental Protection Agency by November 15, 1993.

Mr. Dodgion explained that, in the Title V permitting program mandated on the states by the Clean Air Act, there are two levels of sanctions for states that do not comply with the establishment of the enhanced I & M program.

The first is mandatory sanctions. Anytime the EPA Administrator finds that a state has not met a deadline, or has not made a submittal, the submittal is incomplete or is inadequate, the Regional Administrator must make a finding of that notice in the Federal Register. That action starts a time clock of 18 months, and the state then has 18 months to correct the perceived or actual deficiency as identified by EPA'S Administrator.

The second is discretionary sanctions. The discretionary sanctions allow the EPA Administrator to make a determination, because the state has missed the deadline, or has failed to submit a complete application or the application is inadequate, to apply discretionary sanctions where there is evidence of lack of good faith. The discretionary sanctions can be put into effect following a public notice in the Federal Register of the finding and of the proposal to apply sanctions. A minimum period of 30 days is allowed for public comment followed by a decision, a final notice in the Federal Register, and then the sanctions can be applied, without the 18 month clock.

Mr. Dodgion explained that the program proposed for Clark County is for a decentralized system. Nevada is the only state that is required to have an enhanced I & M Program which is NOT a centralized system and the only state that is proposing a decentralized system. Nevada is proposing a bi-annual testing and that will require a more expensive, more sophisticated type testing equipment and testing procedure. He stated that we feel that the free enterprise system will work and that the Division has evidence from people who are in the service industry who are willing and have come forward, indicating they can and they will establish the free market system and the testing lanes in a sufficient number to run this program in Clark County.

Mr. Dodgion noted that California and Indiana have been granted extensions to the deadlines, and California's legislature has failed to enact enabling or actual legislation to establish the enhanced I&M Program although they are required to have it in 6 or 7 areas in California. Prior to their legislature adjourning, the EPA Administrator put them on notice that if they failed, she would seek and apply the discretionary sanctions. It is my understanding, from conversation that I had with the Region 9 Administrator in San Francisco last Friday, that the sanctions package

has been prepared for California and the notice of discretionary sanctions should appear in the Federal Register either November 16 or shortly thereafter. EPA is fully resolved to go forward with the discretionary sanctions against California and any other state that does not proceed in good faith. It is obvious that California exercises a lot of political muscle, in Congress, and we are concerned that if we do something and California gets concessions, we should be allowed the same concessions. I have been given verbal assurance from the EPA, Region 9, that will be the case. Governor Miller has written to EPA Administrator Browner requesting that all states be allowed any concessions that are offered to California as a result of what may come out of California, as has Senator Richard Bryan.

The proposed regulations which have been reviewed by the Legislative Counsel Bureau and EPA. The regulations are adequate and appropriate to meet the requirements of the Act in the Federal Regulations. Again, the program would go into effect the first of January, 1995.

Commissioner Turnipseed asked if there were any states that don't have non-attainment areas so the new Federal EPA Laws and Regulations don't apply?

Mr. Dodgion replied that there are states that don't have non-attainment areas. 22 states have non-attainment areas for carbon monoxide and are required to have an enhanced I&M program.

Commissioner Molini stated that he understand that the equipment for this enhanced program is fairly costly and wondered what happens if we implement this program through regulation and then the non-attainment for carbon monoxide drops below the 12.7 ppm threshold. Do we come back and amend the regulation but we still have all this equipment and test lanes in place?

Mr. Dodgion replied the goal, of this program and other programs that will be implemented, is that Clark County will drop below 12.7 ppm fact and come into attainment. Once that happens you have to maintain. We expect Clark County to continue to grow, more people, more industry, more pollution. We are going to have to continue programs to maintain the air quality so reaching attainment in the near future won't be the end of an I&M Program. Mr. Fronapfel pointed out to me that you will have to maintain the system for at least 3 years after the county has demonstrated attainment.

Commissioner Ober stated, for informational purposes, that the California Legislature did not pass legislation but the Nevada Legislature did.

Mr. Dodgion replied that our statutes fully enable this Commission and the Department of Motor Vehicles to implement the required programs and he emphasized that the requirement for this program is a Federal Law passed by Congress. The regulations are passed by the Federal Environmental Protection Agency and it mandates what you have to do and the regulations set out the sanctions if you don't do it.

Chairman Close asked if there was indication of any activity in Congress to rescind or modify EPA's authority to compel us to adopt this new program.

Mr. Dodgion replied that he had posed that question to the EPA Region IX Administrator last Friday and they are not aware of any actions to overturn the regulations or law.

Commissioner Bentley asked if we have any choice concerning the mechanism.

Mr. Dodgion replied that we have to have a system that satisfies the requirements set out in the Code of Federal Regulations. The Department of Motor Vehicles has to adopt the rules and regulations that set out the specifications for the equipment and the specifications for how stations and repair facilities are licensed. Those are very important details but we do not have to have those details in place in order to meet the November 15 submission deadline. What we have to have is the program and the regulations that you have the authority and the responsibility to adopt.

Chairman Close noted that a certain method of testing has been proposed in the proposed regulations and he asked if there were other methods that you could have chosen but did not, and if not, why not. Mr. Dodgion replied that the Federal Regulations, through the U.S. EPA, have specified a particular set of test equipment and test procedures and have said, "you have to do this or equivalent" and then have said "there is no equivalent".

Chairman Close noted for the record and the benefit of the public that the proposed regulation in the Commissioner's book is not the same as the one he was handed this morning which was drafted by the LCB, dated November 2, 1993 and he asked that sufficient copies of the updated (November 2, 1993) regulation be made to pass out to the public in the audience.

Commissioner Molini asked Mr. Dodgion to confirm the options in implementing the program; First, A centralized program, which you did elect; and second an annual testing rather than biannual testing. Mr. Dodgion confirmed that the State has the option of going with an annual program, testing every car every year or centralized. Mr. Dodgion noted that Nevada is the only state that opted to try the decentralized system. Mr. Dodgion stated that the Division has received a lot of flak from the U.S. EPA about that choice but recently U.S. EPA has agreed that maybe it's a good idea and maybe it's an option that might work in California.

Commissioner Fields asked if the separation of testing and repair is required by the Federal mandate. Mr. Dodgion replied yes.

Chairman Close requested rationale as to why they have required the separation of those two functions. Mr. Dodgion replied that the U.S. EPA claims that fraud is rampant when you have test and repair at the same facility. Mr. Dodgion emphasized that the State has no evidence to support any fraud in any of the programs in Nevada and that the Department of Motor Vehicles & Public Safety has done an outstanding job of policing Nevada's decentralized test/repair combination facilities.

Mr. Dodgion introduced Mr. Jeff Harris, a planner in the Clark County Comprehensive Planning who, along with Mr. Clete Kus, presented a summary of Clark County's carbon monoxide air quality implementation plan. This plan was completed pursuant to Federal Clean Air Act mandates. Mr. Kus explained that the U.S. EPA has established 2 standards for carbon monoxide, an 8 hour standard and a 1 hour standard. Clark County and the Las Vegas Valley do not have a problem with the 1 hour standard. By using a series of graphs, Mr. Kus showed that,

using the standard of 35 parts per million (ppm), the highest 1 hour concentration experienced in the last five years was 15.4 ppm. He explained that for the 8 hour standard there is a 9.0 ppm standard which classifies you in the moderate non-attainment area. When the area exceeds 16.4 ppm, you are classified as a serious non-attainment area, and that at the design value of 14.2 ppm, the Las Vegas Valley falls within the upper moderate category. Additional graphs shown by Mr. Kus proved the cause of the problem. The emissions inventory shows the sources of carbon monoxide within the Las Vegas Valley as motor vehicles; non-road mobile sources such as lawn equipment and off-road vehicles. The second largest category stated Mr. Kus, is stationary sources and area sources. Mr. Kus noted that in 1990 there were 11.9 million average daily vehicle miles traveled and that is projected to increase in 1995 by 3.4 million miles traveled daily to a total of 15.3 millions per day.

In the preparation of the State Implementation Plan (SIP) the county was required to demonstrate that by December 31, 1995, it will fall into attainment for the national standard for carbon monoxide of 9.0 ppm. One graph clearly showed that the enhanced I&M program will provide the county with over 13,000 annual tons in the reduction of carbon monoxide in 1995. Another slide indicated the cost effectiveness of control measures in conjunction with the previous slide. The I&M program is the second most cost effective control measure at approximately \$328.00 per ton of carbon monoxide reduced on an annual basis, stated Mr. Kus.

Commissioner Molini asked what constitutes an area source? Mr. Kus explained that area sources are the smaller stationary sources, such as a small industry, that you can't actually monitor or measure the emissions from. Included in that category would be charcoal barbecuing and the other associated emissions.

Commissioner Molini asked what a TDM program was. Mr. Kus replied, Transportation Demand Management, where the goal is essentially to either increase vehicle occupancy, reduce trips or to get more people into public transit.

Commissioner Turnipseed stated "You cited several numbers in your presentation. 11.9 million miles and 15.3 million miles per day traveled. Was this travel within the Las Vegas Basin?" Mr. Kus replied yes.

Commissioner Turnipseed stated "the regulations propose different standards depending on the age of the vehicle up to 1983, then the same standards for models 1983 and newer. What percentage of the million miles traveled are in these various categories, 10 year old and older vehicles back to 1968." Mr. Kus replied that information was not available.

Mr. Michael Naylor, Director of the Air Pollution Control for the Clark County Health District explained that their role is to monitor air quality by using a network of carbon monoxide monitoring stations throughout the valley. He explained that the level of carbon monoxide measured at the East Charleston station is what's triggering U.S. EPA's requirement to have an enhanced inspection and maintenance of motor vehicles. Using transparencies, he demonstrated that the 1 mile radius of the monitoring station at East Charleston (which includes the 5 points intersection, East Charleston near Fremont, and Eastern and the Boulder Highway) which

characterizes the area that has had the high levels of carbon monoxide. Mr. Naylor stated that approximately 25,000 people live within the 1 mile radius of this East Charleston station.

Over the years a number of fingerprint analysis have been made at this site and these show that, at the East Charleston site, over 96% of the carbon monoxide is from gasoline powered vehicles. This includes heavy duty gasoline trucks as well as sedans. The diesel's share is about 3 percent and wood smoke less than 1 percent. That reading was collected on one of the valleys highest days which was a relative cold evening and people were doing extensive wood burning.

Mr. Naylor stated that vehicle miles traveled in the Las Vegas Valley has doubled in the last 7 years and gasoline consumption has gone up 2½ times what it was in 1975 to over 400 million gallons per year, or well over 1 million gallons a day. Thus, one of the issues before us, stated Mr. Naylor, is to come up with a 10 year plan that will sustain continuing growth in the valley and yet further improve the air quality. Mr. Naylor explained that they presently operate 7 monitoring stations and noted their location on the transparency.

Commissioner Ballow asked Mr. Naylor why those sites were selected, noting that they seemed close together and wouldn't it be better to have a random selection throughout the city. Mr. Naylor replied that the Health District recognizes that areas generally east of I-15 have higher levels, that most of the sites have been running for 8 to 12 years and that the East Charleston site itself has been running since 1975.

Commissioner Ballow asked if the sites were selected to get the areas of most concentration or were they selected to give you the average or random type of pollution. Mr. Naylor replied that the Health District is looking at areas of high concentration, areas of heavy traffic density. The East Charleston site was chosen by the District in the early 1970's because of the noticeable higher level of haze in that area and more air stagnation. The decision was made in 1974 to locate a monitoring station at the East Charleston site. The City Center site is the oldest site and fulfills the requirement to have one near a central business or some kind of a downtown area. We believe that the overall pattern that causes high carbon monoxide is gentle evening breezes during the cold months of the winter. These breezes, stated Mr. Naylor, carry the urban plume from the west to the east. It appears that the stagnation affect or the accumulation affect is greatest near the five points intersection. But as far as averaging at random locations, if U.S. EPA says, stated Mr. Naylor, that you can average the carbon monoxide data of the whole valley and the whole valley is designated based upon average levels then we would be off the hook. Unfortunately, stated Mr. Naylor, U.S. EPA specifies monitoring criteria being near major traffic areas, and based upon that criteria we do have one or more monitoring stations with high levels. So the whole valley is stuck by those high readings at that East Charleston site. Again, there are 25,000 people in that area that are directly affected by those high carbon monoxide levels. He explained that no averaging of the stations is done. Each station is looked at on its own database, using 2 or 3 years of data to determine whether that station is in or out of compliance.

Commissioner Ballow stated that most of the people in Las Vegas are not breathing that bad of air. Mr. Naylor agreed. He stated that 90% of the residents of the Las Vegas Valley are breathing healthful levels of carbon monoxide.

Chairman Close asked Mr. Naylor if the construction of the expressway significantly reduced the amount of carbon monoxide at the Five Points intersection. Mr. Naylor replied that the Las Vegas valley has gone from 100 unhealthy days in 1976 down to 3 unhealthy days this past season. The reasons, stated Mr. Naylor, includes the freeway, newer cars, traffic light synchronization, the on going inspection program for vehicles and the District's oxygenated gasoline program.

Commissioner Wright asked if the equipment giving the high readings at the Charleston Station is reliable. Mr. Naylor replied, yes and he noted that the next slide looks at 3 years of data from 6 stations: Maycliff station is near East Sahara near the expressway, Shadow Lane is at the Health District, Winterwood is at Desert Rose Golf Course, Downtown City Center, our East Charleston site and Powerline in Henderson near the BMI Plants. The CO standard is 9 ppm and what the Health District is showing is the maximum levels measured each calendar year. It is the East Charleston site that is distinctly above the air quality standard, stated Mr. Naylor, with a maximum level in 1990 of almost 16 ppm. Carbon monoxide levels did drop the next two years but in the previous two years the levels at East Charleston have been similar.

Maycliff is a marginal site, technically in attainment but it is right on the line. The other sites are in compliance, stated Mr. Naylor. If Maycliff was our highest site we would be below that trigger level that mandates enhanced I&M. It is the East Charleston site that mandates enhanced I&M. Now, on the next slide, a closer view of East Charleston, showing five years of data indicates a gradual decline at the East Charleston station. Towards the bottom of the graph you will see the dates of the higher reading: December 1, 1992; November 26, 1991; and we've had January 10, December 22 and December 13 so it is clearly a wintertime problem with December being the most probable month to have high carbon monoxide levels.

Commissioner Fields noted that in 1991 the reading was 12.64 ppm; in 1992 the reading was 12.04 ppm. Commissioner Fields expressed concern that the figure that confused him was shown for the enhanced I&M program was 12.7 ppm. Mr. Naylor stated it was 12.2 ppm. All the metropolitan areas in the country are measured on their levels as of 1989 - 1990.

Commissioner Fields noted that the Variety School station was not on the last graph and asked if they had been able to use the Variety School station to validate the East Charleston site because of them being only 1/4 mile apart. Mr. Naylor replied, that the county has three sites that are near each other. The Variety School station is a quarter mile northwest of the East Charleston station. The Proximity site is 100 yards east. East Charleston is basically one lot from a McDonald's, stated Mr. Naylor and some people say all we are measuring is vehicles at McDonald's and that this has nothing to do with Las Vegas Valley air quality. Mr. Naylor continued, that to get a better handle on that site would it be measuring Las Vegas pollution or is it measuring cars at McDonald's. To address this the Health District added the two sites, Proximity and Variety this last winter. I would like to offer some analysis, summary and conclusions.

The one distinct thing is that everyday the air quality seems to be a little bit different. We don't have two days that have identical types of hourly pollution levels. But on any given day that we look at all three sites, they seem to have very similar curves. Mr. Naylor stated that they have

found that the sites are statistically equivalent and that all sites are measuring the same plume. This indicates that the problem is probably localized, however it is not due to the closest structures (McDonald's) to the East Charleston station.

The Health District, stated Mr. Naylor, hasn't gotten all of its questions answered and they are doing more work this year. The Health District is going to continue those two temporary sites this winter plus two additional sites. We'll have one more at East Charleston, stated Mr. Naylor, and one between downtown and that East Charleston site near Maryland Parkway. We are also going to run dual samplers at several of the sites, said Mr. Naylor, so that we can characterize how much variation there is between two instruments by having co-located instruments. The Health District has hired a consultant with expertise in meteorology and air pollution who will be doing intensive measurements in December 1993. The consultant will have several portable carbon monoxide instruments that they can locate throughout the valley to augment the Health Districts permanent stations. The consultant will also be setting up several meteorological stations to measure wind speed and wind temperature. The Health District and the consultant will be doing some vertical temperature profiles and vertical pollution profiles. Mr. Naylor stated they want to see if there is any vertical difference, or any difference in carbon monoxide as one goes up in elevation from ground level to 100 meters. Mr. Naylor said they will also be releasing inert, benign tracer gases from different candidate upwind areas so they can determine how far away that carbon monoxide travels before it reaches the carbon monoxide station. The ultimate goal, stated Mr. Naylor will be to find out to what extent nearby sources, perhaps those within one mile versus sources 5 to 10 miles away, are contributing to the carbon monoxide problem at East Charleston. Since December is our prime month, said Mr. Naylor, we will be collecting the data next month and we should have preliminary results by January and a fairly comprehensive report by March or April of 1994.

Commissioner Ballow asked Mr. Naylor if they are getting data from the Nevada Department of Transportation on the number of vehicles that are traveling in those areas and is there a correlation between the number of vehicles and the carbon monoxide peaks. Mr. Naylor stated that data was not necessary. Traffic is studied and the emissions estimates are based on the traffic data. We estimate emissions but we find a classic problem where the carbon monoxide levels are going up as the highway traffic counts go down. For instance, stated Mr. Naylor, we will typically get a late evening peak of carbon monoxide when the traffic levels are fairly low. We think, said Mr. Naylor, that the carbon monoxide that we are measuring was generated earlier in the evening when the traffic count was higher, that it migrates to that East Charleston area. So the traffic during the day is probably a key variable but not the traffic at any given hour, said Mr. Naylor. Weather is a key variable also and we think, said Mr. Naylor, that the extent of temperature inversion is a big factor.

Commissioner Wright asked what the rationale was for basing this information on the current data, which is lower than the data collected in 1989 and why don't we get credit for reducing the emission level. I know it's U.S. EPA, exclaimed Commissioner Wright. Mr. Naylor replied that it is recognized that it takes a year or two to collect existing data to find out what one's design value is. The Clean Air Act itself more or less limits one's options and that the last two years are not very representative because of the favorable weather conditions. The year 1992 brought record rainfall and record snow in the mountains so we had very few inversion days and we

cannot assume that the levels that we saw in the past two years data means that we are really there.

Commissioner Fields stated that on the positive side, between now and 1995 we will see the addition of more new, cleaner burning cars, the retirement of some of the old cars plus completion of more of your freeway systems so those things would tend to offset the growth.

Mr. Fronapfel, Bureau Chief for the Bureau of Air Quality, Nevada Division of Environmental Protection read through the proposed regulations, November 2, 1993 version, received from the Legislative Counsel Bureau. He stated that the authority for adoption of these regulations is contained in the Nevada Revised Statutes, Chapter 445.620, 445.630 and 445.632 and most recently section 20 of chapter 654 Statutes of Nevada enacted 1993 which was formerly Senate Bill 347.

Commissioner Molini asked Mr. Fronapfel if all the specialty and imported vehicles in the Las Vegas Valley were required to meet the EPA standards when they come into this country. Mr. Fronapfel replied yes.

Commissioner Bentley asked Mr. Fronapfel about Section 5, item 4, and if that was a part of the Federal Regulations. Mr. Fronapfel replied yes, a regurgitation of the Federal Requirement for waiver provisions. Commissioner Bentley asked where the figure of \$450 in Section 5, Subsection 2, came from. Mr. Fronapfel replied that it was set by Federal Law in the Clean Air Act.

Commissioner Molini asked for clarification of Section 5, section 4 "any available warranty must be used to obtain the needed repairs before any expenditure may be counted towards the cost of the needed repairs". What does that mean, asked Commissioner Molini.

Mr. Fronapfel replied that if you have a vehicle currently under warranty and part of your emissions control system has failed during the warranty period, any cost that is associated with that warranty, deductibles etc. is included as a part of that warranty, and it cannot be included as part of a request for a waiver.

Commissioner Fields noted that the criteria in the first set of regulations received by the Commission is quite different from that which we received today, the LCB version, and why is that. Mr. Fronapfel replied that DEP found out last week that the U.S. EPA has published a guidance for these actual emission set points and limits. Mr. Fronapfel exclaimed that we should have received the documents this last July. We received, said Mr. Fronapfel, that guidance last week and we worked with LCB and changed those numbers according to that guidance.

Chairman Close stated that the \$450 waiver figure is to be calculated based on the value of the dollar in 1989. What is the amount today then that would have to be expended to meet the benchmark. Mr. Fronapfel replied that essentially it was still \$450.00 out of pocket but it is premised on \$450.00 with the consumer price index (CPI) added. The CPI is running roughly 3% so in an equivalent dollar amount, that it is still \$450.00. That amount changes periodically based upon the CPI as it changes. If it says \$450.00 today, in the regulation, in may in fact be

more than that because of the CPI indexing.

Chairman Close stated that in Section 5, Paragraph 3 it talks about parts and labor. How is that treated if I decide to repair my own car, then how is my labor to be calculated and what would be the value of that labor? Mr. Fronapfel replied that under this program, the Department of Motor Vehicles & Public Safety, in order to qualify for repairs for vehicle emissions, you would have to be a Certified Repair Technician. So based upon this you could not claim labor cost in the repair of your own car. This, stated Mr. Fronapfel is also required by U.S. EPA. The licensing of Vehicle Repair Technicians is a requirement under the Federal Clean Air Act.

Commissioner Fields questioned which agency will license the Repair Technicians. Mr. Fronapfel replied that the Department of Motor Vehicles & Public Safety would license them, as part of S.B. 347.

PUBLIC COMMENT

Chairman Close reiterated how the public comment portion of the meeting would operate, no comments should be made about other's comments. I ask, stated Chairman Close, that no outbursts occur and that everyone act in a courteous manner.

Chairman Close called upon Dr. Walter Schwartz who stated that he holds graduate degrees in engineering and in law and as a private citizen and poor taxpayer in Clark County, Nevada he tries to obey the law. Dr. Schwartz stated, he wonders about the cost effectiveness of the mass transit system in Las Vegas and the cost effectiveness of this regulation. Dr. Schwartz suggested that the political pressure should be placed on the Federal Legislators, telling them what people like him, really think about this cost. Cars now are so complex, said Dr. Schwartz and so expensive to maintain, that the fact in, in these programs, that he calculated that 400,000 cars in Las Vegas times 30 dollars a car will cost 12 billion dollars, and the cost will probably triple that. When we pass these laws to make it more expensive to run a car, said Dr. Schwartz, the total picture should be viewed. All these social programs have interactions - when you look at them in the total context in society you have to think about it and I am astonished, said Dr. Schwartz, to sit here and that the 25,000 people who live in the Charleston area are affected by a high smog thing that will affect 800,000 people in the Clark County Basin. The idea that they look at one test center, the worst test center in Clark County, and shove these mandatory programs down our throat because of that is nonsense and I would encourage, said Mr. Schwartz, this commission to seek judicial remedy to an absurd law. Instead of penalizing people we ought to have rewards.

Chairman Close called upon Mr. Steve White from Smog Buster's on 6396 West Sahara. Mr. White stated that there has been no updates on the machinery in the current program for the last 5 years. You are proposing specs for the I&M 240 machine for all the model year vehicles. If you updated the current machinery, put a new program in the current machinery with the specs for the I&M 240 machine, would there be a reduction in CO. and I would like an answer to that. A yes or no question, stated Mr. White. Mr. Fronapfel stated that it was not a simple yes or no. If the current equipment was updated there would have to be a demonstration of equivalency to the designation of the I&M 240 before we would accept it as being a valid testing equipment.

Mr. White stated that he thought the current machines could be refitted to meet the requirements. He also stated that the waiver program initiated a few years ago was ridiculous. One car can emit as much emission as 100 cars and only had to pay \$100 for the waiver, or they could do the work themselves. So many other alternatives could have been presented that would have reduced CO levels. State, county and federal vehicles could have been put on natural gas. There were companies that said they would retrofit at no cost to the state or county but it was never done. Mass transportation, new buses were put on the road that impacted the smog situation. When the public was noticed of this hearing, said Mr. White, we were given less than 10 days to present alternatives. I feel, said Mr. White, that we have had over 5 years, and we have seen this problem coming. I believe an extension would be in the interest of the public.

He estimated 98% of the vehicles on the road, 1968 to 1972 will not meet the specifications asked for in the regulations and the 1983 to 1995 vehicles, approximately 80% of them, will pass with no problem. Mr. White said, with the computer discs that were put into the cars you should be able to determine how many of these vehicles meet that particular specification.

Chairman Close asked Mr. Dodgion to explain to the audience what the Commission would be doing here today. Mr. Dodgion reported that the proposed regulations require a program that meets the federal criteria that is cited in the regulations. The actual specifications for the test equipment, the procedures for testing, the procedures for licensing the test stations will be adopted through a regulatory process with public workshops and public hearings by the Department of Motor Vehicles. Mr. Dodgion stated the Commission's regulations state that the equipment and program has to meet the federal regulations as specified in the code of federal regulations. The Department of Motor Vehicles will develop their regulations on the specifications.

Chairman Close called upon Mr. Jack Greco, Chairman of, and representing, The Nevada Gasoline Retailers and Garage Owner's Association, and also representing the Nevada Auto Emission Testers. Mr. Greco said he was a member of the Clark County Air Pollution Control Hearing Board and that 400+ businesses stand to lose their businesses and 1,000 or more technician's may lose their jobs as a result of the enactment of this regulation today. Mr. Greco asked to go on record that for several years this program has been studied thoroughly by the people and companies he represents. It is their opinion, said Mr. Greco, that the I&M 240 and the test and rule that surrounds it is untried, untested, very controversial, arguably inaccurate for the purpose it is intended. The I&M 240 test is not being used anywhere in the country today as this method is a mass testing device. Mr. Greco said separating test and repair will be nothing less than devastating for the industry that he represents. This move will hurt many Nevada businessmen, stated Mr. Greco and moving forward without our participation as a group will invite out-of-state monopoly contractors to come to the table. California has a bill in the Senate Rules Committee that there will have to be a test and repair together and it will have decentralized equipment that costs 9 times less than the I&M 240 program being proposed. We want to see, said Mr. Greco and follow along with the NDEP to see California's progress on this tactic and whether or not the EPA will resolve this issue with them. The Nevada Auto Emission Testers express a willingness to work with the state and to provide what the state will ultimately use as their testing program.

Commissioner Molini stated that the "box" that the State is in with the Clean Air Act and the regulations of the Environmental Protection Agency, while there may be frustrations within the Commission, he doesn't know that the alternatives to this type of program are that substantial. If we refuse to adopt the regulation, said Commissioner Molini, and U.S. EPA indeed imposes sanctions, it certainly is going to have a substantial impact on business people of the State of Nevada and from that, possibly 110 million dollars in Federal Highway Funds.

Mr. Greco concurred with the statement by Commissioner Molini and admitted that nothing would please the U.S. EPA more than to make an example out of little Nevada and to display that example to California. There are 10,000 licensed testing facilities in California and that would be a major undertaking for the U.S. EPA to come in and take over their program. Nevada would be a perfect place to come in and flex their muscles, said Mr. Greco, and to show the rest of the country what they do to people who don't follow their directives. Mr. Greco stated they appreciate the State of Nevada electing to support the concept of decentralized testing. We want to make sure that Nevada businessmen are testing Nevada motorist's cars, said Mr. Greco, and that we are not sending Nevada money out of state that will not benefit the Nevada economy.

Commissioner Turnipseed asked how much additional financial burden this would be placing on Clark County motorists and he wondered if it was possible to have a 2-Tier test using the existing machinery. Commissioner Turnipseed asked whether if a vehicle passes that it will pass the I&M 240 and then, if it were marginal passing you would have to have a more complicated test. Is that possible, asked the commissioner.

Mr. Greco replied that California got very creative and one of the debates is that rather than use the I&M 240 equipment you use a lesser expensive technology, what is called a Steady State Dynamometer. Using that program coupled with a Bar 84 analyzer which is an upgraded version of the system we use here is about 90% less cost. Currently the U.S. EPA is refusing to acknowledge that option exists. As long as that is the case, the answer to your question is no, there is nothing available to us and that is the box we are in.

Chairman Close called upon State Senator Ann O'Connell, representing District 5. She stated that she has received over 50 phone calls in the last 3 days from constituents expressing concern with what is going on. They are adamantly opposed to this federal regulation. They asked me, said Senator O'Connell to voice the taxpayer's concern over the expansion of government, the additional cost, and how they view this as more government interference with their private life. They are very concerned about the Nevada businesses that will be forced out of business by centralized testing and they are concerned about an out-of-state dealer coming in. In general they hate what you folks are trying to make a decision on and I want to also tell you that I am opposed to the regulation.

Chairman Close called upon Mr. Robert Wolf, representing Nevada Sales and Leasing, who voiced his concern with the I&M 240. He stated that the I&M 240 system has numerous flaws with a 30% fail factor. In Clark County there are 600,000 registered vehicles and if 30% of them fail, that is quite a figure. The present system is working, pollution is decreasing. Why must we go, said Mr. Wolf, to a different system, when there is no justification for it. A test is not going to eliminate anything, only repairs are going to help this situation. Fixing the traffic lights in Las

Vegas, where you can sit from 1 to 5 minutes, would lower the different levels.

Chairman Close called upon Mr. Thomas Pranske, representing Pat Clark Pontiac who stated that it would be more feasible to have a more stringent check program on cars that are polluting the environment, some are not legally licensed, seeing that they do not get through the check station to begin with. Many newcomers to Las Vegas do not register their vehicle with the State of Nevada because they know it will not pass and they also put fictitious plates on their auto. Mr. Pranske continued that we have a higher problem with that occurring than the cars that are going through the program. If we have no problem with fraud in the inspection stations, as stated earlier, then why are you wanting to take it away from decentralized testing.

Chairman Close called upon Mr. Jim Van Dell, representing Nevada Emission Testing Coalition and the Nevada Car Owner's Association. Mr. VanDell stated that the written version of his evaluation of the East Charleston monitor could be found in Exhibit 4. He stated that he lived in that area at the time that parking lot was full and the whole area was very heavily used. There is some correlation of the business activity and traffic in the area in 1976 and up through the 80's that also reflects the decrease in the carbon monoxide problem in Las Vegas. Mr. Van Dell stated that the business area around that monitor is now almost desolate. There must be some correlation of the business activity and traffic that was in the area in 1976 and up through the 80's which reflects also the decrease of carbon monoxide problem in Las Vegas. It is unfair for U.S. EPA to allow only one station, said Mr. Van Dell, and that being the one that possibly is totally flawed due to some geographical quirk, and for it to cause the expenditure of millions of dollars in pollution control problems as it addresses carbon monoxide from a faulty basis. Why not move the monitor from this dirty parking lot. The one 100 yards down the parking lot reflects considerable lower readings than the original monitor and the Variety School monitor. He explained that he actually went to Variety School, looking to see where this monitor was. Here we have the ultimate locale for another dirty parking lot - smack dab in the middle of the public park, the Variety School pickup and drop-off area for the students, and then we have 178 school buses at the bus barn & maintenance facility for the Clark County School District. It was almost humorous to locate a check and balance monitor in this parking lot and I couldn't believe it. Since carbon monoxide is colorless and odorless the cloud that we wake up to every morning is not from the automobiles. Why don't we address Nevada Power which is the sole largest polluter in Clark County, as are power companies throughout this nation. On the basis of the (flawed) data that has come out of the East Charleston monitor in the last 20 years, this is an U.S. EPA perceived discrepancy. I would read that to mean that EPA alleges that Clark County is out of attainment for carbon monoxide, said Mr. Van Dell. Clark County has just initiated a Desert Research Institute study to check the East Charleston Monitor and it gives me, said Mr. Van Dell, the impression that we should not implement some new draconian regulation that causes the interruption of business in Clark County until such time as this study is completed. We have, said Mr. Van Dell, just now initiated a study to see if we are out of attainment so why is this regulation before us. California State Senator Presley is coming out with a regulation that will keep testing and repair together, it will not be an I&M 240 system and you should be advised that not only California, but Indiana and Arizona are very much against this I&M 240. Georgia has done a reversal of I&M 240 in their legislature and Louisiana is communicating with California for guidance. There is a rising movement across this country at a state level and I suggest you join the challenge.

Chairman Close called upon Mr. Daryl Capurro, Executive Director of the Nevada Auto Franchised Dealer's Association, representing 82 franchised dealers who do business in the State of Nevada. Mr. Capurro stated that over ½ of those dealers reside in Las Vegas and that the Las Vegas Valley area is in this problem because of its moderate classification; we are above the standard set by the U.S. EPA and therefore subject to I&M 240. It is interesting to note that Mr. Dodgion indicated that some other agency makes the decision as to the equipment however the citations that are given here are basically I&M 240 as far as the 40 C.F.R. Part 51, Part 53 are concerned stated Mr. Capurro. That this one problem site on Charleston Avenue skews the overall results is witnessed by the fact that three top Clark County Health officials petitioned the Clark County District Health Board to develop a consultant agreement to study that wintertime carbon monoxide hot spot problem. We believe that this one site unfairly penalizes the Las Vegas Valley and its taxpaying inhabitants. The U.S. General Accounting Office, in a report dated September 25, 1992 to Congressman John Dingle, the Chairman of the House Committee on Energy and Commerce Subcommittee on Oversight and Investigations, found that there are drawbacks to the I&M 240 test procedure for both the identification of repair of out of compliance vehicles and that it could hamper the test procedures and effectiveness. Their review found that over 25% of the vehicles that U.S. EPA tested, using the I&M 240 test procedure, failed an initial emissions test but passed a second emissions test even though no repairs were made to the vehicle. The final statement in this GAO really says it all said Mr. Capurro. It is important for U.S. EPA to complete its study on whether an alternative to the I&M 240 exists before November of 1993. Otherwise, said Mr. Capurro, states will not have conclusive information and they may be forced to adopt a test procedure that may not represent the most effective and most convenient approach for their motorists. He stated that he is submitting a copy of this report and providing a packet which includes the GAO report for each Commissioner and for the record. He noted that there are several other citations listed in the report that should be reviewed before a decision is made. Mr. Capurro stated that you are being threatened with sanctions by the U.S. EPA to adopt this ill-conceived, expensive and questionable technology on faith. The U.S. EPA is saying trust us, and I would question whether that trust is well placed. Mr. Capurro also submitted a memo from Donald H. Steadman, a professor in the chemistry department of the University of Denver for the record. Mr. Steadman makes the same points as the GAO outlined and it was an independent study. The U.S. EPA states that 6% of the cars on the road emit 50% of total automotive hydrocarbons. It is safe to assume, stated Mr. Capurro, that those same vehicles are responsible for the majority of carbon monoxide emissions which is the pollutant which has this Commission considering the proposed regulations. An effective program to remove these 6% of the cars on the road would, in all likelihood, remove the need for a test procedure like I&M 240 which penalizes every motorist on the streets in the Las Vegas Valley. Mr. Capurro included another presentation, which was delivered by John H. Lichtblau for the Petroleum Industry Research Foundation to the OPEC Seminar on the Environment in April, 1982 for the record.

Mr. Capurro asked to make additional comments regarding the regulation. Firstly, Section 2 and throughout consistently refers to all motor vehicles. I believe that should be all used vehicles because new vehicles are exempt from the program since they have been manufactured to a standard of the Federal Government. Mr. Capurro asked that the Commission insert all with used wherever that appears.

Mr. Capurro stated the he was confused by what we hear is a missive from the U.S. EPA relative to standards and cut points that we now see in this newest document dated November 2. The document that appears in the Federal Register, which is the regulation of the EPA, Section 51-351 and 352, clearly do not have these cut points and model standards in them. Mr. Capurro continued that the original proposal submitted to the LCB does track those numbers that are in the Federal Register. Some of these cut points would almost guarantee a 90% failure rate on many vehicles, particularly in the 77, 78 and 79 category. I would, said Mr. Capurro, also indicate to you that they have no reasonable reference to the very language that was adopted by EPA under subsection 7 of 51.351 which again, was contained in the original draft. As a matter of fact, even skipping over the fact that we can adequately compare standards in grams per mile (gpm) to a percentage of carbon monoxide and ppm in hydrocarbons, we don't even test NOx now for any vehicle. Federal Law and Regulations don't require us to test up through the model year 1985 stated Mr. Capurro. The cut points have been overlapped, the standards have been set forth for 1986 through 1993, and then 1993 and above. Why we have this, I have no idea. I will say that some of the standards that are set forth are substantially more stringent than what U.S. EPA set forth in their own regulation. On page 3, the 1994 tier 1 vehicles, the standard that U.S. EPA set forth for these vehicles is 15 grams per mile for carbon monoxide. What you have here is a standard that is 50% lower than that. The standard for hydrocarbons in gpm, U.S. EPA said, in their regulation, .70. This regulation says .60. Then you have an anomaly in which we now see a NOx gpm standard of 1.5 that is switched the other way. U.S. EPA, in their original regulation, calls for 1.4 gram per mile. We find, stated Mr. Capurro, similar differences as you go through for light duty trucks under 6000 and over 6000 pounds. Some of these standards will clearly generate such a higher rate of failure, and I can guarantee you, provide some anxious moments for you in dealing with the public that. He went on to explain that they do not correspond with anything that appeared in the original draft or in the regulations of the U.S. EPA. U.S. EPA keeps saying that there is no alternative to what we are talking about, however, U.S. EPA approved a program to Denver, Colorado, an area with similar CO characteristics to Las Vegas, which includes a very interesting exception. The original purchaser of a new vehicle would not have to have that vehicle smogged for four years or change of ownership, whichever occurs sooner. There are other differences in the Colorado law than what U.S. EPA has asked for and yet that program has been approved. If U.S. EPA is accepting some programs with different requirements then why are we being asked to swallow the whole program hook, line, and sinker.

Mr. Capurro stated that the test only I&M 240 program, even a defacto, decentralized program will require dealers to assign one or more employees to do nothing but ferry used vehicles back and forth to a smog test only facility. That adds tremendous cost to the bottom line, even if there isn't a waiting line at a smog testing station said Mr. Capurro. That cost will have to be factored into both the price of used vehicles for sale and negatively, to the price of a used vehicle traded in by the general public. This procedure would hamper across border sales and dealer to dealer trades with other states and other areas with the states not having the same program. We are talking about approximately 45,000 used car sales by franchised dealers in Las Vegas each year. This does not include sales by used car dealers nor does it include private sales of used cars. Factoring all that in, there would be approximately 90,000 vehicles a year that would be subject to, we are not talking about biannually, we are talking about every time a vehicle changes ownership it would be required to be smogged. Most of them are being done now, said Mr.

Capurro, because our people are licensed stations, therefore we are not putting that traffic out into the congestion of Las Vegas and adding to the pollution by sitting in a line waiting to be tested. Another factor costly to the dealership and the general public is an inherent problem in a test only program, centralized or decentralized. Unless a repair facility has the same high-cost, supposedly high tech equipment used by the testing facility, I&M 240, there is certainly no chance the repair facility can guarantee the repairs on a rejected vehicle will bring it into compliance on the retest. Conflicting test results would indicate a vehicle out of compliance when it may well not be, even when comparative diagnostic equipment is used. Mr. Capurro stated that he is talking about equipment costing \$150,000 more or less so he can guarantee it will be costly, time consuming, nerve rattling and unpopular with the general public. From the perspective of the car dealers, stated Mr. Capurro, I would ask you to consider the following changes to the proposed program in the event you feel compelled to adopt the EPA mandated I&M 240 procedure.

Firstly, said Mr. Capurro, allow fleet owners and auto dealers to be licensed to conduct smog tests on their own vehicles and vehicles offered for resale, utilizing the existing program requirements, and upgrade to a Bar 90 standard from the current Bar 84 standard you have on the books. Secondly, allow these same entities to make the necessary repairs to meet adopted standards currently in place. Thirdly, improve the inspection and enforcement on the part of the Department of Motor Vehicles & Public Safety to prevent unlawful activity and fraud. Fourthly, improve training requirements for technicians who are conducting the testing procedure and repairing emission related problems.

In summary, Mr. Capurro stated, we believe that the adoption of this proposed regulation, with the built in I&M 240 requirement, is a step backwards in the effort to improve air quality. An improved program using Bar 90 technology for all smog certifications, together with some other programs improvements which I mentioned, will go just as far to meet that goal and it will be a heck of a lot less expensive. I realize the U.S. EPA will not likely accept that recommendation and will threaten or attempt to impose sanctions against the State of Nevada. We believe a breathing period to explore other options with U.S. EPA; watch the progress and resolution of this same dilemma and domino game in California; and perhaps see what happens regarding numerous lawsuits against U.S. EPA on this matter is called for under these circumstances. I understand, said Mr. Capurro that U.S. EPA will notify us after November 15 of the risks of sanctions. The General Accounting Office has already issued a legal opinion that says that EPA cannot withhold highway funds or impose other economic sanctions until 18 months after the November 15 federal deadline for states to submit their SIP'S. For this reason, as well as all the other problems with this procedure, stated Mr. Capurro, we ask that you postpone any decision on this proposed regulation and move forward with changes to the currently adopted program to produce results in our efforts to improve air quality in the Las Vegas Valley Basin. And, Mr. Chairman, we would like to have an answer as to why, all of a sudden the standards in one day's time have changed as drastically and dramatically as they have. We heard that it was a memo but that definitely does not have the same enforcement and effect as the regulation that has been adopted and is part of the Federal Register.

Chairman Close replied that he recalled that Mr. Fronapfel stated he received updated regulations from U.S. EPA, it was not a memo. Mr. Capurro stated that he saw the front page of that and it does not cite the standards that have been set forth under the EPA's rules and regulations.

Mr. Dick Reavis, with the Division of Environmental Protection, stated that they received a guidance document from EPA that said listed the cut points used in the regulations, in points per million. He continued, that there is a conversion to grams per mile and the new guidance actually used that conversion of grams per mile but that it also changed some of the cut points. We received from the U.S. EPA just a couple of days ago, said Mr. Reavis, an evaluation of the performance standards that we had in the regulations before. The review indicated using the model that U.S. EPA uses for I&M performance that the performance standards we had would not satisfactorily meet the performance standards so had we had not changed them, we would already have a letter from U.S. EPA that says the Commission's regulations are not adequate to meet the performance standards for an enhanced I&M program.

Mr. Capurro asked how they could do that if they meet the standards set forth in their own regulation which was adopted and set forth in the Federal Register in November of 1992.

Mr. Reavis explained that each area that is in non-attainment CO has a different set of circumstances. There is a model developed that uses cut points and various failure rates. The limits that were established in the regulations are minimum standards. But then you have to apply that to a modeling program continued Mr. Reavis. Mr. Fronapfel just handed me a note that says the U.S. EPA technical document that we received actually replaces the regulations. The ones that we received are regulatory now. Mr. Reavis explained that you have to model it using the different cut points that are possible and you model a biannual program opposed to an annual program; you model a failure rate of 40%, 30%, 20% to determine if it meets certain performance standards. He explained that every area in the United States probably is not going to have the exact same cut points and performance standards that we have because of higher or lower CO levels that they have to reach.

Mr. Fronapfel addressed Mr. Capurro's comments about the change between the original version of our petition versus what we are talking about today from LCB. He stated that those new cut points, the CO, HC and NOx cut points are in fact in regulatory form in Section 85.2205 of Subpart S of C.F.R. Part 51.

Chairman Close read for Mr. Fronapfel, who was out of the room at the time Mr. Capurro read them, Mr. Capurro's remarks about Denver. "The EPA improved program for Denver, Colorado, an area with similar CO characteristics to Nevada, includes interesting exceptions. The original purchaser of a new vehicle would not have to have the vehicle smog tested for 4 years or change of ownership, whichever occurs sooner", then asked Mr. Fronapfel if we had considered that. Mr. Fronapfel replied that he had not evaluated the Denver program to see how it functions, how they got that EPA approval, or what mechanisms they used to get that approved so he could not comment nor had that been considered by him.

Mr. Dodgion stated that he had asked that same question and he is of the belief that the EPA has

not approved the Denver program. The program that Mr. Capurro described has been passed by the Colorado legislature, they added an extra element to the program, a roadside spy system that would attempt to pick up the gross polluters and allow the new vehicles to go for four years said Mr. Dodgion. Commissioner Ballow asked why Nevada didn't do that and would that mean that they would pick up the ones where they can visually see the smoke? Mr. Dodgion replied that he did not know how it worked, although touted by Dr. Steadman from the University of Denver it is a trial mechanism in the Denver area and that it did not appear to be feasible so Nevada viewed different options.

Commissioner Wright asked Daryl Capurro if, in the proposed regulations, he had stated that the reference to "motor vehicles" should read "used motor vehicles". Mr. Capurro replied that those tests are required of used vehicles, not new, because new vehicles are manufactured to different standards than this standard that you are looking at. They are under a separate section of the Federal Law and separate manufactured standards so wherever it says "vehicle" it should say "used vehicle"

Commissioner Ballow asked if tests were run on new vehicles when they came out of the factory. Daryl Capurro replied that they were and that information can be seen on a sticker on the hood of the vehicle.

Chairman Close asked Mr. Fronapfel if he had a comment to make about the wording "motor vehicles" versus "used motor vehicles". Mr. Fronapfel replied that the Bureau had included all vehicles but it is possible under, a biannual system to skip that first year requirement for meeting the enhanced inspection upon sale of a new vehicle. Chairman Close stated that if he purchased a brand new vehicle he would not want to have it smogged before he drove it and that should be written into the regulation. Mr. Fronapfel replied that it would be possible to put in the provision to allow new vehicles the one year within the biannual program, and in the second year of registration they would have to follow the program. Chairman Close stated that they should be given two years. When a new car passes when you purchase it, it should be given two years. Mr. Dodgion stated that he would hold a discussion with staff and Mr. Sparks of the Motor Vehicle Department, during the lunch break, to determine the exact language of that should be used. Commissioner Wright asked for clarification. If a new vehicle passed upon purchase, then it would be tested the first time on the third year and Mr. Dodgion replied that would be the concept.

The Commission adjourned for lunch and reconvened at 1:42 p.m.

Chairman Close called upon James Sottus.

Mr. Sottus of the Nevada Car Owner's Association stated that he had attended a meeting the day before where the guest speaker was Mr. Simons of the EPA in Ann Arbor, Michigan. Mr. Simons wrote the entitlement program, the enhanced I&M program. He asked Mr. Simon's why the I&M/240 program was biannual. Mr. Simons replied that it was only meant for 1987 and newer cars because of the onboard diagnostic system that works in conjunction with the IM/ 240. He continued that it was written for the IM 240 program and he helped write the program. Mr. Sottus stated that he has been working with Mr. Naylor and other people in the audience on

problems related to the population in the Las Vegas Valley. At the meeting yesterday Mr. Simons related that a city must show a 15% increase of cleaner air between the periods of 1990 to 1996. Mr. Sottus stated that he did not understand the 1988 and 1989 figures that have been stated here today and that Mr. Simons stated to him that the intent of what was written is not what is being laid out here today. Mr. Sottus felt that what has been presented today is not the intent of EPA and that the problem is not the dirty cars, it is to many cars in the United States. Mr. Sottus continued that the suggested changes would make a major impact on tourism and businesses throughout the nation. He asked for honest government, run by the people, not just the elites who want things to go their way. He continued that as a retired law enforcement officer he feels that the EPA's fraudulent I&M/240 program will put a lot of people out of work and that more problems and more regulations are frightening. He pointed out that Section 5, number 2 was an issue brought up to Mr. Simons at the meeting yesterday. As written in the clean air act, if your car can't be repaired for that \$450 amount, they can take your car and crush it and that an attorney from Washington backed up that statement. There is no protection from that action written into this regulation.

All of the businesses in the area of the East Charleston monitoring station are mostly old, continued Mr. Sottus, 1950 vintage, wood-burning businesses which cause more carbon monoxide. He continued that on October 11 he telephoned Mr. Naylor asking for verification that, as was rumored, a study was ordered made on the East Charleston monitoring station. Mr. Naylor told him yes and sent him copies of the proposed study, relating that the problem at that site might not stem from the vehicle emissions. Mr. Sottus said he agreed with Senator Hickey who, when talking to Jeff Harris in this legislative session, stated that the problem of where the emissions are coming from needs to be solved and that a remote sensor, owned by Clark County and not presently in use, could be used. Mr. Sottus said that he had attended a meeting at McCarran Airport early this year where Jim Brandmueller made the statement that he felt that having properly trained mechanics and going up to Bar 90 would please the EPA if we went to an enhanced program.

Chairman Close called upon Joe Schulman, Director of Emission's Testing for Tune-Up Masters, located in Newbury Park, California. Mr. Schulman stated that they had 5 locations in Nevada and that first there was the centralized program which was a joke and eventually eliminated; the Bar 84 Program lasted until 1990 followed by the Bar 90 Program. He continued that there are only two differences between a Bar 84 and a Bar 90 Program.

The first was that Bar 90 has a modem, and secondly the way the Bar 90 issues certificates out of the machine. He continued that now we are being told that we need the enhancement program by adding a NOx bench and a dynamometer. He said that testing of automobiles is not going to clean the air - no matter what program is used. What will clean the air is repairing and taking care of the automobile. Mis-diagnosing of an automobile comes from the repair person not being taught well enough. Tune-Up Masters thinks the Bar 90 program is an exceptional program, but in token, no better than the Bar 84 in testing, and that what Nevada now has is more than sufficient for testing the automobiles. He recommended working with the mechanics, set up a teaching program and then let the mechanics repair the automobile.

Chairman Close called upon Jim Rozzi. Mr. Rozzi did not appear.

Chairman Close called upon Robert Durler. Mr. Durler reported that he came before the

Commission today as a private citizen and that all the speakers today have so far come from the business sector, He stated that he is a strong proponent of the EPA and its goals of cleaning up the environment and that we should all do everything we can to enhance the quality of all life in the Las Vegas Valley. He agrees that the EPA can and will listen to alternative solutions besides the I&M/240. Mr. Durler reported on a test shown on the national television show Prime Time Live, where a system of detecting carbon monoxide was used that would perform at a fraction of what the I&M/240 would perform. Mr. Durler suggested that all alternatives to improve the air quality, at the same time prevent the loss of jobs, be tried before this program is initiated.

Chairman Close called upon Thorne J. Butler. Mr. Butler did not appear.

Chairman Close called upon Ralph Haak who appeared as a concerned citizen and a Professional Engineer recently working as a government contractor at the Nevada Test Site in the Yucca Mountain Project. Mr. Haak attested that rarely does logic prevail in government operations. He stated that after reading Larry Burkett's eye-opening book, Whatever Happened To The American Dream?, he became aware of myths, such as OSHA, the global warming trend, the hole in the ozone, the asbestos question - all myths - that are causing extreme hardship to the American public. Mr. Haak asked if an environmental impact statement had been performed on the I&M/240 Program and how viable are the EPA number requirements. Mr. Haak stated his opinion, that government regulations are strangling the American economy with regulations that will take this country down the tubes. He urged the Commission to disapprove the pending proposal and to stand tall against Washington. He asked the Commission to show leadership which hopefully, the other states will follow.

Chairman Close called upon M. Savage. Robert Durler stated that Ms. Savage could not attend this afternoon but she wanted it said that many Nevadan's keep up their vehicles and that she is afraid that she will be forced, as will many Nevadan's, to dispose of a vehicle that she is taking care of in favor of more expensive vehicles in order to comply with the new air quality standards.

Chairman Close called upon Lou Gardella, owner of Jiffy Smog and the President of Nevada Auto Emission Testers. Mr. Gardella stated agreed that many arguments heard today are valid, however what is before this Commission are regulations that must be enacted in order to satisfy the EPA and if nothing is acted upon today the EPA will have the right to come in and place a centralized contractor into the state. The issue here is the decentralized/centralized question and the decentralized program is obviously not the easy way out for the state, Mr. Gardella continued and this his concern was the time-line and sanctions. He expressed the wish that the legislature would have been the one to decide the issue, rather or not they would fight the EPA, as California is presently doing. Because the Commission has to act today, this regulation will allow some of us to stay in business and allow Nevadans to test Nevada's cars. For the record, the Nevada Auto Emission Testers do not believe in the separation of test and repair nor do they embrace the I&M/240 but they foresee this program as the only option available. Mr. Gardella urged the Commission to enact the regulation which will allow the state a maximum amount of time. He noted if a centralized contractor is brought in and RFP goes out, we are all finished. Commissioner Turnipseed asked Mr. Gardella if his company presently does both test and repair. Mr. Gardella replied this his company is a five-year old company currently doing test only. It is

the largest chain of test only emission stations in Clark County and that they also test diesel vehicles.

Chairman Close called upon Terry Williams. Terry Williams stated that he represented Marta Technologies from Houston, Texas, a provider of equipment and data services for various testing programs in Texas, Maryland and Jacksonville, Florida. He continued that his company participates at any level the state or local government requests. The contact that they have with the State of Texas allows them, in 4 test facilities and 1 re-test facility, to do the data collection and the quality control but we do not operate the test facility. Our contract with Texas has the provision that we have to lease the test facility out to local business people to operate under contract. We are building a program for the State of Maryland and they will take over ownership of the property and the program after two years. They will either run it themselves or continue a management contract with us. In Jacksonville, there is a centralized program where we run it completely for the State of Florida in that market. El Paso will have an I&M/240 Program for all 1988 and newer cars; all older cars, from 1968 to 1987 will be tested using the BAR 90 technology. Mr. Williams continued that I&M/240 was never designed for all cars because the older emission systems are just not compatible. He reiterated that his company will supply equipment, do software work and design technology and we would like to participate in the program in Nevada.

Commissioner Turnipseed asked Mr. Williams if the program for the Bar 90 testing for 1968 to 1986 vehicles and I&M/240 for 1987 or newer vehicles was acceptable by the EPA. Mr. Williams replied that it was acceptable however his company would supply any equipment or software that is needed and that he was not there to push I&M/240.

Chairman Close asked Mr. Fronapfel to respond to the position that the BAR 90 would be adequate for some testing in Nevada. Mr. Fronapfel replied that when they constructed the program they had several initial options. Going on an annual testing program or a biannual testing program as proposed, or looking at a combination of testing methods for 1968 to 1986 vehicles, 1987 and newer, whatever the combination might have been and because we chose to have you consider a biannual testing program we determined it was necessary to encompass all of the program with the I&M/240 or equivalent equipment in order to pick up the credit for the loss of going to a biannual program rather than an annual program. There was a percentage lost because we are proposing going to a biannual so that is the reason we have chosen to come to you with the package we have on the biannual using the I&M/240 for all model years.

Chairman Close stated that Mr. Williams indicated that the I&M/240 really was not designed for these earlier model cars and asked Mr. Fronapfel if that is the case, why are we subjecting them to that kind of a test. Mr. Fronapfel replied that the initial modeling done by EPA did not include I&M/240 criteria for the older vehicles. The numbers that you have before you now, based on their guidance and their regulations, have now established the cut points for those older vehicles using an I&M/240 test so the data and information has been developed and that is essentially the information that we are proposing to have adopted.

Chairman Close asked Tom if the Bar 90 was capable of making the same test as the I&M/240. Mr. Fronapfel replied that the I&M/240 is a much more sensitive test which is done on a loaded

vehicle at various operating speeds. The BAR 90 is a static type test where the vehicle is not subjected to a dynamic motion. Chairman Close asked if the test could be conducted with the BAR 90 on the older cars that would be equivalent to the I&M/240. Mr. Fronapfel replied that the test procedures were entirely different. Chairman Close asked if the result would be equivalent, is there are BAR 90 test that would be equivalent to the I&M/240 on the older cars and Mr. Fronapfel replied that you could end up with the same end result for your emission base but we lose 3% credit by going to the biannual program. We are trying to pick up that extra 3% using the more sensitive equipment on a loaded vehicle basis.

Chairman Close asked how the credit works. Dick Reavis replied that in terms of the performance efficiency for and I&M Program there are certain things that you do to establish 100% emissions credit. If you test every year, if you do this and that. If you don't do something you lose credit, and one of the things that you lose credit for is going to biannual testing and then spreading the cost out to the motoring public. You lose 3% off of the 100% effectiveness of an enhanced I&M Program. You can regain that 3% fairly easily by including the entire fleet, 1968's and newer in the enhanced I&M Program. By going to a biannual testing we have lost 3%, our program would not meet the Federal requirements as it stood then. So we said, 1968's and newer, we will do with an enhanced I&M Program. To answer your question would the BAR 90 give the same results, the answer is no. The I&M/240 will yield a greater failure rate, more sensitive test than the BAR 90. If you use the BAR 90 you lose emission credits as opposed to using the Enhanced I&M 240 Program on those 1968 and newer cars.

Chairman Close asked if the bottom line was to come into compliance on the emission tests - if the Charleston Test Center indicates compliance using the BAR 90 and the I&M/240 is that not what this is all about. Commissioner Ballow stated that the bottom line is how much pollutants go into the atmosphere. Dick Reavis replied that there are two things; one is attainment of the carbon monoxide standards and the other is performance standards for an I&M Program. The attainment of the carbon monoxide standards is going to involve a number of things and the enhanced I&M testing program is an element of what has to be put in place to reach that attainment. He continued that the enhanced I&M testing program has to meet certain standards in order for the EPA to approve that program and that it is not logical to put a program in place that does not do what it is supposed to do so the 100% emission credit is an enhanced I&M program that does precisely what it is supposed to do but it is made up of elements that you get so much credit for. And again, the 100% using 1986 or 1987 or newer cars involves an annual testing regime. He stated that could do be done except it would make it more expensive to the motoring public so the option was to include the 1968 and newer vehicles in order to go to biannual testing.

Commissioner Wright asked why couldn't a BAR 90 program be for initiated for those vehicles prior to 1988 in an annual test and why couldn't the I&M/240 be for those for those vehicles 1988 and earlier biannually, and, if there is concern about the volume versus the number of stations at 100% I&M/240 this would be a step of fusing into the new system whereby part of the fleet in this area would be under the old BAR 90 Program. Dick Reavis answered that there

would be logistic problems; deciding who gets tested annually or biannually and how the registration is done.

Mr. Dodgion drew to the Commissioner's attention that the Petition before them does not say that they are adopting the I&M/240 Program but that they are setting up a program that complies with the Federal Code of Regulations. Then the Department of Motor Vehicles has to develop their program that has the appropriate specifications and that he would ask Mr. Sparks of the Department of Motor Vehicles to talk to you, after the period of public testimony, about the concept of running two programs, the BAR 90 coupled with the I&M/240 Program.

James Sottus remarked that in 1987-88 on-board diagnostics 1 was put in vehicles, in 1989 OBD 2 was put in and now OBD 3 has been put in and in 1997 vehicles will test themselves, that is the way the I&M/240 was set up. I think we should really think we should do the other units from 1986 and back.

Terry Williams stated that although 2 different tests were being done, it is all done in the same lane with the same equipment. The year of the car tells the computer which parts of the test to activate. He stated that Denver is proposing a test only centralized contractor that is bidding on the 1988 and newer vehicles under I&M/240. The local business people, if they so chose, can participate in the older testing of the 1968 through 1988 model cars using the new BAR 90 equipment. These things are being done in other states to address the concerns of people that are in the program now that may want to stay in the program.

Robert Wolfe asked for clarification. They keep stating that they are not trying to mandate the I&M/240 but, according to the Federal Standard of the EPA Standard, the I&M/240 is the only system capable of handling what they want us to do. So if they are not mandating the I&M/240, what system are we going to use.

Chairman Close called upon Ray Sparks, Chief of the Registration Division for the Department of Motor Vehicles and Public Safety for clarification. Mr. Sparks stated that the Registration Division administers the emission control program in Clark and Washoe Counties. He responded to the discussion of the feasibility of running two programs in Clark County, an I&M/240 test program that would test newer vehicles and at the same time maintain a steady state type of testing for the 1988, or whatever that cut-off year would be, by saying that from an administrative standpoint, although concerned about the additional difficulties that would impose on the department, it would not be impossible to do. Depending on which vehicles would qualify for the BAR 90 testing. It would comprise a certain amount of the fleet that has to be tested, significant enough to make it economically feasible to sustain that type of program. Again, the existing test equipment would not be adequate. To upgrade from the current BAR 84 machines to the BAR 90 would cost from \$15,000 to \$30,000 per analyzer, so if we adopted such a program, the stations that opted into that program will still have to make an investment, although not as significant as the I&M/240 equipment. Logistically, we have to identify those vehicles; be able to notify the owner at the time of the registration renewal notice what type of testing they need; make sure they are directed to the proper test facility; and those types of issues which certainly can be worked out. Coupled with the problem with achieving the credits needed to meet the emission reduction requirements we felt that the two programs would be

administratively complicated and the single program would be much more feasible.

Commissioner Turnipseed asked Mr. Sparks if he could ballpark a figure as to what percentage of the cars on the road in Clark County are 1988 and newer versus older vehicles. Mr. Sparks replied that about 50% of the vehicles in Clark County are 1981 or older models.

Commissioner Ober asked Mr. Sparks what kind of problems would be encountered if the 1988 and newer vehicles were registered every two years and those older than 1988 every year. Mr. Sparks replied that it would be a computer program would have to be written to tie into the registration database to be able to do that.

Commissioner Bentley stated that the standards that are being presented to the Commission are dynamic standards using the I&M/240 system and asked Mr. Fronapfel if the Commission decided to have two separate systems, would it not also mean that a different numerical standard in the present regulation? Mr. Fronapfel replied that there would have to be two different sets of standards for the two different types of testing equipment. Commissioner Bentley noted that the Commission did not have before them the standards for a static testing system. Mr. Fronapfel replied no, they did not.

Commissioner Ballow asked if the standards that are present now would be compatible with the two-tier system? Mr. Sparks stated that he believed that they would with the exception of the NOx standards.

Commissioner Ballow asked Chairman Close if he agreed with Mr. Dodgion's statement that what is before the Commission is not whether we have an I&M/240 program, that decision is going to be made by the Department of Motor Vehicles? Chairman Close replied that, as he understood the proposed regulations, what the Commission would be determining is the general parameters for the emission control program and then the Department of Motor Vehicles, through our regulatory process would provide the specifications to that. There is going to be some model years that will have to be tested with the I&M/240 and if the Department has the flexibility of looking at the dual program, we could do that, although we had not intended to.

Commissioner Ballow mentioned that when the meeting started the Commission was advised that they had no choice and had to take what was put before us or have sanctions imposed upon us. Now, as we get further down the line and hear testimony from different people it appears that we do have some options that perhaps were foreclosed by decisions that were made ahead of time. Chairman Close replied that Mr. Dodgion indicated in his opening remarks there were some options available in designing a program that would be presented to the Commission, i.e., centralized versus de-centralized program; annual versus biannual testing; the applicability of the I&M/240 testing protocol to the older model vehicles. Those types of issues were discussed in meetings that the Division of Environmental Protection and the Department of Motor Vehicles have had and those options were considered. Commissioner Ballow replied that they might have been considered but they were not considered by the Commission and now it appears we could have considered those options. Chairman Close replied that the flexibility that the State has is fairly circumscribed. We do have to meet certain performance standards under the regulations that EPA has promulgated; the programs that we design are going to have to comply

with the standards that the EPA has set forth and, in addition, the program is going to have to achieve certain emission reduction targets to be acceptable to the EPA. Within those requirements, there is relatively little flexibility in designing the program and the areas where there is flexibility have been identified.

Commissioner Wright stated that in regard to the administrative hurdles, he did not visualize those as being insurmountable in this computer age and he thought that the program could be written to notice owners of 1988 and new vehicles every two years. Every year they would get a registration and every other year that registration would carry a signal that the vehicle would have to be smogged checked and those people could drive up to a station that does not do the I&M/240 and would be directed to a station that would. The rest, on their yearly registration, would be told to go to a smog check. Chairman Close replied that the administrative difficulties would not be insurmountable but the administrative difficulties in conjunction with the additional efforts that would have to be made to meet the reduction requirements and to offset the credit loss for the biannual testing combined made us feel that the recommendation of a single program was the more feasible recommendation.

Commissioner Wright stated that he did not yet understand the percentage tradeoffs, whether it is worth this discussion or not.

We have several missions, basically air quality, so we have to consider some of the other aspects, namely the public. Chairman Close agreed and stated that he appreciated the concern being shown towards these issues.

Mr. Sparks gave a brief synopsis on the DMV's role subsequent to the action of the Commission. Once the Commission determines the general parameters of the emission inspection program, then DMV will begin the rule-making process for the regulations which they are charged with promulgating statutorily. DMV's regulations will be much more complex. They will specify the equipment that can be used; the testing protocol that has to be employed in the program; develop new procedures for licensing (because the statute that was passed in the last session created a new category of licensees, that of authorized repair stations) and specify a procedure for providing for licensing of a repair station. The Federal Regulations require the DMV to develop programs that will enhance the enforcement of the emission regulations and we will have to consider doing the on-road type of enforcement program, remote sensing or actual on-road testing. The enforcement activity of registration violations will have to be increased by working closely with law enforcement in Clark County. We will have to develop a computerization program for the stations that participate in the program because the Federal Regulations require that computers link all of the stations so that a person could not go to one station and fail the test and then run across town to another station and try to get it passed. We have been in the process of drafting the regulations and the final product will depend upon the Commission's actions on the regulation before you. He stated that the DMV would like to start the public hearing process on their regulations in December and have the regulations finalized shortly thereafter. At that point we will be ready to select and license stations who are interested in participating in the program. We are discussing developing some type of legal agreement or contract with the stations for both the interest of the State of Nevada and the participating stations. Obviously, they have to make a substantial capital investment in the program. Our time frame is that by the summer of 1994 we would be in

the final phases of implementation of the program in the testing of the new stations and be ready to go by the January 1, 1995.

Commissioner Molini asked Mr. Sparks if there were a number of equipment manufacturer's whose equipment would meet the criteria for I&M/240 and if, by standardizing the equipment, the whole system would work better. Mr. Sparks replied that although there are a number of manufacturer's, under the program that has been described today, it would complicate the program if the station operators use different types of equipment. Stations must be linked together through a computer so we are exploring the possibility of the State doing a competitive bidding process with the equipment manufacturer's and as a condition of participation in the program, the participating stations would have to purchase from that one vendor. Commissioner Molini asked how available is that equipment in terms of time parameters for station owners. Mr. Sparks replied that they had initial concerns about the availability of the equipment in terms of the manufacturer's who are also contractors in states that have a centralized program, that perhaps they may not be willing to make their equipment, particularly the software, available for retail purchases.

Commissioner Close called upon Mike DeFloria. Mr. DeFloria, a resident of Las Vegas for 30 years, stated that he did not care about the smog but he does know he is getting screwed. He reviewed several recent local newspaper articles about smog, the ozone layers and other garbage that the government is putting out. He quoted former Senator Barry Goldwater as being steadfastly opposed to Federal control over local and state governments. In one article Mr. Goldwater stated that he had waited in line in his automobile for 1 hour and 15 minutes in 115 degree temperatures to have his exhaust system tested to meet Federal standards but that the area surrounding his Phoenix home is still polluted. He read a report critical of the Interior Department for allowing the environment to be trashed, permitting its workers to face dangerous conditions and running up a 200 billion dollar clean-up bill. He read that the Interior Department manages 440 million acres of public lands, mostly in the west and that it may take up to 30 years to clean up the Department's environmental messes; that in the past 16 years the Department has only corrected less than 1 billion dollars of an estimated 60 billion dollars worth of environmental health and safety problems related to surface coal mining and that it has the worst occupational record of all federal agencies. The Department of Interior's rate of lost time, because of injuries and illness, is 67% above the federal average. Mr. DeFloria continued that between 1978 and 1990 he purchased 5 new vehicles in Las Vegas, had them smog tested yearly and passed every test but that he was punished because cars, trucks, and buses who pollute the air, pay absolutely nothing and don't require testing. He continued that mandatory testing of late model cars is illegal, a mass punishment, unconstitutional and like being punished for a crime that your neighbor committed.

Chairman Close called upon Thelma Clark. Ms. Clark, a private citizen, stated that her car celebrated its 24th birthday last September, is kept in good condition and that she cannot afford a new vehicle. Ms. Clark asked if there was a map of the hydrographic area 212 mentioned in Section 2, number 1, and if so, would it be attached to this regulation.

Chairman Close called upon Commissioner Turnipseed, State Water Engineer to answer Ms. Clark. Mr. Turnipseed stated that Hydroglogic Basin 212 is from mountain top-to-mountain top;

Mount Charleston in the west to Sunrise Mountain on the east and from Indian Springs Valley on the north to Ivanpah and Eldorado Valley on the south. This means the area within this basin where the water, if it hit on the surface, would run toward the middle and run out Las Vegas Wash. Ms. Clark asked why that was not made clear to the public in the regulation, then stated that there was something in the federal law saying that we have to spend \$450 to get our car repaired if it does not pass and is there is anything that describes the maximum price for inspections and that something should be in the regulations that states that the inspection stations cannot charge any more.

Chairman Close asked Mr. Sparks of the DMV if that would be part of his program and is it correct that the fee setting is not applicable to this regulation. Mr. Sparks replied, that is correct that there are existing regulations that set a ceiling on the inspection fee under the current program and that same type of fee ceiling would be implemented under the new program.

Ms. Clark suggested that in Section 2, where it reads "except motorcycles" should also include the terminology "new vehicles". She questioned if the new machines purchased for testing do not reduce the smog or the pollution will the EPA come back with stricter regulations? Mr. Dodgion replied that scenario is what we just went through. The Clean Air Act has mandated that areas come into compliance by certain dates, going way back to 1979, 1982, and 1987. States have not been able to attain the standards and each time the EPA then sets the date further off and requires more stringent requirements.

Ms. Clark asked what a tier 1 vehicle, as stated is. Dick Reavis replied that tier 1 vehicles are light duty, gasoline powered vehicles, essentially automobiles.

Ms. Clark requested an explanation of Section 5 on page 5 that talks about waivers, saying the Department can grant a waiver from standards in Section 4, to motor vehicles powered by any fuel except diesel fuel but the amount spent on expenditures must be calculated to the value of the dollar in 1989. It says \$450 but how would we know how much that would mean in 1989, more or less. How much more, is there a percentage. Mr. Fronapfel explained that the Department of Motor Vehicles will explain what that fee will be as part of their package. They will adjust that \$450 to when the date of the regulation is effective, January 1, 1995. That figure will be established within their program and adjusted annually in terms of what the actual inspection and waiver costs will be.

Ms. Clark replied that she would like to see the reference to the 1989 Consumer Price Index taken out of this section. Chairman Close replied that he understood that language was a requirement of the EPA.

Ms. Clark asked if home repairs were "out" for waiver purposes. Chairman Close replied that if you cannot fix your car at home so that it passes inspection, then you would have to go to a certified mechanic.

Ms. Clark asked for clarification, on page 6 of the waiver. She asked if that language meant the waiver would be valid for 1 or 2 years. Chairman Close replied that, as the proposal stands right now, that it would be for two years.

Ms. Clark asked about the wording in subsection 6 on page 6, it reads "the department may grant and extension of time". She asked it that meant the Department of Motor Vehicles and how much time does that mean in days or weeks, is there a maximum amount of time.

Mr. Fronapfel required yes, that it did mean the Department of Motor Vehicles and in Section 6 it does say the maximum time allowed is 2 years. Ms. Clark replied, that is only if you give me the waiver. That is not if I am asking you to give me time to get my car repaired. Ms. Clark asked for amendments to the regulation to clarify the points she has brought up and to add wording referring to economic hardships.

Chairman Close called upon State Senator Matthew Callister. Matthew Callister stated that he was attending today in his real life capacity, as opposed to his political life capacity, as counsel for Jiffy Smog. Mr. Callister read excerpts from the bible of the Federal Registry to remind the gathering of that which we can change and that which we can't. He read the mandatory languages which states "Enhanced Programs will be required in serious, severe and extreme ozone non-attainment areas with urbanized population of 200,000 or more " and stated "that is Clark County." He stated that many in the legislature, upon hearing that language, were offended. That issue has been visited and determined and the determination from the legislature wasn't to simply say "forget it, we are not going to play ball" but the legislature agreed to try to come into compliance. Thus, legislation was drafted, and approved by both houses, that authorized the implementation of a plan to come into compliance. The legislature deferred to you to adopt, amend or repeal regulations. Petition 94003, proposed by the Nevada Division of Environmental Protection, says we want to permanently amend NAC 445 by adding a new section establishing a decentralized program for the inspection and maintenance of motor vehicles in an enhanced mode adequate to fulfill the requirement of the Clean Air Act. That is the issue. What is before you today is to adopt two key components to bring us into compliance as the legislature has indicated we need to do, that would be decentralized and in an enhanced mode. It doesn't specify the format for enhancement. It does specify decentralized. When you review the Federal Register, it is clear they don't want you to have a decentralized program, but in spite of that, these good folks at DMV and DEP have said "we will try to fight the good fight for you." Understand, if they don't succeed, we are going to end up with the the centralized program, in the end. I suggest that we not risk sending a mixed message to the people who really hold our future in their hands. That is not the legislature or the Commission. That is Region IX of the EPA that has that 160 million dollar gun loaded at our heads saying "do you want these highway funds". I suggest we take the action today that these courageous folks have asked you to take. Send a clear message to Region IX that we are going to fight the fight that we can win, and that is to adopt a decentralized enhanced program. I urge you to focus on that today, Mr. Callister continued.

Chairman Close called upon Juanita Clark. Juanita Clark, a teacher in the Clark County School District, stated that she felt that the Commission had been given the "bum's rush" today, and that they maybe don't know all of the details that they should know to make a decision. Juanita stated that she had gone to the EPA on Tropicana Avenue to pick up a copy of the amendment that was up for "adoption, amendment or repeal" and for a copy of a copy of 40 C.F.R. Part 51, which they did not have available. As a car and pickup owner, she expressed concern over the vehicle age, the costs involved of bringing these vehicles into compliance and the economic hardship this would bring on people in her economic situation. She also expressed concern over

the flawed testing. She mentioned that flawed smog testing is going on at a school for handicapped students that has numerous buses and other vehicles picking up and dropping off children. The Health Department needs to go back to the drawing board - they cannot base all these facts on a flawed premise, on untruths.

Chairman Close called upon Don Delangis. Mr. Delangis did not appear.

Chairman Close called upon Brent Humley. Mr. Humley did not appear.

Chairman Close called upon Frank Azvil. Mr. Azvil stated that he came to the Las Vegas Valley in June of 1954, watched the growth in the Valley, and cannot understand how you can continue to raise the rates on the inhabitants. He questioned why a vehicle less than 5 years old was being smogged. If the emission control on a new car fails it is under warranty. Federal Law requires 5 years or 50 thousand miles warranty. He questioned the viability of only smogging Washoe County and Las Vegas automobiles and asked why not smog the vehicles that drive into these areas and why not get tough with people who live in Las Vegas but register their vehicles in other counties in Nevada or even other surrounding states. Mr. Azvil suggested tougher enforcement of registration and expressed disapproval of this new regulation. You are putting a burden on the honest citizen and putting many people out of work he continued. He expressed the desire that the law makers concentrate their efforts on the real problems that are affecting this country, the morality of the country and the social problems and he urged the Commission to repeal the regulation.

Chairman Close called upon Nova W. Cain. Nova W. Cain asked the Commissioner's why the residents in Mt. Charleston and the surrounding small towns and outlying areas were not required to have their vehicles smog checked.

Mr. Sparks replied that residents of the Mt. Charleston were exempt from the current program in view of Mr. Turnipseed's description of the hydrographic basin. He informed Ms. Cain that the DMV translates the program area boundary into zip codes so that it can be administered and those areas will trigger the emission inspection requirement when the owner registers his vehicle. Nova W. Cain replied that vehicles from outlying areas drive into Las Vegas every day to go to work. She stated that her 1975 model car is in good shape, when she stops at a red light you cannot hear the motor but now you want to get the old cars off the road. She expressed her feeling that every vehicle should be smog checked. Chairman Close asked Mr. Fronapfel if Mr. Charleston would come under the purview of this regulation. Mr. Fronapfel replied yes. Chairman Close stated that the people living in the small out-lying areas do not have the smog problem that Las Vegas has and for that reason the smaller areas do not the smog problems that we have. At the present time we have not contemplated, in areas where there is attainment right now, having those vehicles undergo a smog test.

Commissioner Wright commented that the people in the Reno-Sparks area face the same situation. Vehicles commute from Carson City and Fallon on a daily basis for work purposes and feeble attempts have been made in the legislature to require an I&M Program for the whole State. Commissioner Wright suggested to Ms. Cain that she go before the legislature with her concern.

Juanita Clark asked what would happen if the Commission did not adopt this petition. Chairman Close replied that they have been told that the EPA would take sanctions against Nevada and possibly withhold significant amounts of money the State would otherwise be entitled to receive, however the money would not be taken away from us for 18 months. Commissioner Wright expressed his concern that the State would also incur discretionary penalties prior to 18 months. Mr. Dodgion replied that there are two methods of applying the sanctions. The mandatory sanctions have the 18 month time clock to correct the deficiency. The EPA Administrator has the authority for discretionary sanctions and there is no 18 month clock involved there. She does have to make the finding, put a notice in the public register, run for a minimum of 30 days for public comment, review those public comments, make a final decision and post the notice of that decision in the Federal Register and at that time the sanctions would be applied. So the discretionary sanctions can be applied relatively quickly. He stated that he has been told that the package is prepared to impose discretionary sanctions on California and Indiana because of their refusal to adopt legislation for the enhanced I&M Programs. Chairman Close asked Ms. Clark if she understood that he had given her the wrong answer which Mr. Dodgion clarified. Ms. Clark replied yes.

Commissioner Wright asked Mr. Dodgion if, under SB 347, the Commission is working under a shadow of any legislative intent at this moment on this issue. Mr. Dodgion replied that under NRS 445, the State Clean Air Act as amended by Senate Bill 347 in the last session, the Commission is given the authority and responsibility to designate areas within the State that are required to have Inspection and Maintenance Programs and to define what those programs are to be. SB 347 did not deal with any particulars of any particular program he continued. It clarified your authority to do what has to be done. Commissioner Willie Molini asked how that amendment changed the existing statute. Did we not have that authority and responsibility before the amendments of the 1993 session. Mr. Dodgion replied that the statute, as it existed before SB 347, would not have allowed you to have a program that would separate test and repair.

Commissioner Griswold asked Mr. Dodgion it was true that there are 22 states facing the problem that Nevada is facing. Mr. Dodgion replied that he understood there are 22 states that are required to have enhanced I&M Programs as a result of being in non-attainment for carbon monoxide. There are other states, and more states, that are in non-attainment for ozone and a certain level of ozone also requires an enhanced I&M with more requirements for the testing procedures than what will be required for carbon monoxide. Commissioner Griswold asked how many of those 22 states have adopted regulations to satisfy the enhanced I&M. Mr. Dodgion replied, all of the states except California and Indiana have adopted enabling legislation and are proceeding with regulations or have regulations in their own statutes. Arizona is wrestling with air quality problems for the Phoenix area he continued, but they are not mandated to have an enhanced I&M Program although they are looking at the enhanced I&M Program as a means of coming into attainment. The Arizona legislature is talking about a special session within the next few days to deal with the Air Quality non-attainment issue for the Phoenix area.

Commissioner Russell Fields noted that the Commission has been operating under the premise

that the Las Vegas Valley is in non-attainment for CO and that premise is based on primarily, the sampling results at the East Charleston site. It seems we are very close to being in attainment; we've peaked over that threshold only a couple of times and the trend is getting better over the last couple of years and asked Mr. Dodgion if there is any chance that the State of Nevada might petition the EPA to take into consideration how close we are, the trend that we have established and provide a little extra time for some understanding to just how close are we. Deputy Attorney Jean Mischel interjected a misconception from this morning's discussion that the attainment was 12.7 parts per million level and actually it is 9.0. Mr. Dodgion replied that Ms. Mischel is correct. It is not close to attainment but rather close to the design value that mandates the difference between the basic I&M Program and an enhanced I&M Program. He stated his opinion as to how we would fare in such a petition to EPA, which we could do, is that it would be totally rejected. Commissioner Fields opinion was that he thought such a petition could be made in good faith. Mr. Dodgion responded to Commissioner Fields that nothing the Commission would do, as far as adopting the proposal or modified proposal that is in front of them, would preclude Clark County from taking such an action.

Commissioner Molini asked Mr. Dodgion if, supposing that the Commission adopts the regulation with some minor adjustments that have been discussed, he would speculate on the chances that California or Indiana or others might successfully raise a challenge to this mandated program. Mr. Molini continued that the testimony he had heard today gives me cause to pause about it, and that he has a degree of discomfort with what the Commission is doing and he senses that same discomfort in the other Commissioners. As he understand it, if these regulations are promulgated today, the program does not have to be in effect until January 1, 1995 so there is time where some changes could be made by EPA. Mr. Dodgion replied that was correct. If there were changes made by EPA then we, and the service industry that gets involved in the testing program, would want to take advantage of those changes and the problem will be in timing.

Mr. Dodgion stated that California's legislature will go back into session in mid-January of 1994 and that he thought the Enhanced I&M question would be addressed early. Perhaps Nevada could find out as early as March what they pass and EPA's reaction to it. If the EPA makes concessions there, then we might very well be able to take advantage of it if it is equivalent to the I&M/240. We have, stated Mr. Dodgion until January 1, 1995, the mandated date to have the system in place but lead time is needed for equipment procurement, testing and check-out before we are ready to go.

Commissioner Molini asked how much discretionary authority, administratively, does EPA have under the parameters of the Clean Air Act. Are the constraints we are dealing with today administrative? Mr. Dodgion replied that they are based on statutory deadlines and EPA regulations and the specifications for the I&M/240 equipment are EPA regulations and the finding of whether a different system than I&M/240 is equivalent is an EPA discretionary authority.

Commissioner Bentley asked about the split system, if you have a 3% reduction from 100% for using a biannual system, is there any advantage for the biannual for the over 1988 and annual for under 1988. Mr. Dodgion asked Clark County Comprehensive Planning to speak to the split system. He stated that we have to have the enhanced I&M Program, no matter what you do with it, you have to have this I&M/ 240 equivalent as at least a major part of it and aside from that, you have to have credit for the program that you design. It gives you the ability to show attainment for the non-attainment area.

Jeff Harris, Clark County Comprehensive Planning, asked to take a step backwards to explain how the Enhanced I&M Program fits into the over-all Clean Air Act mandates and how it fits in the SIP. He stated that it is true that the I&M Program is a stand-alone issue that you are dealing with but it is not a stand-alone issue of the Clean Air Act and the requirements. The need for an enhanced program was first outlined in the County's State Implementation Plan, the Air Quality Plan to control carbon monoxide. We did not know what the Enhanced I&M Program would be, we just knew we had to have one and we modeled for one. In our attainment demonstration, which is a requirement of the plan itself, we assumed that an enhanced program was in effect. The enhanced program is like a smorgasbord where you can select different options, so long as you select those options which reach 100% of the program, and that is what our plan assumed. As far as the split program, there are a number of ways that can go. It can be a combination of basic annual inspections for older vehicles with an enhanced I&M/240 test for newer vehicles; it can be a program that you add on options such as the visual inspection program; you get credit for mechanic training certification; you take away credit if you decide not to require I&M/240 test for newer vehicles. But whatever you chose, so long as it adds up to 100% of the Federal Program performance, that is our decision. Commissioner Bentley stated that so in essence, the SIP is predicated on a full-blown enhanced program, biannually.

Jeff Harris replied yes, but not by our design. The planning protocol that goes into any SIP document preparation across the country follows a pre-described protocol set out by the Federal Government. We followed the rules as we prepared that SIP document, with the understanding that if we chose not to, they would reject it. The SIP document itself, has three basic parts in terms as an attainment demonstration by the end of 1995.

The first area focused on was the gasoline fuel itself and the oxygenated fuels program that is administered by the Health District is one leg of that plan. The second leg of that plan is to go after the operating efficiency of vehicles and that is in fact, the enhanced maintenance and inspection program. The third leg is everything else combined. Everything else combined does not come close to the benefits derived from either the oxygenated fuels program nor the enhanced inspection maintenance program.

Jim VanDell asked to correct one thing that Senator Callister said. The first quote that he made out of the Federal Register related to ozone and we are not out of attainment for ozone, our only alleged problem is carbon monoxide. He continued that possibly, our representatives to the U.S. Congress failed to do their job throughout 1990. They adopted, without reading or understanding, a very draconian act that we are now having to deal with and it seems there is little real justification for much of what they are trying to make us do. Mr. VanDell expressed his concerns about the sanctions. He stated that Congressman Dingle of Michigan is the Chair of a House Committee that is working with the Government Accounting Office to evaluate what

EPA is mandating that is actually beyond EPA's scope. From a State level, looking up at EPA at a Federal level it is often-times a matter of intimidation used by EPA which works quite well on the State level. Congressman and the Government Accounting Office hold the purse strings on EPA and it has been widely stated, although not carved in stone, that EPA can't impose immediate sanctions. The letter of the law does say that there is an 18 month period prior to the allowance for sanctions to begin. As long as the GAO holds the purse strings we should consider that an opportunity. Additionally, the State of Georgia has reversed on the I&M/240 and Los Angeles is working with California. The 10,000 stations in California that are now doing a decentralized program are organizing, along with other industries. There is a strong lobby to greet the California legislature. Senator Presley has done a turn-around and is working with the industry and we'll probably see a very strong bill coming out in the California legislature that will have test and repair together and use some type of a BAR 90 system. Until California, where emission testing was created, has actually done something, they are adamantly against EPA, and I think we should take note of that and respect it. There is not one iota of difference between the I&M/240 Program on a centralized basis versus de-centralized. The only difference is who owns it. It will mean 22 machines in Clark County to test 550,000 cars plus the other 90,000 cars that change ownership every year and whatever amount of new cars come into Clark County. We have a system with 22 lanes that is not capable of testing all the cars in the Valley in a period of one year, so then we have to go to 2 years. Right now we have an effective decentralized system that has, in the face of rapid growth in the Clark County area, brought our level of carbon monoxide down and I think that is an effective, efficient and workable program. It has been very cost effective and to take it and all the people involved with it and toss them out the window is ludicrous. Mr. VanDell stated that he had learned more about the I&M/240 Program and the Clean Air Act in this meeting today than I have in attending 2 years of meetings that led up to this with the people that are putting it together in this State. The public, the industry and the Commission have not been properly informed on this issue and it should be tabled. We should seek out more information, see what California and the other states are going to do and talk with EPA and see what they are going to do.

Ralph Haak read a paragraph in the chapter "Blue Print for Disaster" from the book Whatever Happened To The American Dream:

"as difficult as it is to comply with all the regulations in a business, just think of trying to comply with them as a private individual. Recently a friend in Congress decided to order a copy of all the EPA regulations that might potentially affect private citizens in his area. After having a staffer research the Clean Air and Clean Water Act and all the associated documents, he ordered one copy of each from the Library of Congress. The staffer received a call from the clerk at the library asking him if he really wanted a copy of all the documents. The staffer replied, yes, why do you ask? Because I wondered if you guys really have enough room to store a semi load of paper, the clerk replied. Needless to say, they didn't get a reply of everything referenced. But it does point out the absurdity of too many regulations over too many areas of our lives. I have not read the Clean Water Act but a friend that consults in this area tells me that no single human being can possibly assimilate all the information. He also mentioned that no sane human being can understand it anyway since it references documents which reference other documents which reference other documents and all of these then become a part of the law".

Commissioner Molini urged, due to time constraints, that the public refrain from statements regarding the efficacy of the government. Mr. Molini asked Jeff Harris if, relative to the credits, a kind of dual program were implemented that exempted, from I&M/240, 1987 and older vehicles, would that cause a credit reduction in the overall program. Jeff Harris replied yes it would. He stated that the Federal Performance Standards were based on a 1990 bill enacted in New Jersey where their program was based on an I&M annual inspection. He explained that when we go to a biannual inspection, there is a reduction in points and it is a very tight program. The Health Department is not suggesting that or recommending an annual program. EPA may have been overly optimistic when they set those performance standards - the relevance is that those are the numbers that the planning agencies use to develop the attainment demonstration. He noted that EPA can impose sanctions on more than just whether a state has an enhanced I&M program. The enhanced I&M Program effectively becomes part of the State Implementation Plan. Regardless of whether the local air quality planning agency or the state does it, it is all one big plan.

Commissioner Molini asked what happens if Clark County is not in attainment by CO by the end of 1995. Jeff Harris replied that there would be the sanctions and, something as bad as the sanctions, the EPA could step in and impose what they call a Federal Implementation Plan (FIP) where they come in and do the plan for us and require that the state and local governments enact their plan.

Commissioner Molini asked Jeff Harris if we don't adopt as this regulation as proposed, which includes 1968 and newer cars and an I&M/240 but do a dual program and lose some credits, will that keep you, in itself, from making attainment - do we have to do this to get to the 100 point program you spoke about? Jeff Harris replied that EPA Region 9 had advised them verbally that we will have to recalculate the attainment demonstration based on whatever program the Commission decides upon. If it is something less than 100%, when we recalculate attainment and attempt to demonstrate that attainment, we are going to have to make up the difference and pull some fancy things in order to compensate for any reductions in that federal performance standard.

Chairman Close asked, if we adopt the two-tier system, and because of that there is some deficiency in our attainment, can we not then, after showing good faith, come back and take another shot at it. Jeff Harris replied that he did not have a clue what the EPA could do. They may come back and FIP us, as they did in Phoenix. Phoenix is now trying to cover themselves, in a special session, trying to remove that Federal Implementation Plan, which is fairly draconian. Over the last 7 years, I have never seen EPA say "why don't you guys try again" they've hammered us hard at every phase.

Commissioner Molini asked Mr. Sparks how difficult it would be for the DMV to implement the two-tier system, if we left the cars 1987 and earlier under the current system and mandated an I&M/240 for the newer vehicles. Mr. Sparks replied that he felt they could work out the administrative details, that there was nothing he was aware of now that would make the program impossible. An attempt would be made to make it administratively feasible for the department, and they would also design it in such a way so it would not complicate the consumer's problem.

Dick Reavis stated that addressing the consumer's problem, in terms of the cost of the I&M/ 240 Program or an enhanced I&M test, being in the range of what smog testing costs right now, if we go to 1968 to 85 and do that with the BAR 90, you are talking about an annual test and therefore doubling the cost to the motoring public. Commissioner Molini reiterated that what Mr. Reavis is saying is that we couldn't maintain the existing program for older cars because we are still mandated to separate test and repair. Dick Reavis replied yes, you are still mandated, and you will have a supply of cars that is going to diminish all the time and it doesn't make a great deal of sense, even to the industry, to try to maintain that separate equipment. Commissioner Molini stated that mandate only applies if you are in non-attainment for CO. As, an example, in Washoe County that program is not going to change, it will remain in place with test and repair still allowed at the same site. Dick Reavis replied that in an area where an enhanced I&M Program is required test and repair has to be separated.

Chairman Close called upon Dave Brown. Dave Brown, smog station owner and the employer of 5 inspectors expressed myriad feelings at the testimony he has heard today and commended the Commission for giving the public the much needed information through the forum of this meeting. He stated that if the proposal before the Commission today is adopted he will be put out of business. Although against the proposal, he noted that he has written a letter of intent requesting two smog lanes in the testing facility. He continued that the proposal before you has been called a decentralized one and he does not see it as that nor does he see an economic benefit out of one out-of-state operator owning the facility. He stated he would prefer to see 6 - 12 owners and noted that, if we are going to adopt the EPA Program, let's go with centralized. If it does not work and we find ourselves out of attainment at least we will know that it doesn't work. He recommended that the Commission do not adopt the proposal but if it is adopted, adopt it without any amendments and to go with centralized I&M for those 1988 and up and decentralized, which means between 200 and 300 operators still testing cars, from 1987 on down, allowing those who do that testing, with minimal upgrades and impact, to continue to employ and be in business benefitting the operator and the motoring public. He stated that we know that the market is going to diminish for the I&M/240 machine and if we go into attainment, where we are headed, there will be tremendous public outcry, because others have been allowed options that have not been considered or brought out to open public discussion in Nevada.

Chairman Close called upon Lou Gardella. Lou Gardella responded that the issue at hand is not the I&M/240. As far as the decentralized/centralized issue, the difference is who runs the program. If the members here vote against this program, you will invite sanctions and a centralized contractor.

Chairman Close declared the public comment portion of the hearing closed.

Commissioner Griswold asked Terry Williams if he had looked at page 3 and 4 of the LCB version handed to the Commission and the public this morning, and if so, is he was comfortable that these standards would do the job that we want them to do without any more adverse problems to the public. Terry Williams explained that, as equipment manufacturers and tester, the company has nothing to do with the setting of standards, cutpoints. We put in the equipment and the State makes the decision of what the cutpoints are, what their target failure rates are etc. Commissioner Griswold asked Mr. Williams if he could just look at the standards and have an

idea of what the results would be. Terry Williams replied that is one small part of it and that when you put all the information into the 50A computer program it spits out a number and by tweaking the numbers, rather it be cut-points or different things you come out with the bottom line. Not knowing the mix and other things that will go into it, there is no way that I can comment on what the cut-points are, what they would or would not achieve, it is all part of a big mathematical formula.

Commissioner Wright asked Mr. Dodgion if he and his staff had crossed the hurdle in regard to the new and used issue raised by Mr. Capurro. Mr. Dodgion replied that they agreed that they could use his language and refer to used vehicles, meaning, according to state law, a vehicle that has been registered. A new car would be registered, it would have to be smogged by the dealer to be registered the first time; the second time it was registered it would have to come into the program.

Commissioner Wright asked if the new language would be inserted under Section 2.1. Mr. Dodgion replied that it would go on the next to the last line there, inserting used in there is acceptable. Commissioner Wright asked if his understanding of the new vehicle, that under the biannual, the first year after the second year of registration, a new vehicle would be subject to inspection.

Mr. Dodgion replied that a new vehicle would not have to have a smog certificate to be registered. Then the next time it comes up for registration it would come into the biannual program, you would have at least one year and maybe two years of exemption depending upon how the DMV sets up the testing program in their registration. Commissioner Wright asked Mr. Sparks how he visualizes the DMV administering that situation. Mr. Sparks replied: A person purchases a new vehicles, comes to DMV to register it for the first time. Being new it is not required to be inspected. One year after the original date of registration, it is renewed for the first time, no inspection would be required. Then one year from that date of renewal, which would be two years from the date of first registration or the beginning of the third registration year, an emission inspection would be required.

Commissioner Wright asked Mr. Sparks if the DMV would accept that, without the Commission putting that into this regulation, because that is a function of your activity. Mr. Sparks replied that your regulations would state it was a biannual testing program and we would administer it procedurally. Commissioner Wright stated and that would be done because the Commission would insert that word "used" in the regulation before us. Mr. Sparks replied it would be implemented in that way.

Commissioner Ober asked Mr. Williams if a company was awarded a contract for this

equipment, what would be the lead time required. Mr. Williams replied that would depend upon what the requirements are. He stated for an enhanced I&M Program, if a new facility would have to be built, it would take time to acquire the site and build the building. If the equipment could be fitted into an existing facility that would shorten the time. Normal time needed is 14 - 18 months from the time the contract is awarded to the time you are ready to open for business. Commissioner Ober asked how much time it would take if they were to just furnish the equipment only. Mr. Williams replied as soon as the specification were known, probably 6 months.

Chairman Close asked Deputy Attorney Jean Mischel if she had any comments or questions. DAG Mischel replied that she wanted to clarify the meaning of the word "new" so that it was acceptable or had the same meaning that the Commission intended it to have. She continued that "new" is defined as "a vehicle that has never been registered in any state or foreign jurisdiction". She cautioned the Commission to be aware of the fact that there will be a very small percentage of vehicles that are brand new vehicles and have never been registered and the biggest example, the loophole that has been used in the past that has been closed, was with rental cars. So the only other type of vehicles are the unusual vehicles like fire trucks. She clarified the other issue raised in the course of this hearing which was the change of the regulation language between the LCB version and the version that was supplied by the Nevada Division of Environmental Protection. She stated that the open meeting law allows this Commission to take action on the LCB version today, the open meeting law does not preclude changes made by the Commission or by the LCB after this date as long as the changes are something that a person could have anticipated as having occurred, in other words, you could not go outside of clean air or emission testing today and add regulatory language. As long as it is in the purview of the notice, and I have reviewed that notice, you may take action today on this regulation today.

Commissioner Turnipseed referred to Mr. Harris's mention that a bifurcated procedure would fit into their old air quality plan and wondered if the Commission members felt that was even still and option. Commissioner Bentley replied that he felt it was not a good option. Commissioner Turnipseed stated that it appears that SB 347 was the enabling legislation to allow this Commission to adopt these rules in essence, or enabling the DMV to adopt their rules with some guidance. Mr. Dodgion replied that the history of the I&M legislation in State Law goes back to the early 1970's but it has been bifurcated. The Commission's authority is to designate the areas, designate the types of programs that are required, set the emission standards, i.e. the cut points, in cooperation with the Health Districts, and that prior to your acting on anything you must have approval by DMV. And then DMV's responsibilities are to set up and operate the program that you have specified as being required.

Chairman Close asked the Commission if they wanted to make any modifications to the plan.

Commissioner Wright stated that two amendments had been discussed. in Section 2 it was the addition of the word "used" and we were advised by Staff that Section 2, subsection 2, the words "authorized test only inspection", deleting the word -
Mr. Fronapfel stated that in Section 2, Subsection 2, bottom of the first page we suggested after the word "decentralized" inserting "test only" as well as on the top of the next page after "multiple test only authorized inspection stations. Commissioner Wright asked if that also

applied on 3 and Mr. Fronapfel replied no, that just gave the effective date of the enhanced inspection program.

Commissioner Wright stated if there is a motion made after that action is taken, depending on that action, I have a suggested resolution for the Commission.

FIRST MOTION

Commissioner Ballow made the motion that the Commission maintain the existing inspection and maintenance program for those vehicles of 1987 and older and that we only require the new I&M/240 Program for new vehicles. Chairman Close asked for a second to that motion. Commissioner Molini seconded it for discussion only.

He stated that an option that has not been discussed is "annual" I&M/240 inspection. The biannual is mainly predicated on the capability of industry to respond to public need and the number of vehicles that need to be registered. He admitted he was leaning that way until Mr. Reavis pointed out that with the EPA regulation mandate you still have to have separation of test and repair. Could someone comment on the option of, if we went to this two tier system of annual inspections for the newer model vehicles, would that help address this percentage point issue that comprehensive planning is concerned about.

Mr. Dodgion spoke to the motion of "maintaining the existing program." If you stay with something other than the I&M/240 for the 1986 and older vehicles it still has to meet the requirements for new programs, the test equipment has to be upgraded and you have to have separation of test and repair. If you go to two separate programs, in order to try to approach sufficient credit for the 100% performance requirement, you will have to go to annual testing with the more sophisticated I&M/240 equipment or equivalent. Whether or not the two tier program will meet the requirements remains to be seen. The program we have proposed for you meets the performance requirements. If you go from biannual to annual you double the cost to the consumer so it was not totally what industry could do that led us to biannual, it was looking at what the consumer has to put up with as well as the cost to the consumer.

Commissioner Molini stated that he was going to vote against the motion because Clark County Comprehensive Planning has come up with their own Air Quality Management Plan, and they think that the regulation, as written, satisfies their needs and will help them come into attainment and since we are delegating to Clark County that they reach attainment, giving them the tools to attain this is important.

Chairman Close asked Commissioner Ballow if he would modify his motion to, rather than just go back to the existing program for 1988 and older to meet the criteria that Lew suggested.

Commissioner Ballow stated that Lew even changed the dates. That he had 1987 and older vehicles and that was based on the testimony that the I&M/240 program was not for these older vehicles and they couldn't comply with it.

Chairman Close stated that you have to have a test only station and you have to have the BAR 90

rather than the BAR 80. Commissioner Ballow replied that if they have to upgrade the existing program, he would agree with that.

Chairman Close stated that you would have to go to the BAR 90 and if we are going to adopt the two tier program you would have to have those other two criteria included in your motion. Commissioner Ballow replied that he did not want to see the I&M/240 Program applied to the older vehicles because it was not intended or designed to work with those vehicles.

Chairman Close asked Commissioner Ballow if he was not changing that aspect of his motion. Commissioner Ballow replied he could move to amend the motion to provide that we would have an improved inspection and maintenance program for the older vehicles to what they referred to as the BAR 90 standards.

Deputy Attorney General stated as well as the requirement of the test only -

Commissioner Ballow stated that he thought the test only thing was a separate issue, that only applied to the 240 Program. Dick Reavis replied that there was a feeling that the I&M/240 was not applicable to the 1986 through 1968 cars because there were not cut points published for those. Now they are published and I know of no physical reason that a 1968 model car cannot be subjected to an I&M/240 test. Commissioner Ballow stated that was about the time they came out with the plug and test facilities on the automobile. Prior to that time they did not have that capability but now, a new car can be taken to the dealer and they can put the equipment right on to the vehicle and test it. Dick Reavis replied yes, but at the same time you can run a 1968 on a dynamometer and test it so it is physically possible, it is just the EPA hadn't published the cut points and now they have. So you can use the I&M/240 on the entire system.

Commissioner Turnipseed noted that before a car fails, a car can have 4 times the amount of CO, as long as it is prior to 1975 and still pass.

Deputy Attorney Jean Mischel asked, for clarification, if the motion include the term used in Section 2, Paragraph 1, Commissioner Ballow stated that was already resolved and not a part of his motion.

Commissioner Bentley stated that Commissioner Ballow had made a partial motion, he had not included the entire package, just one aspect of it.

Commissioner Ballow asked the Commission to address the test only issue also and stated that it was one of the biggest problems for the industry, separating the testing and repair function which creates an almost impossible situation for the people that have to repair the vehicle, they can't test it to find out if they have it repaired or not. Commissioner Wright stated that it was his understanding the Commission had no flexibility on that issue, that is the law.

Deputy Attorney General Mischel asked the Commission to keep in mind, in a motion that you are adopting, you are moving to adopt or amend -

Commissioner Ballow stated no, that he was just moving to revise the proposed regulation.

Chairman Close asked Commissioner Ballow if he wanted to get the consensus of the Commission as to the two tier system and then if that is accepted then there will be further motions relative to -

Commissioner Ober asked Mr. Dodgion, if we have the two tier system, the inspections stations will not only have an investment in the new equipment but also additional investment in upgrading the old equipment. Mr. Dodgion replied that is possible, but what you might have are stations that could test the 1986 and older vehicles with the up-graded BAR 90 equipment and other stations that would be able to test the I&M/240 or equivalent, a station with a combination.

Commissioner Ballow stated that was kind of a compromise that would be feasible.

Chairman Close asked for further comment and asked the Commission members if they all understood the motion.

Chairman Close called for a vote on the motion. Commissioner's Griswold, Ballow, Fields, Close, voted in favor of the motion. Commissioner's Molini, Trenoweth, Wright, Bentley, Turnipseed and Ober opposed the motion. Chairman Close reported that the motion had failed.

Commissioner Wright stated that for the record, he thoroughly supports the intent of Commissioner Ballow's motion but is concerned about the things that he has heard today and the feasibility.

SECOND MOTION

Chairman Close asked for another motion. Is there a motion to adopt the regulation with the proposed amendments to Section 2(1) with the addition of the term "used"; Section 2(2) the addition of the term "test only" and corrections to Section 4(3.c) of the typing error to ".80".

Commissioner Bentley made the motion to adopt petition 94003 with the proposed amendments. Commissioner Wright and Commissioner Ober seconded the motion. Deputy Attorney General pointed out to the Commission, for the record, a typographical error that would be included in the motion on page 4. Chairman Close asked for further comments, then asked the Commission to vote. **Commissioner's Close, Ober, Bentley, Molini, Wright, Griswold, Turnipseed, Trenoweth and Fields voted in favor of the motion. The motion was adopted with Commissioner Ballow voting nay to the motion.**

Commissioner Ballow opposed the motion and asked that the record and the minutes show that he voted no on the motion. Commissioner Wright stated, that due to the nature of the subject, he

would like to suggest that the Commission consider this resolution which he read:

THIRD MOTION

"Whereas This Commission has heard questions about the validity of the I&M/240 test process; and

Whereas Concern has been raised over the air quality data gathered in Las Vegas Valley, to the extent that it will be evaluated by DRI; and

Whereas There is the possibility that EPA and California may come to terms that may relax some of the requirements; now

Therefore This Commission declares that it is willing and anxious to revisit this issue to consider adjustments thereto. "

Commissioner Molini asked Commissioner Wright if that was a motion. Commissioner Wright replied yes. Commissioner Bentley seconded the motion.

Chairman Close asked if there were any additional comments to the motion and called for a vote. **There were no additional comments and the motion carried with the full support of the Commission.**

Chairman Close asked to make the documents before us, written testimony and the exhibits a part of the record.

Mr. Dodgion stated that before the Commission adjourns, Mr. Sparks needs to make a statement.

Mr. Sparks stated that he furnished the Chairman with a letter from James Weller, the Director of the Department of Motor Vehicles and Public Safety. The letter delegates the authority to me, Ray Sparks, to grant the department's concurrence with the regulation adopted today by the Commission. Mr. Sparks requested that the letter formally go on the record with the Department's concurrence with the Commission's action. Chairman Close stated that Mr. Weller's letter would be made part of the record.

Commissioner Molini made a motion that the meeting adjourn. Commissioner Bentley seconded the motion.

The meeting adjourned at 4:55 p.m.

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: November 4, 1993

Location: Cashman Field, Las Vegas, Nevada

EXHIBIT LOG

#	Item	Item Description
1	FAX - Letter	Nevada Auto Emission Testers - Letter/fax to Mel Close RE SB 347- Clean Air Act
2	Letter	Jim Parsons, Department of Motor Vehicles Letter
3	Testimony & material	Daryl E. Capurro, Nevada Franchised Auto Dealers Testimony & back-up information
4	Copy of Letter to Las Vegas Review Journal	N.E. T.I. (Nevada Emmission Testing Industry Coalition Testimony/Letter
5	Letter	Letter to Lew Dodgion from USEPA - David Caulkins
6	Graph/Chart Copies	Copies - Co-National Ambient Air Quality Standards
7	Letter	James P. Weller, Director - Department of Motor Vehicles
8	Letter/fax	Matthew Q. Callister of Callister & Reynolds Representing Jiffy Smog: Letter and Testimony.

Nevada State Environmental Commission
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