NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF December 8 and 9, 1998

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES	**REGULATORY**	
	APPEAL	
	FIELD TRIP	
	ENFORCEMENT	
YES	**VARIANCE**	**(U.S. DOE)**

RECORDS CONTAINED IN THIS FILE INCLUDE:

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

NEVADA STATE ENVIRONMENTAL COMMISSION
REVISED A G E N D A
December 8, 1998 2:00 pm
December 9, 1998 8:30 am

The Nevada State Environmental Commission will conduct a meeting commencing at **2:00 p.m., on Tuesday December 8, 1998,** at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The regulatory hearing will be on **Wednesday December 9, 1998, beginning at 8:30 am** at the above location. Business not completed on December 8th will be heard the next day upon conclusion of rule making activities.

This revised agenda reflects that Petition 98007 (R-121-98), item X.F relating to the Chemical Accident Prevention Program has been withdrawn from the regulatory hearing of December 9, 1998.

This agenda has been posted at the Grant Sawyer State Office Building and Clark County Commission Chambers in Las Vegas; the Washoe County Library and Division of Wildlife in Reno; and the Nevada State Library and Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on November 10, November 17 and November 24, 1998, in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

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

December 8, 1998 - 2:00 pm

I. Approval of minutes from the September 24, 1998 meeting. * ACTION

II. Election of Commission Vice Chairman * ACTION

III. Settlement Agreements on Air Quality Violations * ACTION

A. Sierra Chemical; Notice of Alleged Violations # 1336
B. Valley Joist; Notice of Alleged Violation # 1344 & 1345
C. Alamo X-Press Construction; Notice of Alleged Violation # 1346
D. Kal Kan Foods Inc.; Notice of Alleged Violation # 1337 & 1338
E. Frehner Construction; Notice of Alleged Violations # 1339

IV. Penalty Hearing * ACTION

A. Frehner Construction; Notice of Alleged Violations # 1347

V. U.S. DOE Variance * ACTION

The Nevada Environmental Commission pursuant to Nevada Revised Statute 445B.400 received a request on September 11, 1998, from the U.S. Department of Energy, the Nevada Operations Office, to issue a variance from the 20 percent opacity restriction in Air Quality Operating Permit AP9711-0556 for operations at the Hazardous Materials Spill Center (HSC) located at the southeast section of the Nevada Test Site, approximately 15 miles north of Mercury in Nye County, Nevada.

VI. Status of Elko County Appeal and other matters related to the appeal.

VII. Letter from the Advisory Committee on the Control of Emissions from Motor Vehicles, dated September 8, 1998, to the Environmental Commission. This letter discusses recommendations of the Clark County Board of Commissioners to strengthen the vehicle inspection/maintenance program in the Las Vegas Valley. *** ACTION**

VIII. Letter from Michael Naylor of the Clark County Health District dated September 10, 1998 transmitting Resolution #2-98 of the Clark County District Board of Health requesting that the Environmental Commission consider by March 1, 1999, the possible potable water contamination effects associated with summertime gasoline that may be oxygenated with MTBE (Methyl Tertiary Butyl Ether), in deciding whether or not regulations should be adopted that would limit the use of the additive oxygenate MTBE in gasoline. *** ACTION**

IX. Petition to Reconsider the Commission's Action of June 17, 1998 Regarding Mr. Robert Hall's Petition and other matters pertinent to the Clark County Health District' Emission Credit Program * ACTION

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

December 9, 1998 - 8:30 am

X. Regulatory Petitions * ACTION

A. **Petition 1999-03** is a temporary amendment to NAC 445B. The regulation amends NAC 445B.319, 445B.327 and 445B.331 by increasing air quality operating permit fees for administrative amendments, Class I and II operating permits and change of location permits. The regulation adds new fees for Prevention of Significant Deterioration (PSD) permits and major revisions to PSD permits. The regulation increases the annual emission fees and annual maintenance fees for all stationary sources.

B. **Petition 1999-02** is a temporary regulation amending NAC 445A.232 "fees" in the water pollution program by extending the date of expiration from July 1, 1999, to July 1, 2001. The portion of NAC 445A.232 effective from July 1, 1999 to July 1, 1999 is repealed, and that portion of NAC 445A.232 effective on July 1, 2001 is retained. This petition affects mining water pollution control discharge fees. This petition amends a 1997 action where the fees were amended with three rolling escalating fee schedules between the time of adoption and the year 2001. Those mining water pollution control fees currently in effect are proposed to be retained until July 1, 2001. The intermediate fee schedule is proposed to be repealed by this action.

C. **Petition 1999-01** is temporary regulation amending NAC 445A.121, 445A.143, 445A.144, 445A.213 of the water pollution control regulations. The regulations are proposed to be amended to change the reference for limits in drinking water standards from the U.S. Public Health Service to those adopted by the Nevada State Board of Health. NAC 445A.143, the Colorado River salinity standards, is proposed to be amended to include the term “flow weighted average”. NAC 445A.213, the minimum quality criteria applicable to interstate waters, is proposed to be repealed.

D. **Petition 1999-04** is a temporary amendment to NAC 445A. The amendment adds a definition for the term "rolling stock". The term “temporary permit” is also defined and exceptions clarified. The conditions and procedures for issuing temporary permits are proposed by this petition. NAC 445A.313 is proposed to be amended to include the term "diffuse source" as a clarifier of those activities exempt from the temporary permit process. NAC 445A.309 "Diffuse source" defined is proposed to be repealed.

E. **Petition 1999-05** makes temporary amendments to NAC 445A.228 to 445A.292. The amendments clarify wording, remove outdated language, conforms the water pollution regulations to statutes, addresses who must sign a discharge monitoring permit, clarifies establishment of effluent limits and compliance schedules and provides for minor water control discharge permit modifications. The amendments also provide for the transfer of permits to new owners. NAC 445A.105 and 445A.246 is proposed to be repealed.

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

XII. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (702) 687-4670, extension 3118. The public notice and the text of the proposed permanent regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at **http:/www.leg.state.nv.us.**

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (702) 687-4670, extension 3117, no later than 5:00 p.m. **December 2, 1998.**

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

The Nevada State Environmental Commission will hold a public hearing beginning at **8:30 a.m. on Wednesday, December 9, 1998, at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Ave., Las Vegas, Nevada.**

The Environmental Commission will hear non regulatory business items on **Tuesday, December 8, 1998, at the above location beginning at 2:00 pm.** Those items will include air quality ratifications, variance requests and other non regulatory petitions pending before the Commission. The non regulatory items includes a petition by the Clark County Health District regarding MTBE. Business not heard on December 8th will be carried forward to the next day.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of permanent regulations in Nevada Administrative Code **(NAC)** Chapters (NAC) 445A, 445B, and 459. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

Petition 98007 (LCB File No. R-121-98) is a permanent regulation amending NAC 459.952 to 459.9542, the regulation of highly hazardous substances. The regulations amend NAC 459.953, 459.9534, 459.9536, 459.954 and 459.9542. NAC 459.9526 and 459.9528 are proposed to be repealed. This petition adds in excess of 100 new sections. This regulation implements Senate Bill 266 of the 1997 session to allow delegation of the EPA's Clean Air Act Risk Management Program (RMP), 40 CFR Part 68, to regulate facilities with hazardous substances. Facilities affected by the program would be required to prepare risk management plans that would be available to the public. The proposed regulations mesh the existing State authorized Chemical Accident Prevention Program with the Federal Risk Management Program. The amendments also add provisions to regulate facilities having two accidental releases of substances listed in NRS 459.3816. NAC 459.9542 modifies the fee structure to incorporate RMP facilities.

The proposed amendments will increase the size of the regulated community from a current level of approximately 35 facilities to 150 facilities. The program is fee funded, with facilities currently paying from $ 3,100 to $ 21,000 in program fees. The facilities will also have to bear the cost of program implementation, which will vary dependent upon the scope of their existing accident prevention program. Benefits to businesses will range from the reduced risk of catastrophic accidents to improved operational efficiencies at facilities. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The public will receive a positive benefit by the reduced risk of accidents and by the disclosure of potential hazards in their communities. Additional program costs are anticipated that will be covered by the fee structure. Duplication of federal regulations will be avoided with these proposed amendments. Fees will be used to cover the cost of the RMP program, including staffing and operating costs.

Several sections of the proposed amendments are more stringent than the federal regulations as defined in 40 CFR Part 68, RMP. In 40 CFR Part 68.10(b) a facility may qualify for the minimal federal program, but if the facility is also subject to the requirements of the state program then the facility can not qualify for a minimal federal program. In addition, under the state program, access to the above aspects of the minimal federal program is denied if there has been an onsite death, injury or restoration activity within the last five years. The regulation is more stringent than the provisions of 40 CFR 68.71 in the area of training programs. The state program requirements are more clearly defined than the federal regulations. In the petition the regulation is more stringent than 40 CFR 68.90 and 68.95. The state program requires specific compliance with OSHA requirements for emergency response and coordination with local responders. The federal regulation does not define emergency response plan requirements explicitly.

Petition 1999-01 is temporary regulation amending NAC 445A.121, 445A.143, 445A.144, 445A.213 of the water pollution control regulations. The regulations are proposed to be amended to change the reference for limits in drinking water standards from the U.S. Public Health Service to those adopted by the Nevada State Board of Health. NAC 445A.143, the Colorado River salinity standards, is proposed to be amended to include the term "flow weighted average". NAC 445A.213, the minimum quality criteria applicable to interstate waters, is proposed to be repealed.

The proposed temporary regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Petition 1999-02 is a temporary regulation amending NAC 445A.232 "fees" in the water pollution program by extending the date of expiration from July 1, 1999 to July 1, 2001. The portion of NAC 445A.232 effective from July 1, 1999 to July 1, 1999 is repealed, and that portion of NAC 445A.232 effective on July 1, 2001 is retained. This petition affects mining water pollution control discharge fees. This petition amends a 1997 action where the fees were amended with three rolling escalating fee schedules between the time of adoption and the year 2001. Those mining water pollution control fees currently in effect are proposed to be retained until July 1, 2001. The intermediate fee schedule is proposed to be repealed by this action.

The proposed temporary regulation is anticipated to have significant affirmative short or long term economic impact on Nevada businesses. The mining industry will see a decrease in the fees paid regarding mining water pollution control permits. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee. The regulation decreases fees on the mining industry.

Petition 1999-03 is a temporary amendment to NAC 445B. The regulation amends NAC 445B.319, 445B.327 and 445B.331 by increasing air quality operating permit fees for administrative amendments, Class I and II operating permits and change of location permits. The regulation adds new fees for Prevention of Significant Deterioration (PSD) permits and major revisions to PSD permits. The regulation increases the annual emission fees and annual maintenance fees for all stationary sources.

The proposed temporary regulation is anticipated to have a significant economic impact on businesses in Nevada. The proposed fees will increase annual cost for all stationary sources regulated by the state by approximately $ 1.1 million. The impact on each stationary source will vary widely depending upon the number of tons of air pollutants emitted by the sources. One stationary source will realize a substantial increase in annual fees due to the volume of their emissions. Fees for applications will also substantially increase. The fee structure will generate approximately $ 1.9 million.

The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement of the regulation. Fees will pay for the State's air pollution control program, including staffing and operating costs.

Petition 1999-04 is a temporary amendment to NAC 445A. The amendment adds a definition for terms rolling stock. The term "temporary permits" is also defined and exceptions clarified. The conditions and procedures for issuing temporary permits are proposed by this petition. NAC 445A.313 is proposed to be amended to include the term "diffuse source" as a clarifier of those activities exempt from the temporary permit process. NAC 445A.309 "Diffuse source" defined is proposed to be repealed.

The proposed temporary regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The proposed regulation should make it easier for affected businesses to comply by simplifying the requirements for securing a temporary water pollution control permit. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Petition 1999-05 makes temporary amendments to NAC 445A.228 to 445A.292. The amendments clarify wording, remove outdated language, conforms the water pollution regulations to statutes, addresses who must sign a discharge monitoring permit, clarifies establishment of effluent limits and compliance schedules and provides for minor water control discharge permit modifications. The amendments also provide for the transfer of permits to new owners. NAC 445A.105 and 445A.246 is proposed to be repealed.

The proposed temporary regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The proposed regulation should make it easier for affected businesses to comply by simplifying the requirements for securing a water pollution control permit. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

Persons wishing to comment upon the proposed regulations or any other matter listed above may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least 5 days before the scheduled public hearing.

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

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

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

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89706-0851, facsimile (702) 687-5856, or by calling (702) 687-4670 Extension 3118, no later than 5:00 p.m. on **December 3, 1998**.

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

# # # #

STATE ENVIRONMENTAL COMMISSION
Meeting of December 8 & 9, 1998
Room 4401 - Grant Sawyer Building, 555 E. Washington Avenue
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:
Melvin Close, Jr., Chairman
Mark Doppe
Alan Coyner
Terry Crawforth
Fred Gifford
Marla Griswold
Paul Iverson
Joseph L. Johnson
Roy Trenoweth
Michael Turnipseed

MEMBERS ABSENT:
Robert Jones

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

December 8, 1998:

Chairman Close called the meeting to order at 10:15 a.m. and verified the meeting had been properly noticed in compliance with the Nevada Open Meeting Law.

Agenda Item I: Approval of minutes from the September 24, 1998 meeting.

Commissioner Griswold moved for acceptance of the minutes as presented.
Commissioner Turnipseed requested the minutes be amended on pages 8 and 9 to reflect that he was not serving as Vice-chairman as stated. Mr. Molini was Vice-chairman.
Commissioner Trenoweth seconded the motion with the corrections noted.
The motion carried.

Chairman Close moved to **Agenda Item II. Election of Commission Vice Chairman**

Commission Trenoweth moved that Mike Turnipseed be elected Vice Chairman of the Commission.
Commissioner Johnson seconded the motion.
Chairman Close called for additional nominations and/or comments.
The motion carried.

Chairman Close moved to Agenda Item **III. Settlement Agreements on Air Quality Violations**

Prior to the presentation of the Settlement Agreements Eric Taxer, Branch Supervisor for the Compliance and Enforcement Branch in the Bureau of Air Quality gave a brief review of the Penalty Policy Guidance Document. The purpose is to ensure that BAQ's recommendations to the Commission are consistent and that the recommended penalties are commensurate with the violation that was committed. Mr. Taxer emphasized the Division's goal for recommending penalties is to deter future violations and to encourage voluntary compliance in the regulated community. The penalty guidance is composed of 3 main components:
1) gravity component which evaluates the severity of the violation;

2) economic benefit component to determine the business cost a company may realize from non-compliance; and
3) varying investment factors - degree of cooperation, supplemental proposed environmental projects, economic hardships, and the history of non-compliance of a facility.
To the base fine that is developed from the gravity component we add in the economic benefit component and make the appropriate adjustments in evaluating the penalties that we present to the Commission and we also look at the number of days the violation occurred.

Commissioner Doppe questioned the history of non-compliance adjustment and noted that a company with half-a-dozen violations could end up adding 40% - 50% to the amount of the fine in total but if that fine is low to begin with, in relation to what this company is doing, that percentage of $10,000 would be cheaper for them than it would be to correct the problem. That fine becomes almost invisible in a multi-million dollar business. Mr. Doppe recommended the Division look at this problem of repeat offenders involved in high-dollar projects.

A. Sierra Chemical - Notice of Alleged Violation # 1336:
E. Taxer reported Sierra Chemical Company operates a transloading facility north of Battle Mountain and has two major processes that require permitting, the transfer of lime from rail cars to delivery trucks and the handling of ammonium nitrate for blending with fuel oil. In April, 1998 a scheduled compliance inspection noted that operationally the facility was functioning properly however the air quality operating permits had expired in March, 1997, 13 months prior to the inspection. A Notice Of Alleged Violation (NOAV) was issued. During the enforcement conference that was conducted a representative from Sierra Chemical explained that the permit renewal application was missed due to internal organization issues however NDEP had phoned in January of 1997 to remind them that their permit was expiring and needed renewal. A follow-up reminder letter was sent in May of 1997. Using the penalty matrix, a base penalty in the amount of $700 was agreed upon during the enforcement conference which reflects the minor potential for harm since the facility was noted to be operating properly and also looked at the major extent of deviation from the regulations. That amount was increased by 25% to reflect they had not cooperated in complying with the regulations in spite of 2 separate notifications. Because they had operated for 13 months in non-compliance the fine was based on 13 days, basically calling each month a day of non-compliance. The resultant penalty, totaling $11,375, was agreed upon by Sierra Chemical, the amount we are requesting to be ratified today.
VC Turnipseed made a motion to accept the penalty.
Commissioner Griswold seconded the motion.
The motion carried.

B. Valley Joist; Notice of Alleged Violation # 1344 & 1345.
E. Taxer reported Valley Joist operates a steel roof joist manufacturing and painting facility in Fernley, Nevada. A regularly scheduled compliance inspection was conducted at the facility in July, 1998. The inspection revealed that they were operating a bridge paint dip tank without a permit and the facility records noted that Valley Joist was exceeding the permit limits for the hours of operation. Two NOAV's were issued. During the enforcement conference Valley Joist explained the bridge tank was not permitted because of an oversight by their consultant during the permitting process. A base fine of $600 per day of violation was agreed upon, noting the minor potential for harm from the facility and the extent of deviation from the requirements. We adjusted their three consecutive months of noncompliance to one day of non-compliance per month and a total penalty of $1,800 which was agreed upon.
NOAV 1345 regarded their production record, again a minor risk for harm to human health and the environment but significant deviation from the regulations. A base fine of $600 plus a 25% adjustment factor (to reflect they continued to operate after notification of noncompliance) was calculated for the 1½ months of violation for a penalty of $1,125. Eric requested ratification of a penalty total of $2,925 for the two violations.

VC Turnipseed made a motion to accept the settlement agreement for Valley Joist.
Commissioner Griswold seconded.
The motion carried.

C. Alamo X-Press Construction; Notice of Alleged Violation # 1346

E. Taxer reported Alamo X-press Construction operates a aggregate screening plant and concrete batch plant in Alamo. A July inspection documented that the facility had constructed and operated their plant without ever applying for an air quality operating permit. At the enforcement conference the current owners explained they had purchased the company in January, 1997 and when they obtained the appropriate county permits they were never informed that they needed an air quality operating permit. They have now submitted the appropriate permit applications and the permit is in the process of being issued. An administrative fine of $600 was agreed upon. The facility continued to operate for one month after they were notified they were in noncompliance and they did not take the appropriate steps to get the facility permitted. Again, we noted minor potential for harm since it is a small facility but we recognized the extent of deviation from the regulatory requirements. Eric requested the Commission to ratify the $600 fine.

Commissioner Doppe made a motion to accept the settlement agreement.
Commissioner Gifford seconded.
The motion carried.

D. Kal Kan Foods Inc.; Notice of Alleged Violation # 1337 & 1338

E. Taxer reported Kal Kan Foods Incorporated is located in the Patrick area off Interstate 80 in Storey County. Facility operations commenced in August, 1996. After conducting an internal review, Kal-Kan notified NDEP in July, 1998 that they neglected to specify specific conditions in their permit: 1) notification of plant start-up activities and 2) they had not conducted their stack-test in the time specified in the permit. During the enforcement conference Kal-Kan agreed to modify the system so only 1 emission unit at the site would be source tested. All the remaining emission units would be converted to a self-contained system. For failing to notify NDEP of plant start-up activities an administrative penalty of $600 was agreed upon, again noting the minor potential for harm. Kal-Kan was 1½ years late from when they were required to conduct the source test and they have agreed to conduct the source test on the remaining emission units by the end of December, 1998. Because this is a rather insignificant deviation from the requirements and because it is difficult to determine what the potential for harm would be without evaluating the actual emissions from the facility stacks, an administrative penalty of $1,000 per day of violation was agreed upon. Using 1½ days to reflect the 1½ years of non-compliance determined a total penalty $2,100.

VC Turnipseed asked what process in making dog food creates a hazard to the environment.
E. Taxer explained there was a PM_{10} issue with the emission units and potential emissions from carbon monoxide
VC Turnipseed moved to accept the settlement of $2,100 from Kal Kan.
Commissioner Griswold seconded.
The motion carried.

E. Frehner Construction; Notice of Alleged Violations # 1339

Eric Taxer explained that Frehner Construction facility is located in Yerington and in July an inspection was conducted in response to complaints received of dust being generated at this facility. The inspection documented that lime dust was escaping from the lime silo. During the enforcement conference Frehner Construction representatives concurred that lime was escaping from the lime silo on the day of inspection so there would be one day of violation for this facility. Referring to the Penalty Guidance Document and evaluating Frehner's past compliance record this violation was a significant deviation from the requirements and the escaping lime from the bag house posed a significant impact to the environment. NDEP is recommending a maximum penalty of $10,000 for the one day of violation be assessed. Additionally, during the enforcement conference a compliance order was agreed upon that requires action by Frehner Construction in education and in implementing various controls at their facilities throughout Nevada to prevent future releases from this type of activity. NDEP recommends that the $10,000 penalty be ratified for this violation.

Commissioner Iverson questioned the 6 additional violations listed in Frehner's compliance history and expressed hope that looking at 3 pages of violations the enforcement conference would have an impact.

Eric explained the Commission is considering the August 4, 1998 violation. The next agenda item addresses additional violations discovered one week before the enforcement conference and that the 3 pages also list both compliance and non-compliance inspections throughout the entire state.

Commissioner Griswold asked if Frehner has indicated the measures they were going to take to correct the problems.

Eric explained those specific measures are summarized at the bottom of the summary page. Frehner said they were going to:

Provide education for all plant personnel on the loading and unloading process with the lime trucks and the air quality controls necessary to prevent emissions from that process;
Develop and initiate inspections at certain frequencies at all their lime marination facilities throughout Nevada; and
Research and propose modifications to their lime silo baghouses throughout Nevada to reduce emissions from these processes.

Commissioner Griswold asked if Frehner had one person responsible for their compliance and permitting process.

Jim Matthews, with Frehner Construction reported he has been responsible for obtaining permits and compliance throughout the State of Nevada for about 7 years and Frehner has been aggressively addressing the problem. Being one of the largest contractors in the state they have potential for more mechanical mishaps. Frehner has spent $75 to $100 thousand dollars so far on this issue.

Commissioner Gifford asked if the bureau kept a record of dust complaints and if so how many days prior to the inspection were complaints received.

Eric explained violations or penalties are not based on the complaint received, they are based on what the inspector observes at the facility but a record of complaints is kept and he would provide that information to the Commission. BAQ responded within 2 - 3 hours of receiving the complaint.

Jim Matthews reported the first complaint for that plant was received on July 9 and Frehner received no lime that day. The second complaint was received on July 27 in the afternoon and the two loads of lime Frehner received that day were delivered at 7:00 a.m. and 11:00 a.m.. Gopher Construction, a subcontractor is operating in that area so it could have been their operation.

Commissioner Doppe asked how many kinds of these plants Frehner has statewide.

Jim Matthews explained they have 9 hot plants.

Commissioner Doppe asked if the 29 violations in the last 13 years were from hot plants.

Eric replied from both hot plants or crushing facilities, and probably a proportionate number.

Commissioner Doppe asked for the number of crushing facilities Frehner operated.

Jim Matthews replied 8 or 9 and reminded the Commission that he was not minimizing the significance at all compared to the amount of work that we have, but to pay the 5 or 10 fines over the past 5 years you have to remember that we have also completed probably 100 to 125 projects of significant size. These fines are a result of mechanical failures and not intentional.We do our best to comply.

Commissioner Iverson remarked that if Frehner is doing everything they can to comply then what is the purpose of the fine? The fine is there to encourage you to do your best, to participate and work with NDEP. Frehner could certainly use that $75,000 that they have paid in fines in their account for additional training or employee benefits. Commissioner Iverson suggested Frehner attend a Commission meeting in 6 months to tell us what training and educational programs have been implemented. We can see the fines are cutting into your business, we want to do what we can to encourage business in Nevada and at the same time protect the environment and make sure that the regulations are complied with.

Jim Matthews reported Frehner would be happy to return to tell the Commission what we have done and where we are at.

Chairman Close asked why on August 4 NOAV 1340, operating without a permit, was reduced to a warning.

Eric Taxer explained NOAV 1340 was for the operation of a lime guppy without a permit. That is a type of storage facility for lime. That NOAV was reduced to a warning because several years ago the bureau's rules for lime guppies were not clear. There was a period in time where those were not permitted. We started to permit those facilities but communication was not clear enough to warrant that NOAV and assess a penalty so it was reduced to a warning. It should be permitted now, under the current rules, but we recognized there was confusion and acknowledge that was why it was not permitted. The Division started permitting lime operations within the last 2 years.

Chairman Close requested that Eric check to see that notification had been made to all those facilities.

Commissioner Iverson asked where the money for the fines went.

Eric explained air quality fines go to the school district in the county in which the violation occurred.

Commissioner Doppe noted the $10,000 proposed fine is the maximum that you are able to propose so the Commission is restricted by statute from going on beyond that. Frehner does a tremendous amount of work around the state and the bigger the company the more opportunity there is to run afoul of the regulations but we can't ignore the 29 violations over the last 13 years. I see a great deal of unease on the part of the Commissioners, we are troubled with 6 violations this year and your past history. We are anxious to understand more about your company's efforts to find out what you are doing, how serious you are taking this, and to hear that same kind of information from the Division. How serious is Frehner Construction? How responsive? What is their attitude? There are other things that could be done like revocation or denial of permits. I don't recommend that we pull those triggers yet but I am recommending that we do start to develop a thorough understanding. If Frehner wasn't doing that work and if 7 other smaller companies were, would we have perfect compliance? Probably not, but would we have 29 violations over the last 13 years? I would make a motion if you are ready to entertain one.

Chairman Close commented that NOAV 1328 in June, 1998 was a $10,000 fine for operation without controls on a lime silo but on August 4, 1998 we reduced it to a warning. The two seem to be closely related and asked for clarification.

Eric Taxer explained there are two violations for the lime facility in Yerington. One was reduced to a warning because it was for operating the guppy without a permit. Again, there was issue with whether or not a lime guppy needs to be permitted or not. The second violation was for the emissions resulting from the actual lime silo which is separate from the lime guppy and similar to NOAV 1328 that was related to emissions from a lime silo at their Carlin facility. We aren't reducing the fine, we are recommending a $10,000 fine for operating a lime silo without the appropriate controls, exactly what we recommended the previous $10,000 fine for. The second NOAV was related to the lime guppy that did not have emissions coming from it. It was just a unit that was at the site that needed to be permitted. It was operating functionally but again there was confusion on Frehner's behalf on whether that lime guppy needed to be permitted.

Jim Matthews reported the violations read "operating without control devices" and explained the control devices are in place and are working. But baghouses, these particular ones in the lime silos, become plugged, air-flow can't get through, the pressure builds up so much it actually blows out - splits the tank itself. So saying we don't have the controls in place is not true. They are in place and a mechanical malfunction happened which caused a leak and created the dust.

Commissioner Johnson asked for a description of the difference between the baghouse equipment and the guppy.

Jim Matthews explained a guppy is a horizontal, different size tank sitting over here and then you have a lime silo, a vertical tank, that is actually connected to the plant. They unload into the guppy and as the silo becomes empty they

pump and transfer into the silo and that material then goes to the plant. Never in our prior history were the guppies required to be permitted so we have never had them on a permit. About 1½ years ago Air Quality decided those had to be permitted but we were never notified. Suddenly they popped up at Yerington and said "hey, we notice that your guppies are not permitted - we need to amend that permit". They gave us a specific time limit to apply for all out plants statewide and we did that and amended all the permits so now they are all permitted.

Chairman Close called for additional comments. There were none.

Commissioner Doppe made a motion to accept the recommendation of the Division with regard to NOAV 1339 and asked that the Division report back to us at either the next meeting or the one after that, the results of a study that you will prepare for us to let us know if, in your opinion, we can do better with this, the largest road contractor in the state and can they do better and are they acting in good faith.

Commissioner Doppe thanked Mr. Matthews for appearing at the hearing today.

Commissioner Iverson asked to amend that motion and ask that Frehner, at that same time, come back to show us what they are doing so the Commission could hear both sides of that issue.

Commissioner Doppe accepted that as an amendment to his motion.

Fred Courrier from Frehner Construction acknowledged the gravity of the situation and agreed that Frehner would be willing to make a presentation to the Commission regarding the entire operations from moving a facility to what takes place on a daily basis for these jobs. Frehner accepted this particular penalty of $10,000 after a lengthy discussion with Eric. Our focus is to be more pro-active on these problems and we have agreed to implement:

Extensive training for our employees;

Include, for lack of a better term, the legalese that protects us financially. We deal with other players that we do not have control over, i.e., when we issue a purchase order for lime it is dispatched out to whatever carrier is available. Future verbiage in our purchase orders will highlight to suppliers the seriousness of the situation and they, by signing the purchase order, agree to abide by Frehner's rule for delivery of a product;

We are estimating about $75,000 will be spent for training for all employees and senior management so that they understand how to implement the program;

Implementing modifications to possibly minimize the pressures that are logged in off-loading the lime;

Talking with suppliers so that they understand the risks they have and the cooperation we need from them.

Mr. Courrier reiterated that Frehner wants to take the driver's seat by being proactive we welcome the opportunity to return to the Commission for a future presentation.

VC Turnipseed seconded the motion and suggested, because the Commissioners were not familiar with how an asphalt plant works, that in conjunction with the briefing the Commission actually visit one of the facilities.

Mr. Courrier agreed that could be arranged.

Chairman Close called upon Robert Hall.

Robert Hall expressed concern regarding the Commission's authority, that under Nevada's constitution you can't be the investigator, the prosecutor, the judge and jury so you may have a problem being a rum court outside the judicial system and advised the Commission to go to the Attorney General for an opinion or go to court and get a declaratory judgement. Violations of environmental laws are criminal.

Chairman Close informed Mr. Hall that the Commission does have the authority.

Commissioner Iverson expressed concern that Frehner had absolutely no idea that the guppies were being regulated and incurred a fine because of a lack of communication.

Jim Matthews agreed and noted the fine was reduced to a warning after Eric researched and determined there was not clear knowledge. We were given the opportunity to amend our permit to make it right.
Commissioner Iverson agreed it was good that fines incurred went to the school district but wondered if the state wouldn't be getting a bigger bang for the buck and if it would be more beneficial for Frehner to develop an educational program that they could utilize and share with small construction and lime companies state-wide.

Allen Biaggi, Administrator of the Division of Environmental Protection, explained that monetary fines are only one component of the activities looked at with regard to violations. Other policies and options called "Supplemental Environmental Projects" are available to violators in the air program, the water programs, and the hazardous waste program. In lieu of a monetary fine they can propose to us other non-required activities to resolve the concern. Many times those involve public education, facility education, other types of projects that are non-directly monetary related and we use those quite frequently.

Chairman Close called for a vote on the motion and the second.
The motion carried.

Chairman Close moved to **Agenda Item IV. Penalty Hearing**
A. Frehner Construction; Notice of Alleged Violations # 1347

Eric Taxer explained a compliance inspection was conducted in July, 1998 at Frehner's operation located in Hiko and in Lund in Southern Nevada. The inspection revealed that they were operating their asphalt batch plants at both locations without the fogging water sprays required by the permit. Approximately 1 month prior, an inspection was conducted and it was noted that the controls had not yet been installed. Plant personnel were notified that the controls must be installed. The enforcement conference verified that Frehner was aware that the pollution controls had not been installed and that they had discussed this with NDEP in June of 1998. Frehner was trying to get the permit modified to remove those controls from the permits. However, appropriate information was not received by NDEP to evaluate so that those controls could be removed from the permits. Frehner operated the facilities without the required controls in place and without receiving an amended permit for a period of 10 days each. Had NDEP received the appropriate information to evaluate we would probably removed the fogging spray control requirement from the permit. During the enforcement conference a compliance order was agreed upon requiring Frehner to conduct and certify to a compliance audit at each of its temporary facilities. That report for each facility is to be submitted to NDEP for review prior to commencement of operation at each of its facilities in the future.
NDEP is not recommending the maximum penalty that could be assessed, $10,000 per day of violation or $200,000. Potential for harm without the fogging sprays at these two sites is very negligible and a permit would have been issued, removing those requirements from the permit had the information bee received. The extent of deviation is significant. Frehner should realize they should not operate a plant if they are not in compliance with their permit requirements. NDEP recommends the low of the spectrum in the penalty matrix, in the $600 range. Looking at the adjustment factor this would be increased by 85%, 25% for continuing to operate the facility without the controls after NDEP's inspection and an additional 60% for the history of past non-compliance. This calculates to a fine of $1,100 ($10 per day of violation) for a total of $22,200. A stipulation for agreement of a penalty has not been reached between NDEP and Frehner Construction in this matter.

Commissioner Gifford noted that according to the information in the packet Frehner discussed the issue with NDEP in June of 1998 and they believed they had submitted the necessary information and asked Eric if he had seen the information submitted.

Eric Taxer explained it was dated June 9 but NDEP did not receive it in June. Copies were provided during the enforcement conference. Their fax was sent to a wrong number.
Chairman Close asked if Frehner had a confirmation of the fax that was sent.

Jim Matthews did not have it with him and explained a spray bar on a feeder in the initial process of a hot plant is not

ever going to happen. A copy of a permit from another plant at that time shows that it doesn't have that so it was all my mistake. I telephoned Cheryl Bryant and explained what had happened and she said there would be no problem and that BAQ could amend it if I send the correct information which I faxed to her. I never followed up on the fax which was sent to 687-6360 instead of 687-6396. I was not notified that the information was not received. BAQ is fully aware that we do take care of these things right away so it is not a question of whether we did it or not.

Commissioner Gifford asked, if the fax had been received how long would it have taken the department to respond.

Eric explained by law BAQ has 10 days to respond to an amendment request but he did not know whether it would have taken a day or 10 days.

Commissioner Gifford noted June 9 would have been after the initial inspection was conducted at the site in late May or early June and before they began operating their facility.

Commissioner Gifford asked if the Commission could assume that whoever did the inspection would have indicated that the spray equipment would not be needed and if they were to submit the proper paperwork that this problem would have been taken care of?

Eric explained when an inspector is in the field they have the permit to refer to, to determine what control equipment is required by the permit but they have no way of knowing why certain control equipment is, or is not, required. That analysis is conducted in the office looking at ambient air quality standards, compliance with other applicable regulatory requirements. That type of analysis cannot be done in the field.

Commissioner Gifford asked how Frehner found out they didn't need the spray equipment.

Eric Taxer explained after Frehner was inspected in June they contacted (by fax) the permitting branch to request that these controls be removed from the permit. Had the request been received the permit writer would review the information and makes a determination on whether or not the request was valid to have those controls removed from the permit. The permit writer would evaluate it against whether the facility would still be able to maintain compliance with ambient air quality standards and the other applicable requirements.

Commissioner Gifford stated he hated to see a fine levied against somebody who was actually acting in good faith but agreed Frehner should have followed up because the fax number was wrong.

Jolaine Johnson, Chief of the Bureau of Air Quality explained the reason BAQ recommended a penalty of $22,200 on this specific violation had a great deal to do with the intensity of the Commissioner's responses at the last Commission hearing regarding Frehner Construction and repeated violations. Frehner operated their source in non-compliance with their permit even though they had been notified that the permit had required controls on it. Unknown to BAQ Frehner attempted (wrong fax #) to have their permit changed but never did get that changed and they continued to operate for some time without controls.

VC Turnipseed asked if, in the initial application for a permit, Frehner had not shown a spray bar BAQ would have permitted it without the spray bars?
Eric Taxer explained that is how the general permits are constructed. There are different control options and one is to operate without controls. Also, there are varying degrees of controls that can be constructed at the facility.

VC Turnipseed asked if they were located in some other part of the state the spray bars may have been required, but not in Lund.

Eric agreed.

VC Turnipseed asked if they would have had an alternative dust control measure at Lund.

Eric explained the alternative would be no controls and in that circumstance, during issuance of the permit, BAQ would have looked at the facility location, how big the temporary facility is, how long it is going to be operated and will there be an impact to human health and the environment. Can we allow that operation to continue without controls or will we require them to implement the next step of controls.

Jim Matthews explained there were never emissions emitted into the air because of this control device not being there. The emissions were controlled through moisture content in the material prior to being fed. BAQ was supplied with moisture content information for each day that it ran, well over 3½% on an average daily basis. Emissions were being controlled and would have been accepted through the permitting.

Commissioner Johnson commented it is not the responsibility of the Division to obtain needed information but acknowledged there was communication at the time of the notice and a tentative statement made that if Frehner supplied the information that they would have this requirement waived. The problem resulted because the information was not received in BAQ. Although not in favor of this penalty to the extent outlined he does appreciate BAQ showing sensitivity to the Commission's interest in seeing that repeat violations are addressed.
Commissioner Johnson recommended one day of violation, that the subsequent non-receipt of information be dually noted because we won't expect to see this happen again, but not to assess a penalty for that.

Chairman Close felt even one day was too excessive. There were no emissions and in view of the attempt to comply and even though Commission has the authority, because this company has multiple offenses, this does not seem to be the time to exercise that authority.

Commissioner Doppe agreed and determined the Commission would be penalizing them for using a wrong number, rather than polluting.

Commissioner Iverson made a motion to drop this penalty and I want to add to that motion that we commend the Division because they are making a point on the multi-level of penalties we continue to get from this facility. Frehner understands our the Commission's concerns and 6 months from now it will give us an opportunity to evaluate where Frehner is going and where DEP is going.

Commissioner Griswold seconded the motion.

Commissioner Johnson amended the motion so that the compliance order that was agreed upon still stands.

Commissioner Griswold seconded the amendment.

The amended motion carried.

Allen Biaggi, Administrator, Division of Environmental Protection asked the Commission to move to Agenda Item VIII, the Clark County MTBE issue in response to people who need to catch flights here to testify on the matter.

Commissioner Griswold noted the Elko County people have to leave too.

Chairman Close explained if no one objected the hearing would move to Agenda Item VIII.

Kristin McQueary from Elko County stated the Elko County group had no objection.

Michael Naylor from the Clark County Health District Board of Health explained the Board of Health approved a resolution at their August meeting and is petitioning the SEC to consider the possible potable water contamination

effects associated with summer time gasoline that may be oxygenated with MTBE (Methyl Tertiary Butyl Ether) in deciding whether or not regulations should be adopted that would limit the use of the additive MTBE in gasoline. Submitted with the resolution were 12 letters received by the District during the public hearing process.
There are 2 basic oxygenates currently in use in the United States but the use of MTBE in the Las Vegas Valley is limited to ½ of 1% of the gasoline market in high-octane racing fuel. During the winter months oxygenate gasoline is required and we have the highest minimum oxygen requirement in the U.S. We are currently being sued by the Western States Petroleum over that high oxygen content and the petroleum groups have alleged that our current rules amount to an ethanol mandate. Presently, federal regulations do not allow MTBE to be used to meet our high level of oxygen.

The summertime gasoline used in Southern California is reformulated and does contain MTBE. There is a joint exercise with the Department of Comprehensive Planning and the Health District to look cleaner summertime fuels, we have been looking at California gasolines and other cleaner gasolines as potential gasoline for use in the Valley in the summertime. California is concerned with the use of MTBE there but in recent months the California Energy Commission and the University of Davis have released analyses and recommend the use of MTBE be phased out in the next 3 - 6 years. We are not currently looking at even having the need for summertime oxygen but in any event, whether or not MTBE should be used in gasoline is a water issue and since the Commission sets policy for water we believe that the Commission should be issuing some guidance on whether or not MTBE should be used.

Doug Zimmerman, Bureau Chief for the Bureau of Corrective Actions, NDEP, explained the bureau has 3 regulatory programs which deal with the potential impact of MTBE on water resources in the State of Nevada. The Underground Storage Tank (UST) Program and the Leaking Underground Storage Tank (LUST) Program are two federally delegated programs and then the State Petroleum Fund which reimburses owners of underground storage tanks that have had releases to clean up fuel releases. The State of California has just completed some very extensive studies, mandated by the California Legislature, on the impacts of MTBE. Their first report is titled "Health and Environmental Assessments of MTBE", a 5 volume report published in November. The second report for the California Energy Commission is titled "Supply and Cost of Alternatives to MTBE in Gasoline". These appear to be very definitive studies and the bureau recommends that we review these in conjunction with the Clark County District Health and return to you at the next scheduled Environmental Commission meeting with specific recommendations on MTBE.

Mr. Zimmerman explained MTBE does not have a federally mandated maximum contaminant level established for it. There is no drinking water standard for MTBE so most of the municipal water supplies in Nevada do not monitor for MTBE. Southern Nevada Water Authority has done monitoring for MTBE and verbally communicated to me that they have not detected MTBE in the deeper drinking water aquifers in the Las Vegas Valley nor has sampling at Lake Mead, at both surface and depth, detected MTBE. So the database we have of actual impacts on drinking water supplies is limited. We do have extensive information on the impacts of fuel releases which go typically into the shallow ground water systems and we found that 30%-50% of them do contain MTBE.
The issue with MTBE is really a subset of the larger issue of fuel releases. The potential impacts to human health and the environment from any fuel release results in significant impacts - benzene, toluene, xylene - those components of gasoline. Benzene has a drinking water standard of 5 parts per billion and is a carcinogenic compound.
The key, from our perspective of a regulatory program of dealing with fuel releases is:
The UST Program deals with the design of facilities so assure they meet the current regulatory requirements for contained fuel, monitoring and leak protection systems and the LUST Program responds quickly to a release, minimizing the impacts of any fuel releases so we have the regulatory framework in place and it is working very well to protect the waters of the state from fuel release.
MTBE has received a lot of attention because it is more soluble in water so it migrates very quickly with the water and it isn't as absorbed on the soil particles as readily as some of the other contaminants. It also is not as readily bio-attenuated by the microbes in the soil as some of the other constituents. Some of the treatment methods typically used on fuel releases that don't contain MTBE aren't as effective on fuels that contain MTBE. MTBE releases can be more problematic than a typical fuel release but it takes a certain set of conditions. Where migration appears over a long period of time you will find MTBE out at the leading edge and at farther distances than a typical fuel release.
Steep hydrologic gradients speeds the movement of MTBE also. What we typically find in the majority of fuel release

cases is that the MTBE, the benzene, toluene, xylene, ethel benzene constituents are really contained in one plume and there is no significant separation of MTBE from the rest of the plume.
Because 30% - 50% of the plumes in Nevada contain some MTBE we have developed a draft guidance document on MTBE remediation. That document is being reviewed on a limited basis by some of the regulated community. Public workshops will be held and we hope to have it finalized in the first quarter of 1999. We are currently monitoring for MTBE in all of our active cases and part of what the guidance document addresses is if there is a receptor in an area, for example a water supply well in close proximity to a plume, are we going to go back and reopen a case.
Nevada has MTBE contamination but it appears to be confined to the shallow aquifer system. I caution again that some of monitoring is incomplete in terms of the municipal water supplies since they are not required to monitor for MTBE at this time.

Michael Naylor explained that until about 1994 about 1/3 - 1/4 of winter time gasoline typically was oxygenated with MTBE so it was quite prevalent through the '80s until the mid '90s. MTBE has not been used for about 4 years in local gasoline with the exception of the racing fuel.

Doug Zimmerman stated the same is true for Washoe County.

VC Turnipseed noted that the refineries supplying the majority of gasoline to Clark County are located in Southern California and Northern Nevada gasoline comes from Northern California who are already tuned up to put the ethanol in the gasoline as an oxygenate and Clark County does not want MTBE as an oxygenate for summertime gasoline.

Michael Naylor reported they are unsure that there is a real benefit to have oxygen, whether it is MTBE or ethanol. Summertime gasoline could be cleaner but it could be oxygenate free. Our ideal specification is that is would have a lesser amount of sulfur than is present, lower vapor pressure, lower volatility and a lower amount of aromatic hydrocarbons which are different forms of benzene's range so we think those three specifications could be imposed in the future and there would be no requirement to have oxygen. That will take public hearings, workshops, action by the Board of Health and potentially action by the Board of Agriculture, just things under study. At this time we would contemplate that neither ethanol or MTBE is needed in summertime gasoline.
In the wintertime we definitely need oxygen. Ethanol is simply the only commercially oxygenate available to meet the mandate. If we lose the lawsuit by the Western States Petroleum Associates that could mean that MTBE could be allowed in the future. Under current regulations MTBE cannot be used because the federal rules do not allow MTBE to be used at that high of an oxygen content.

Commissioner Johnson commented that his initial understanding of your application was that you were anticipating requiring reformulated gasoline; that the intent was to further depress the NOX and not to recommend MTBE; and that you were asking us to rule on the water quality issues. I see some positive statements in the U.C. Davis study, as positive I have ever seen a university investigator make, about inadvisability of using MTBE and that there simply isn't, on advance technology vehicles that are being sold to California standards, no improvement in oxygenated versus non-oxygenated. Do you anticipate you will be going with reformulated requirements in the summer and excluding MTBE.

Michael Naylor explained the conceptual rule that we are thinking of for the summertime would not mandate any oxygen. A refinery may want to send up California reformulated gasoline to meet our requirements and they might choose to send their normal reformulated gasoline with MTBE. All the Southern California areas are using a reformulated gasoline with MTBE but they are shifting to a non-oxygenated gasoline in the Northern California markets so we are locked in to what the refineries. The federal requirement literally mandates the use of MTBE in the non-attainment areas.

Commissioner Johnson noted that Clark County's summertime NOX does not set you at that level. You have the choice of making it oxygenated or not.

Michael Naylor agreed, at this time we do because we are still considered an attainment area but we are looking for a

cleaner gasoline. We probably don't have to worry about NOX emissions but the real issue is the most readily available gasoline in California to meet cleaner rules happens to be made with MTBE and that the dilemma.

Commissioner Johnson asked NDEP staff how MTBE would affect the cleanup rules, the A - K process - that you allow a plume that is outside the standard to remain because it is will be biologically reduced in time. MTBE has a half-life of over 20 years.

Doug Zimmerman explained the A through K process is a risk assessment process or faith in transport process - it will make it more difficult to meet and accept or close a site with contamination in place because of the higher potential for migration for MTBE. Present treatment is pump and treat or air strip it and carbon can be effective too. Also, it does naturally attenuate but the bugs prefer to eat benzene and other things before they get to the MTBE.

Commissioner Johnson noted some figures he had showed benzene half life is in months compared to the 27 years that is cited in literature for MTBE. That is a significant difference so there would be a significant increase in cost in impacting the petroleum remediation fund.

Doug Zimmerman replied there may be on certain plumes where they have grown larger, a 20% - 30% increase in cost and that has an impact on the fund but again it appears that most of the plumes we are dealing with the MTBE and other contaminants are in the same area so the costs are not significantly higher. With the attenuation half-life of 6 months or 30 years approximately, the A through K assessment would be much different and would have to recognize the persistence of those contaminants.

Dr. Nancy Balter provided the panel with a copy of her current vitae and a written copy of the following statement.

Ms. Balter explained she has a Ph.D. in pharmacology, from 1979 to 1995 was on the faculty at Georgetown University Medical School teaching courses in pharmacology and toxicology and for the last 5 years has been involved in examining health impacts of the use of oxygenated gasoline, particularly gasoline containing MTBE and served as a consultant and peer reviewer for the U.S. EPA, the CBC and the National Academy of Sciences on this issue. A copy of my published paper on acute health effects of MTBE I will be handed to you along with my statement. I am a consultant to the Oxygenated Fuels Association and they have asked me to be here today to share my knowledge about health impacts of MTBE with you.

The scientific literature with respect to MTBE is extensive. It includes not only industry-sponsored studies, but also studies done by the federal governments and state governments as well as the academic community. It is a far greater database than is available for any other oxygenate. MTBE has been evaluated using the standard battery of tests required for toxicity testing as well as numerous additional studies designed to fill data gaps and address specific questions. This database of scientific studies has been reviewed by a number of independent scientific panels and I won't go through the process of naming them but most recently we have reports that have been issued by the U.S. Davis. That report is a draft report, it is currently being peer reviewed. I personally have read very carefully the entire health assessment section and I know other people are reading the sections. It may have some modifications based on peer review - I don't know. In addition, the International Agency for Research on Cancer and the National Toxicology Program are just completed or are currently completing reviews on the potential carcinogenicity of MTBE. Finally, the Northeast States for Coordinated Air Use Management (NESCAUM) has recently published a review of the relative cancer risk of conventional gasoline compared to reformulated gasoline containing MTBE.

Health concerns related to MTBE fall into two general categories: Acute health effects and concerns about risk of cancer. With respect to acute health effects, in some places where MTBE in gasoline, reformulated or oxygenated gasoline has been introduced there have been a variety of complaints - things like headaches, nausea, vomiting, etc. These occurred early on, beginning around 1992 they precipitated a number of epidemiologic studies as well as experimental studies where volunteers were exposed to MTBE. The bottom line of all this research and I think it is generally agreed that we do not think that MTBE in gasoline is causing acute health complaints in the general population. Everyone also agrees that it is at least theoretically possible that there may be a small subset of individuals who are uniquely sensitive to MTBE but right now that is a theoretical possibility and there is no evidence that is actually the case.

There are no studies of MTBE carcinogenicity in humans so we have to rely on animal studies. MTBE, at very high levels of exposure, does cause some tumors in experimental animals. The question is, does this animal response predict a risk in humans? It used to be, when we didn't know a whole lot about chemical carcinogenesis that we made the very conservative assumption in all cases that a chemical that caused cancer in animals would also be a cancer risk in humans. It was a conservative assumption. We now know a lot more about the way in which chemicals cause cancer and we realize that there are situations, and they are becoming more and more numerous, where a chemical that causes cancer in animals will not pose that same kind of risk in humans exposed at much lower doses. In my opinion, the current evidence supports an opinion that the findings in animals do not predict a cancer risk in humans. Among the reasons is that MTBE does not damage DNA which is one of the things that usually occurs if we think that the animal is predicting a risk in humans. In addition, there is a lot of experimental data on the particular types of tumors caused in animals which suggest that there are mechanisms that would not apply to humans exposed at lower doses.

The evaluation of the carcinogenicity literature for MTBE remains an active area of scientific debate. The U.C. Davis review concludes that additional research is necessary before they would be comfortable concluding that the tumors seen in animals are not predictive of human risk. In other words, the reviewers at the University of California chose to assume that the animal results were predictive of human risk because they didn't think that the data related to the mechanism(s) of carcinogenicity was conclusive enough. On the other hand, IARC - the International Agency for Research on Cancer - which is an arm of the World Health Organization, reviewing the same information that the University of California did, determined that MTBE could not be classified, was not classifiable as to its carcinogenicity in humans. This is significant because IARC has been convening independent review panels to evaluate the carcinogenic risk of chemicals to humans since 1969, and their findings are generally accepted by the scientific and regulatory community.

To illustrate just how controversial the cancer studies are, the U.S. National Toxicology Program (NTP) has prepared a report on the carcinogenicity of MTBE for the purpose of determining whether it is "reasonably anticipated to be a human carcinogen." This report has undergone a number of internal and external peer review. In the first review the vote was 4 to 3 to list MTBE as "reasonably anticipated to be a human carcinogen"; in the second peer review the vote was reversed, 4 to 3 not to list it and last week at a meeting of the NTP Board of Scientific Counselors, which is an outside peer review group, the vote was 6 to 5 against listing MTBE as "reasonably anticipated to be a human carcinogen." Eventually, the director of NTP will make a final decision.

As frustrating as it is to have conflicting opinions as to whether or not MTBE poses a carcinogenic hazard to humans, the question turns out to be not as pivotal as you might expect it to be. This is because the use of MTBE as a component of gasoline has the effect of reducing human exposure to known human carcinogens like benzene, which is a component of gasoline. So even if we make the conservative assumption that MTBE is a human carcinogen and calculate a projected cancer risk that risk is less than the decreased risk of cancer because of benzene and other components where exposure is reduced because that MTBE is there. In my written statement I have included a figure that was taken from the most recent NESCAUM report which graphically depicts the changes in cancer risks associated with the reduction in cancer risk from benzene and butadiene and other components of gasoline as compared to the increase from MTBE if we make this assumption that MTBE is a human carcinogen.

The statement was made earlier that MTBE is a water issue and I just want to spend a minute and talk about the risks of MTBE in water and how that affects this health balance. The answer is that it doesn't. Acute health impacts are not an issue with respect to water contamination by MTBE because people are not going to be exposed at levels that could harm them. This is because of the impact of MTBE on taste and water characteristics which in and of itself is going to limit exposure. When you consider the increased risk of cancer associated with MTBE in water and add that to the net balance about whether or not MTBE is causing a net reduction in cancer risk it has a negligible impact - it adds one or two projected cancer deaths per million people and when you look at the figure you are still talking about a tremendous net benefit of addition of MTBE in terms of cancer risk.

One of the legislative mandates covered in the University of California report was to review alternatives to MTBE as an oxygenate in gasoline. Clearly, and it was recognized in the report, there is much more knowledge available about the toxicology of MTBE than for any of the alternate oxygenates currently available. With respect to the decision making process in California the report recommends a full environmental assessment of any alternative to MTBE including the components of their cleaner burning fuel itself before any changes are made in California State law. Such an assessment is going to require considerable additional research and quite some time to accomplish.

In conclusion, gasoline oxygenated with MTBE has demonstrated air quality benefits which outweigh the potential

health risks associated with human exposure to MTBE. I thank you for your attention and I am happy to answer any questions you have or serve as a future resource for literature or other information as you may need it.

Chairman Close recused himself because of a potential conflict of interest and requested Vice-chairman Turnipseed to act as chairman on this matter.

Acting Chairman (AC) Turnipseed asked if Ms. Balter was opposing the resolution on its face that MTBE has greater benefits than it does risks.

Nancy Balter explained she was not taking any position with respect to any legislation. I serve as a resource in terms of information. My opinion is that the jury is still out with respect to acute health effects. I think that there is a consensus that this is not an issue save for this theoretical possibility of some very sensitive people. With respect to carcinogenic risk, it is an area of active scientific debate and is based on what we generally do in this situation - we make judgements based on the weight of evidence. Not everybody sees that weight of evidence the same way and that is what I illustrated with the very groups that have looked at carcinogenicity. The point I wanted to make is that if you are concerned about carcinogenic risk to take the perspective not only of what the carcinogenic risk of MTBE would be, assuming that you are going to assume that it is a human carcinogen, but balance that against the decreased risk you see because you are using it and when you do that see a net benefit.

AC Turnipseed asked how people take this MTBE into their body - when they drink the water or do they breathe the vapors when it is aspirated through the shower?

Nancy Balter explained there are two major routes, through ingestion of it in the water itself and because of its volatility there also will be some vaporization when you shower or bathe. There are not a lot of studies on dermal absorption, absorption through the skin, but it is believed that is not a significant route of exposure.

AC Turnipseed noted Ms. Balter had stated there are possibly benefits that outweigh the negative effects; cleaner air in Southern California versus the risks of drinking it or breathing the vapors. If the Las Vegas Basin, Southern Nevada, or Northern Nevada can meet their attainment without it does that change that balance?

Nancy Balter explained the question would be, and again we are focusing on cancer risk, you may be able to meet the requirements without it but not achieve the same reduction in benzene levels and therefore not achieve the same reduction in cancer risk. If your goal is just what do you need to do to meet a standard then that may not be relevant. If you are looking at benefits in terms of reduction of potential cancer risk then that would be an issue. I am giving you bottom lines. I'm taking what has been calculated about benzene, acetaldehyde, butadiene, and MTBE levels. Then, based on the animal study we derive a cancer potency figure and from that can calculate numbers of cancer deaths. When you look at the various levels of chemicals in the atmosphere as a result of the use of conventional gasoline and compare that to the use of reformulated gasoline containing MTBE we see increasing cancer risk because the MTBE is there and we are assuming it does increase the risk. The NESCAUM figures talk about relative cancer risks - but those are increasing it by a relative number of 8 as compared to a decrease risk because of the reduction in benzene levels that is more on the order of 12 or 13 so that you have a net benefit plus. Then you have benefits from the other chemicals as well. If MTBE is present in gasoline there is less benzene.

Commissioner Iverson expressed concern about the statement that the jury is still out on the impacts and effects of MTBE.

Nancy Balter reiterated that she had stated the jury is out on carcinogenic. It is an area of active debate and there is a consensus that based on the evidence that is currently available we should not consider it as a risk to humans in terms of carcinogenicity in spite of the fact that the U.C. Davis report concludes otherwise.

Commissioner Johnson revealed he had a summary of the U.C. Davis report findings are very crucial to what is

happening. The report made the positive statement "thus there is no significant additional air quality benefits to the use of oxygenates group such as MTBE in reformulated gasoline relative to alternative Galford II non-oxygenated formulations". Ms. Balter cited this lower risk with MTBE oxygenate over standard fuel but the oxygenate that is available is reformulated gasoline without MTBE so what is the relative risk difference.

Nancy Balter replied, with respect to the very positive conclusion of the U C Davis report made, it is limited in scope for 2 reasons:
1) I believe that statement applies specifically to vehicles that have this advanced technology which is a relatively small percentage of the fleet, as I understand it;
2) For reasons which I really don't understand, and I have been dealing with the health section of the report more than the other, they really focused on combustion emissions and didn't consider evaporative emissions from the gasoline which is the second important source so I question that statement in terms of how broadly it can be applied. I am very worried about the additional impact of the evaporative emissions. The numbers that I gave were calculated by the Northeast Regional Consortium that looked at conventional gasoline versus reformulated gasoline containing MTBE. I am not sure that anyone has done the calculations or projections to answer the question of some form of reformulated gasoline without MTBE or any other oxygenate. Obviously, California attempted to do it but only looked at the combustion emissions.

Commissioner Johnson agreed the California regulations are rather open-ended on how they meet the standard so predicting what is in the reformulated gasoline may be different from one refinery to the other so you are looking at a different group of replacement molecules. I appreciate that the relative risk of MTBE for carcinogenic nature is small in comparison to many other risk factors we have.

Commissioner Doppe asked about other health risks. There is the headache, nausea sort on the other end of the spectrum is cancer but what about stuff in between? Have there been studies with regard to birth defects and other effects?

Nancy Balter explained that is all part of the routine toxicologic screening battery. There have been tests done in rodents involving time exposures where at the end of the exposure every single organ is looked at, and as with all toxicologic studies we are talking about exposures in the high dose group where these animals were etherized. (The E in MTBE stands for ether) where they were out for the count by the end of their exposure day and similarly high doses used in both reproductive and developmental toxicology testing. From these you develop a no effect level, a concentration and exposure in the animals that has no effect and then you put all kinds of safety factors on that to come up with a level that you would consider an acceptable daily intake in a human being. What would be an acceptable daily intake is quite high, well above what anybody is going to achieve as the result of the use of MTBE in gasoline.

Commissioner Doppe recalled Commissioner Johnson talked about the difference in effective half life between a chemical such as benzene, 6 months versus 27 years for MTBE and asked if he was wrong in assuming that despite the fact that MTBE may or may not be as potentially damaging as a carcinogen as benzene it is an area of active debate. The risk of being exposed to MTBE must be higher because benzene is going to decay at a far greater rate if it ever does make it into the soil.

Nancy Balter noted that is the situation in water. The situation is air is very different and that is a result of evaporative emission of gasoline and combustion of gasoline. Andrew Stocking will speak to you on MTBE in water.

Commissioner Iverson stated he assumed from Ms. Balter's comment that there is an active scientific debate going on. Is there a time where we finally get to the point where the jury is out?

Nancy Balter explained the way it works is a chemical causes tumors in animals and that is all we know; we start with the assumption that predicts human risk; we do studies to try and understand the mechanism by which this chemical causes tumors in animals and as we collect data we may become more convinced that it causes tumors in animals but the mechanism doesn't apply to humans so therefore we are going to back away from this conservative assumption, and

we are not going to consider it to be a human carcinogen. A lot of studies have been done on MTBE on mechanisms. Depending upon who you are and a variety of other factors, you have a certain level of proof that you want before you are going to say "O.K. - I am comfortable saying it is this mechanism so it is not" - that threshold was not reached by the U.C. Davis panel, it was reached by IARC. There is one statement in the U.C. Davis report relating to the California Public Health Goal Proposed Standard which is based on carcinogenicity brand MTBE right now, and they say they are willing to accept that although recognizing that may change once more mechanistic data becomes available. The reason it is a moving target is because we continue to learn more about MTBE and everything we are learning is saying "you know we shouldn't consider it a human carcinogen" but U.C. Davis doesn't think we have learned quite enough yet that they are comfortable stepping back from this default conservative assumption.

AC Turnipseed invited Ms. Balter to return in the future and thanked her for educating the Commission.

AC Turnipseed asked if the Commission needed to take action on this item today as it was publicly noticed as an action item.

Executive Secretary Cowperthwaite explained it was on the agenda as an action item so action could be taken if the Commission desired but you don't have to take action but if you did want to take action.

Attorney General Mischel informed the Commission that they are only considering to have the workshops before a regulatory change.

AC Turnipseed called upon Andrew Stocking.

Andrew Stocking explained he is an Environmental and Chemical Engineer with Malcolm Pirnie, an environmental engineering firm. His goal today is to serve as a resource for you on safety transport, remediation, drinking water & treatment of MTBE in water within the context of what is going on in California.
A good capsule of the two types of gasoline is:
Reformulated gasoline which is 2% by weight oxygen used year-around in ozone non-attainment areas and that equates to 11% by volume MTBE; and a California Air Resources Board fuel used year around which doesn't have a mandate for MTBE but it does have a 1.8% - 2.2% by weight oxygen. Most refineries choose to use MTBE to meet that requirement. Concerns raised by California regulators regarding what has happened in Santa Monica and what is happening in Lake Tahoe is the tip of the iceberg for what will happen in the rest of California, whether wide-spread contamination will result. There is also concern that MTBE in surface water will persist and accumulate and concerns related to the cost of drinking water treatment and remediation. The answer to all these questions evolves around the properties of MTBE. MTBE has a very high solubility, a magnitude higher than the BTEX compound; the vapor pressure of MTBE is also high and the part of MTBE is low which limits the applicability of air stripping; it has a low TOC which is adsorption in the soil; and it is not retarded in the soil. A number of different things cause MTBE to get into the surface water and ground water. In February, 1997 California's Department of Health Services added MTBE to their list of other regulated chemicals and all public drinking water sources were required to sample for MTBE. As of November 13, 1998, about 4,600 of the 11,000 drinking water sources in California have been sampled with 65 detections of MTBE, 1.4% of the sample sources. 38 are ground water sources and 27 are surface water sources. The ground water sources are 18 above 5 parts per billion.
The largest taste and odor study to date is a 57 person consumer panel and the threshold from that study was 15 parts per billion which is what we and industry were recommending for a secondary standard. There are 8 groundwater sources above 35 parts per billion. There are no surface water sources greater than 15 parts per billion at the drinking water plant intake and to date 3 systems have been shut down - two well fields in Santa Monica, 13 wells in South Lake Tahoe and 1 well in Santa Clara posed a potential threat. The reason these wells are impacted is well vulnerability. If a well is streamed in a shallow aquifer or if there is significant communication between the shallow aquifer and a deeper aquifer the well is vulnerable. 12 or 13 wells in South Lake Tahoe that had MTBE concentrations were streamed in a shallow aquifer and in Santa Monica a fault line served to communicate the upper aquifer with the lower aquifer.
In surface water MTBE is released from recreational boats which release 25% of their fuel unburned into the water

body. Half of that immediately vaporizes and the other half goes into the water. Dr. Glenn Miller from UNR researched that study and other studies showed similar results. MTBE enters the environment with the other VTEX compounds and has a relatively short half life, 4 days, due to oxidation - reaction with oxidants in the atmosphere. In surface water it will volatilize a river rapidly because of mixing and rapid movement and in lakes and reservoirs the half life is days to weeks. It will still do the volatilization of a litmus test, current volatilization and wind volatilization. In ground water MTBE, as we have heard today, doesn't seem to biodegrade as rapidly as VTEX - it has a longer half life.

A California water district study on MTBE concentrations in surface water supports recreational activities. They thought that concentrations of VTEX and MTBE increased during recreational activities, data from Lake Havasu and Southern California following a jet ski competition when concentration became elevated. Once the jet ski competition/recreational activity ended concentrations of all the compounds volatilized rapidly which indicates that MTBE is not going to persist and accumulate in surface water, it will readily volatilize into the atmosphere where it will be degraded.

MTBE has been shown that it does not readily biodegrade in the ground water and soil however work at Port Hueneme has shown that by enhancing the subsurface condition with oxygen there is a rate of .03 days, about a half life of 18 days, so it is increasing the natural biodegradation under both aerobic and anaerobic conditions.

MTBE has been shown to be prone to higher degradation in the subsurface although it still does not biodegrade as readily as the VTEX compound. Therefore there are limitations on the applicability of natural attenuation.

MTBE doesn't retard or isn't adsorbed on the soil. In groundwater MTBE can be found behind the VTEX on old releases. Because MTBE has only been added recently to gasoline it has not had time to catch up to the VTEX.

Remediation technology that works for VTEX compounds works for MTBE as well except for natural attenuation.

Soil vapor extraction, air disparaging - technology of flushing air into the water -, pump and treat works well because MTBE doesn't adsorb on the soil, and chemical oxidation works because MTBE is a organic chemical and readily oxidized.

EPA recently informally surveyed 48 states in terms of remediation of MTBE sites versus sites without MTBE. They found that for the majority of states MTBE increased the cost of remediation by less than 20%. The effectiveness of remediation technology is clearly going to be a strong function of the hydrogeology. If a technology doesn't work for MTBE because of the hydrogeology it also won't work for VTEX because of the hydrogeology in a low permeable zone.

EPA also looked at the remediation technologies that were working and air disparaging with successful pump and treat worked well. The technology that had problems were the ones that relied on biodegradation. The work being done at Port Hueneme will be useful and it will be interesting to see the results in the future.

With drinking water a number of remediation concentrations are high, on the order of 100 parts per million. By the time MTBE flows and the VTEX plume migrates to the drinking water well concentrations have fallen below a part per million. Technologies that can handle drinking water treatment are air stripping, advance oxidation and adsorption. The oil and chemical communities in California have been working with the water community and affected parties to evaluate the cost of water treatment technologies and they concluded that air stripping is the most cost effective technology, depending on the ease of permit-ability and whether offset treatment is required.

Advance oxidation and activated carbon are always affective for removing MTBE, higher costs but at certain times those methods are more convenient.

Currently, MTBE has not been shown to impact a large number of drinking water wells however it will impact those wells that are streamed in the shallow aquifers in close proximity to a gasoline station. They are vulnerable.

Several drinking water wells in California have been shut down, required replacement or treatment. Treatment costs to remediate MTBE are modest relative to VTEX compounds. There are limits on the application of monitored natural attenuation and MTBE may increase characterization costs.

One issues that MTBE is pushing forward is source protection strategies: improved leak detection monitoring; end of 1998 tank upgrade requirements; and identifying vulnerable drinking water wells that are close to gas stations.

AC Turnipseed noted Mr. Stocking had talked about vulnerable wells and that MTBE has not appeared in any deep wells and asked if it was the assumption that you find a layer between the two or that you just haven't had enough time for gasoline to percolate to the deeper aquifer.

Andrew Stocking explained MTBE has been found in deep wells where there are improperly abandoned old wells. If there is anything that will serve as a conduit for water to move through MTBE will follow as will other gasoline constituents. MTBE will probably come quicker because it doesn't adsorb.

AC Turnipseed stated many of the valleys in Nevada have a definite shallow aquifer that is separated from the deep aquifers by low permeability soils, lake bottom sediments, but that is not the case everywhere. If it were just great water table conditions where there are unsaturated thickness until you get to the water table is it your testimony that the MTBE will never get there or just hasn't had time to get there yet.

Andrew Stocking replied he would not want to say that it would never get there but there needs to be a vertical gradient or faults that have a strong pumping gradient from a deeper well. When they shut off the wells in Santa Monica the water level of the deeper aquifer went up 40 feet, an indication of a very strong pumping gradient. As will any chemical if you put a force on it, MTBE will move into the deeper well. It depends on the hydrogeology and other conditions.

AC Turnipseed thanked Mr. Stocking for his testimony and invited him to appear before the Commission in the future.

AC Turnipseed called upon James Sohns and asked that his information be entered into the record as Exhibit 21.

James Sohns, President of the Nevada Cars Owners Association asked to go on record as being totally against MTBE. California Senator Mountjoy pushed Senate Resolution 26 that listed 4% of California's water supply and 8% nationwide is contaminated. Another study by Dr. Peter M. Joseph of the Pennsylvania School of Medicine goes into detail on MTBE issues and talks about respiratory, neurological, cardiac and allergy problems. MTBE has been out there for a long time, not just for a year or two. Alaska and Montana have banned it and elections in Northeastern States were just won because people were against MTBE. Lawsuits have been won in North Carolina and in Santa Monica. There is also a town in California that Unocal is rebuilding because of the MTBE issues. We don't need it. We are spending over $2000 on every new car for new emission equipment so what is working, the emission equipment or the fuel?
The California Air Resources Board just had a meeting and found out that only 2% of the vehicles in California are diesel but they cause 60% of the harmful particulates in California - benzene, dioxin, and other chemicals.

Jack Greco, Chairman of the Nevada Gasoline Retailers and Garage Owners Association and the Vice-chairman of the State Of Nevada Air Quality Compliance Advisory Panel and member of the Clark County Air Pollution Control Hearing Board commented that:
On September 22, 1998, the Air Quality Compliance Advisory Panel voted to support the CCHD Resolution 2-98 with a caveat that we believe that the SEC and all other bodies involved with regulations regarding MTBE follow very closely the activities that are going on in California;
A 7 year study by our association of gasoline pricing between Southern Nevada and Southern California. After you compute the difference in tax and the 3¢ tariff that it costs to ship fuel through the CalNeva Pipeline the gasoline in Southern Nevada averages 5¢ - 7¢ less than Southern California;
MTBE is a VOC so it is an air issue and not just a water issue; and
You can lower the Reid Vapor Pressure and lower the aromatics and olefins in fuel without adding MTBE and that needs to be explored; and
The fuel that will be sent up from Southern California for this summer has no MTBE in it because of Utah's labeling law. Refineries, concerned about disclosing what is in their fuel,
vote on what kind of fuel to bring up the pipeline, it gets configured by CalNeva Pipeline and they themselves voted not to put MTBE in there so it did not have to be labeled for Utah.

Robert Hall revealed his training as a KC-135 tanker pilot for the Strategic Air Command, which resulted in a sensitivity to fuel, has a bearing on his comments as does his training as a medical psychotherapist and membership in the American Academy of Environmental Medicine, a part of the AMA.
This is history revisiting itself - i.e., Rachel Carson's Silent Spring. If you surf the net, put in MTBE and review the research it will not match what you heard here today. Another thing to be aware of is the difference between toxicology

and immunotoxicology and there is no comparison between the two. At the end of World War II they came up with this discipline in toxicology where 50% of rats poisoned died, you back it off by a factor of 100 and you say it is O.K. but there is no science behind that, never was and never will be but that is the poisoning of the organism. Immunotoxicology involves how your immune system reacts to a particular substance and you can react at one, two and three parts per trillion - profound reactions of the immune system that get turned off as you increase the parts per trillion and suddenly the reaction disappears and then you start coming into the poisoning reaction of toxicology. In other words the immune system seems to get overwhelmed. Then you go into a poisoning situation and when people talk to me about toxicology and cancer I know that we are in deep trouble. I am speaking today for the people with asthma, respiratory, neurological, cardiac, allergic problems, sinuses, nose and throat, these hacking coughs. On a recent trip to Monterey I developed a hacking cough just on that weekend.
Dr. Balter talked about the high doses and experiments on animals and we accept those results but we don't know what is going to happen in 15 or 20 years. We try to compensate for that by giving animals a higher dose and over the years those animals have been pretty good indicators as to what happens. My concern is that well-educated people understand these concepts. Whenever anyone talks about the drop of a substance in a swimming pool I think you are being conned and I caution you to be careful because it is the immune system we are concerned about.
John Link, a hydrologist, testified once that heptachlor, which was banned all across the country, would never get into the water table in Hawaii and it did and it poisoned the water there. And when we talk about parts per billion this is huge immunologically -parts per trillion can affect the immune system so I am not comforted by the discussion at all. The best way to remediate MTBE out of the ground and water is not to put it in the fuel. Everything we have learned leads us to believe that MTBE is bad news for fetuses and children whose systems are just formulating. So please be very careful and keep your eyes and ears open.
Mr. Hall offered his service for further research and to obtain experts in the field of immunotoxicology to testify on the issue.

Commissioner Iverson asked Andrew Stocking if MTBE accumulates in surface water.

Andrew Stocking explained California has seen MTBE concentrations during the summer, starting Labor Day weekend, it gets to a certain level and remains constant until recreational activities stop. Then, within a couple of weeks, MTBE concentrations drop to non-detect because it is volatilized out of the surface water. In surface waters it doesn't accumulate or persist.
AC Turnipseed asked if the Commission wished to take action on the MTBE issue. so do you want to take action or -
Commissioner Gifford noted that based on today's testimony the issues of acuteness and cancer are open to debate and the possible main concerns are volatility in air and solubility in water, probably resulting in odor and taste problems and made the motion the SEC ask NDEP to further research the topic for us and if some action is required by the Commission that we revisit the issue at a later date.

Commissioner Johnson seconded.

Commissioner Doppe asked if NDEP should be providing guidance in regards to water quality standards for the compound.

Commissioner Gifford thought anything pertinent should be brought back to the SEC's attention.

AC Turnipseed reminded the Commission that the CCHD would like us to sanction or condone their resolution so that they can meet all their air quality standards without MTBE. If they can meet the air quality standards without MTBE in the fuel then they prefer not to have it. Although we learned a lot here today we are still pretty much in the dark -
Commissioner Gifford agreed CCHD could go ahead with the resolution but it would be inappropriate for the Commission to endorse it at this point.

Commissioner Johnson reminded the SEC that the U.C Davis report, dated November 12, 1998, and other preliminary reports out for peer review need to be evaluated by the March 31 time-line.

AC Turnipseed asked if the SEC would meet again before March of 1999.

Ex. Secretary Cowperthwaite reported a meeting is planned for late February of 1999.

Commissioner Iverson offered a modification to the motion that staff and the CCHD prepare data to be presented back to the SEC. That information needs to be done in concert with what Michael Naylor and his group is doing. It would

Commissioner Gifford explained the intent of the motion was not that NDEP would exclude any group in terms of coming back and reporting to the Commission.

Commissioner Doppe asked for clarification on what action the Commission would take in February after listening to this report.

AG Mischel explained the Commission's jurisdiction involves the air pollution and the water pollution standards. If their research indicates that a regulatory change is warranted presumably they would come up with some draft language at that time for the SEC to consider. If there were legislative amendments this would obviously be dealt with separately.

Commissioner Iverson reported that if there is combustibility would automatically throw that over into the Board of Agriculture's authority so his staff would be involved to make sure that the ASTM standards and those issues are also addressed.

Commissioner Johnson commented that MTBE is not now a listed chemical. The resolution is requesting much broader action than the SEC has information on and what is our authority under this circumstance.

Commissioner Gifford stated he made the motion, based on the interest expressed by both the public and the SEC, that it warrants further looking at.

AC Turnipseed asked for a vote on the motion and second.
The motion unanimously carried.

AC Turnipseed returned the gavel to Chairman Close.

Chairman Close moved to Agenda Item # 5 - US DOE Variance.

Ex. Secretary Cowperthwaite asked to continue Agenda Item # 5 to December 9 because the participants had a scheduling conflict and had to leave.

Chairman Close moved to Agenda Item VI. Status of Elko County Appeal and other matters related to the appeal.

Allen Biaggi, Administrator for the NDEP, explained this agenda item relates to the Jarbidge River South Canyon Road case heard by a three member panel in September and acknowledged the presence of Kristin McQueary with the Elko County District Attorney's office and Roberta Skelton and Nolan Lloyd, Elko County Commissioner and Commissioner elect.
On July 15, 1998, the U.S. Forest Service made a decision regarding the reopening of the South Canyon Road near Jarbidge, severely damaged in a flood event in 1995. This road provides a number of recreational opportunities for residents and visitors to the area and the U.S. Forest Service and Elko County were working cooperatively for a number of years to get that road back open.
The residents of Jarbidge and the Elko County Commissioners were notified by the Forest Service that they did not intend to open up the road, that they would relocate the road as a trail and make it accessible only to horses, hikers and bicycles. That trail would terminate, as does the road, in the wilderness area for Jarbidge. On July 15 the Elko County

Board adopted a resolution directing the County Road Department to fully repair the South Canyon Road and further directed that a copy of the resolution be transmitted to the U.S. Forest Service and to the press for public noticing.

NDEP sent a letter to Elko County on July 20 indicating that construction activity which involved heavy equipment in the stream channel would require a rolling stock permit. Road building began by Elko County on or about July 20 and on July 22 NDEP contacted Elko County and verbally directed the County to cease and desist from any activities on the Jarbidge River that could cause a violation of NRS 445A.465. George Boucher, Elko County Manager, agreed to comply and on July 23 NDEP issued a formal finding of alleged violation and an administrative order regarding the activities that were on-going.

On August 11 the U.S. Fish and Wildlife Service announced the emergency listing of the bull trout, a resident trout in the Jarbidge River, and provided protection as a listed species for a period of 240 days. NDEP's concerns were water quality related only. NDEP did not have an issue with regard to ownership of the road nor whether or not the bull trout should be listed as endangered.

On August 12 Elko County appealed the administrative order on the grounds that no permit was required.

On August 19, Joe Livak and Icyl Mulligan, NDEP Water Pollution Control Program staff, conducted a site inspection on the South Canyon Road from the main campground to the trail head at Snowslide Canyon. Their observations confirmed that violations of law had occurred and backed up the Finding of Alleged Violation and Administrative Order that was issued. They were accompanied on that investigation by the County Road Superintendent, Otis Tipton, who described what his crew did, when they did it and why they did it.

On August 26 a show cause meeting was held in Carson City between NDEP and Elko County. The County presented good arguments that there was no harm to the fish and that they were justified in doing the project. A complete transcript of that show cause meeting was made available to the County, to NDEP and also to the panel that heard the case.

On September 3 NDEP issued a written appeal to all of the agencies and entities involved - Elko County, U.S. Forest Service, Fish and Wildlife, Army Corps of Engineers, the Department of Wildlife and Trout Unlimited - to work together in a cooperative relationship to discuss the work that needed to stabilize the 1,000 foot stretch of river that was impacted and to attempt to work together to stabilize the roadway. Unfortunately, positions had become so polarized by that point that those entities did not come together or could not come together.

On September 16 the panel members of the Nevada State Environmental Commission (SEC) convened at South Canyon Road and the Jarbidge River and toured the area.

On September 17 the factual portion of that hearing continued in Elko. The panel upheld the findings of the violation but concluded that Elko County reasonably believed that an emergency existed which warranted an exemption to the state's water pollution control laws. The SEC panel decided to amend the order on three major points:

1) to require Elko County to apply for a rolling stock permit within 20 days of the date of the modified order;

2) to have NDEP review and act on the application as soon as possible;

3) to direct NDEP to seek a penalty not to exceed $1,000.

On October 9 Elko County submitted an application and a fee for the rolling stock permit. There was information missing that NDEP felt was necessary and NDEP worked with Elko County to secure a complete application and the missing information.

On October 14 the SEC issued its final Findings of Fact Conclusions of Law and Order.

On October 23 the U.S. Forest Service submitted a complete application for a rolling stock permit to the NDEP so the NDEP was in the unusual position of having 2 rolling stock permits in place for what was essentially much the same work.

On November 2 the Division issued the temporary rolling stock permit to Elko County in accordance with their application.

On November 2 the Army Corps of Engineers sent a letter to Elko County refusing their application for a 404 Permit based upon violations of federal law.

On November 6 the Army Corps of Engineers issued a 404 Permit to the U.S. Forest Service.

On November 6 NDEP issued a temporary rolling stock permit to the U.S. Forest Service.

On November 13 Elko County petitioned the Fourth Judicial Court for a Review of the Order Issued by the Nevada Environmental Commission panel and I will let Deputy Attorney Jean Mischel discuss those activities.

DAG Jean Mischel explained the appeal is in the form of a Petition for Judicial Review. It will be restricted to the record

so there should not be any further evidentiary matters taken before the District Court. A Notice of Intent to Participate has been filed on behalf of the Commission and NDEP also filed a Notice of Intent to Participate so there are 3 parties at this level of appeal. The other option would be for the Commission to stand back and watch NDEP and Elko County work it out at the District Court level but typically, our office will defend a decision made by an agency that we represent and that would be my position to defend the Findings of Fact Conclusions of Law and Order issued by the Commission. I had 10 days to file a Notice of Intent to Participate. The record will be transmitted to the District Court tomorrow. David and LuElla worked very hard at transcribing that hearing and putting together all the documents for the court's review. Elko County has now requested a Stay of their Appeal of that Petition for Judicial Review pending resolution of some other matters and we would agree to that unless a commissioner has a concern with that.
It is Elko County's burden of proof to prove that the Commission committed some error. The way the Administrative Procedures Act describes the Standard of Review, is that the courts are required to defer to this Commission with Determination of Fact. It would not reverse, but remand, your decision if the court found that there was an error of law, if the decision was based upon unlawful procedure, or if the decision was in violation of your statutory or constitutional authority. There are other standards like arbitrary and capricious and there are things we will be arguing did not occur in this case. We will defend the panel's findings that are in your packet. With a Stay in effect the whole process normally takes 6 - 9 months.

Kristin McQueary from the Elko County District Attorney's office explained she filed the Petition for Judicial Review to protect the record because we do not have any idea of what effect your ruling will have in our fight with the federal government on this issue. I talked to Ms. Mischel and Mr. Meredith about holding the petition in abeyance for awhile. Yesterday I found a case which may give us some guidance on how your ruling will assist us in our fight. As we have told you before, Elko County's fight is over ownership of the road. It is not with NDEP and it is not with the SEC and we would appreciate your allowing your Counsel to go ahead and stipulate to hold our petition in abeyance. Although the federal government has threatened us with enforcement action we have not received formal notice of any enforcement action. We have had lots of threats and letters but nothing, as of yesterday afternoon, has been filed against us. I will have to figure out with Ms. Mischel and Mr. Meredith what an appropriate time to hold the petition in abeyance would be. Mr. Biaggi's recitation of the basic facts are correct with a few minor errors in dates and one day on the hike. However, he essentially got it correct.

Commissioner Griswold noted that Mr. Biaggi stated an attempt was made to bring the parties to the table to try to reconcile the matter but the positions were all so "polarized" at that point it was not possible. I believe Elko County was very willing to cooperate with that meeting.

Allen Biaggi agreed and pointed out the polarization and the problem was not with Elko County it was with the federal entities that indicated that they were not willing to sit down at the table and discuss the issue.

VC Turnipseed suggested the Commission allow Counsel to stipulate to the Stay. There is no sense going forward with the litigation if it is not necessary.

DAG Mischel informed the SEC that the stipulation would not resolve in any effect to your order so the order is not stayed - in terms of its impact.

VC Turnipseed stated but if it goes to conclusion in Elko County Court it is either upheld, reversed or remanded. If it is remanded we go back, hear more testimony, take more evidence, and issue a new ruling. If it is reversed then we either appeal or the verdict stands.

DAG Mischel explained there really is no precedent to the state by allowing a stay of the petition. It really puts the briefing period off for some definite period of time.

Kristin McQueary explained if Elko County finds that the SEC ruling will have no adverse affect on it in other forums we will withdraw our petition and expressed hope that her research will lead to that conclusion. The case I found

yesterday is the first I have found that gives us any idea of what affect your ruling will have on us in a federal forum.

Chairman Close stated it would seem wise to not cause our Counsel to expend the time, energy and the state's money in handling this matter. I see no reason why we should not go forward with the Stay.

DAG Mischel explained a motion was not needed.
Chairman Close introduced new Commission member Terry Crawforth, Administrator of the Division of Wildlife, and welcomed him to the position vacated by Willie Molini.

Chairman Close moved to Agenda Item VII. Letter from the Advisory Committee on the Control of Emissions from Motor Vehicles.

Jolaine Johnson, Chief of the Bureau of Air Quality - NDEP, represented Jim Parsons of the Department of Motor Vehicles (DMV) who had to leave the hearing to catch a plane, explained in the past this Commission has heard 15 recommendations that were made by the Clark County Board of Commissioners in terms of improvements to strengthen the state's motor vehicle Inspection and Maintenance Program in the Las Vegas Valley. Today's presentation will target 3 of those recommendations specifically:
1) by July of 1998, a date that has passed, exempt new vehicles from the smog test program for the first 3 years because new vehicles are under warranty and tend to have very low pollution. Bill Draft Request #40-358 in the legislature accommodates this change however research of the current NRS revealed the SEC has the authority to exempt certain classes of vehicles, including classes by age group. BAQ will work with Clark County and bring a petition to the SEC at a future time.
2) Item #7 proposes that we implement an annual Heavy Duty Diesel Vehicle Smog Check Program, not required anywhere in the state at this time. The BAQ is working with Clark County and the DMV but there is concern about our legislative authority to proceed with this proposal so we have requested clarification from LCB. The statute says that the State Environmental Commission was to adopt a heavy duty diesel smog check program but that it had to be substantially similar to that program implemented in the State of California. Currently, the State of California has two programs on heavy duty diesels, a road-side check program a requirement for heavy-duty truck fleet owners of more than 2 vehicles to, on an annual basis, do a self-check on the emissions from their diesel vehicles and to keep records of that. I am currently researching that program to determine the appropriateness of the State of Nevada to adopt that. We are working with Clark County and the DMV to further consider appropriate heavy duty diesel programs.
3) Item 14 on page 2 to lower vehicle emission cut points. Clark County continues to be in non-attainment for carbon monoxide and we are looking for additional control measures to help alleviate that problem. We are working with Clark County and DMV to give full consideration to the appropriateness of lowering cut points of various classes of vehicles and looking at the potential cost benefits of that. When we reach an agreement we will hold workshops and then present a petition to this body at a future hearing.
Clete Kus with the Clark County Comprehensive Planning explained 15 recommendations were transmitted to this Commission in February of 1998 following adoption by the Clark County Board of County Commissioners at their January 6, 1998, meeting. The entire set of recommendations were developed with input from Clark County's Air Quality Planning Committee and the Clean Air Task Force II, groups made up of representatives from local government and interest groups to provide recommendations to the Board of County Commissioners on measures and programs to improve air quality. It is important to point out that these recommendations are also included in the Southern Nevada Strategic Planning Authority's Strategic Plan which is currently going through the final part of the public comment period and will be presented to the 70th session of the Nevada State Legislature in 1999. The recommendations have were also presented to the State's Advisory Committee on the Control of Emissions for Motor Vehicles at their July 16 meeting and a motion was made to move forward with these 3 recommendations before you today for consideration. To clarify what Jolaine presented, #2 addressed gross polluting vehicles and increases the waiver amount to $1,000. We looked at the emission testing data and determined the majority of vehicles have emissions well below the established standards. However, a relatively small percentage have emissions just below the standard so by lowering the cut points a substantial amount of emissions could be reduced from a limited number of vehicles, We feel that this would be very effective.

With respect to increasing waiver amounts to $1,000 for gross polluting vehicles, currently motor vehicles failing the annual smog test must spend $450 before a waiver is granted and the vehicle is permitted to be registered even though it still has excessive emissions. This recommendation seeks first to define gross polluting vehicles and then secondly requires an additional $550 be spent on repairs prior to receiving a waiver. Current regulations require that vehicles failing an emission test already spend $450 - vehicles which exceed emission standards by a factor of 2 times, which we are looking to define gross polluting vehicles as, should be required to spend twice as much - a proportionate amount to have repairs conducted on the vehicle.
With respect to an annual inspection heavy duty vehicle testing program, diesel emissions consist of carbon monoxide, toxic nitrogen, particulate matter - both PM_{10} and fine particulates, and hydrocarbons. Heavy duty vehicles are the only class of vehicles that currently do not undergo a regularly scheduled test within the State of Nevada. This recommendation not only addresses an equity issue but it also attempts to establish an effective program to ensure that emissions from these vehicles are kept under control. Collectively, diesel emissions are substantial and contribute to all of the Valley's air pollution problems.
The Air Pollution Control District in the CCHD, Jolaine's staff and the DMV will continue to work cooperatively and come back to this Commission for action at a later date.

VC Turnipseed asked if all three recommendations will apply to both Clark and Washoe County.

Jolaine Johnson clarified that they are looking at 4 different proposals, #1, #2, #7 and #14. These are proposed programs for the Clark County I/M Program for reduction in carbon monoxide, needed to reach attainment of the standard.

VC Turnipseed recalled the SEC had recently increased the amount that had to be spent before a waiver was issued. Jolaine agreed about one year ago failing vehicles were increased from $200 to $450.

VC Turnipseed recalled the discussion from the car owners and the restored vehicle owners and asked how that whole program is working.

Clete Kus explained he is the County's representative on the Advisory Committee on the Control of Emissions for Motor Vehicles and to date the committee has not received a report back from DMV.

Commissioner Johnson commented that he would like to know why a report has not been issued because it is not just a Clark County issue, it is a state-wide program. The SEC adopted the framework early enough that we should see a program in place.

Jolaine Johnson explained the classic car exemptions and program has been implemented and those cars are being exempted from smog check programs. We are not prepared tonight with the statistics on how many might be involved but we can bring that back at a future meeting.

Chairman Close asked if action on the 4 items was required.

Jolaine Johnson explained the intent of this presentation is to advise the SEC of these items and to let you know that the Advisory Committee has encouraged the SEC to further consider these issues. I am not sure that action is necessary. The BAQ is working with the DMV and Clark County to determine which of these measures should be considered and how they should be implemented. We will then go to public workshop with those issues that are appropriate and then present appropriate petitions to the SEC in a future meeting.
Chairman Close expressed concern about #2. People who must spend $1,000 to repair their car probably have an older and only vehicle. $1,000 may cause them great tremendous economic and emotional harm. A $1,000 requirement is very high.

Clete Kus responded that some members of the Clark County Board share that concern. Recently we embarked on a pilot program to provide a subsidy to lower income people that currently operate high polluting vehicles. We have

approximately $750,000 available and we are working with the CCHD to identify additional funding to supplement that program.

Chairman Close expressed pleasure and asked if those funds would be used to pay for all or a part of the $1,000 repair cost required?

Clete Kus explained the current pilot program is set up so that we require a $100 co-payment and we will pay up to $600 to a certified shop to repair that vehicle.

VC Turnipseed asked if the owner of the vehicle spends $100 and you spend $600 and the car is only worth $450 it would seem prudent to just buy the car and send it to the junk yard.

Jolaine Johnson acknowledged that was a good idea but emotional attachment and the value of emotional attachment enters into the situation. California's program has been fairly effective but they encounter situations where "it is the first car they ever owned, it is the family car, their child was born in that car" - sentimental and emotional attachment.

Jolaine Johnson proposed that the BAQ, along with Clark County and the DMV, give this further consideration, take the appropriate recommendations to workshop and then bring petitions to this Commission as soon as we can.

Commissioner Johnson referred to item #1. You say that new cars that are under warranty supposedly don't pollute but occasionally they are really gross polluters. Where do you catch those and do you have figures that can document that none of these vehicles that we are exempting are not polluting.

Clete Kus explained they rely on a new technology called roadside remote sensing where an infrared beam is placed across the road along with a video camera to measure the emissions of the vehicles that pass by that particular site. Clark County is working to become a test ground for new technology that is coming.

Commissioner Gifford asked if there were records to indicate the passing rate of new vehicles or vehicles upwards of 3 years old.

Jolaine Johnson replied that those details will be researched before we make a determination to proceed with the recommendation. We don't have that information with us today but we can obtain it.

Commissioner Iverson recognized that most new cars have at least a 3 year guarantee on the emissions system and asked if it would be possible for a provision that if a pollution problem is detected by remote sensing or roadside check that it becomes the responsibility of the dealership and manufacturer.

Clete Kus agreed to consider that idea.

Chairman Close called for public testimony on Item # VII.

Jack Greco reported he has worked on the I/M Program in many different facets for over 15 years and asked to make the Commission aware of a public crisis. He explained he is a licensed emissions inspector and owns a licensed emissions station and expressed concern for education. His association is not opposed to a resolution requesting the strengthening of emission standards in Clark County, or the entire state, as long as those changes are based on sound, logically supported, data. We implore the SEC to take whatever steps are deemed necessary or appropriate to mandate that the technician training program promised by the DMV before the Compliance Advisory Panel and industry be restored in order to allow mechanics presently employed to earn while they learn, as originally structured, in order to head off our serious licensed technician shortage. We have all agreed that focused auto repair is the key to reducing

emissions in Nevada. Currently, a number of good technicians have been literally locked out of their tool boxes until they get G-2 ratings and it is becoming a very serious problem resulting in an almost 100% increase in labor rates for emission related repairs. This has been compounded by the fact that many consumers are now rushing to shops not even involved with the emissions program, getting repairs that often fail to reduce the emissions and to shops that don't employ licensed mechanics let alone someone that is trying to get their G-2 certification. It is a failed program. At this point even multi-million dollar shops and first class auto dealerships have complained of the extortion-like atmosphere existing between employers and technicians thus further driving up repair costs and limiting the repair availability to the consumer. We are 10 years behind California and Arizona training programs because we started 10 years late. We have a meager line-up of licensed technicians plagued by an unnecessarily restrictive technician program. We need an enabling program to maximize the number of technicians in school and to stop the extortion that is going on at some of the best dealerships in Nevada. Service managers are frustrated with what technicians want to repair the consumer's vehicle. I would make # 16 on your resolution an LCB change in the Administrative Codes that required DMV to reinstate an intern program. If you have a small shop with no G-2 mechanic you are out of business. A guy I know worked for BMW for 25 years and he can't open the bottom 3 drawers on his tool box without getting a fine from the DMV. It does not make sense. The DMV started a program that would allow people to work on cars while they were going to school. They only implemented it for about 8 months. There is no reason for that, the EPA did not require it, they only require that we have "a training program". An amendment should be made that as long as the student had a 90% attendance record and 70% class work he could work on vehicles and practice what he is learning in the training program. We would have a caveat that he could not work on a vehicle that was within its 90-day renewal cycle and that would be carrot before him to complete his G-T training and get his license and certification.

James Sohns, President of the Nevada Car Owners Association agreed with Jack Greco and explained he was totally against a 3 year exemption on a new vehicle. A DRI study on centralized testing a few years ago, backed by the University of Minnesota, revealed when a sensor goes off the vehicle is a gross polluter. The owner does not know this unless he has an emission test and dealerships only warranty certain parts of the vehicle. Studies will back up that newer vehicles are guilty.

The California Air Resources Board says that 2% of the diesel vehicles in California are causing 60% of the pollution so maybe diesel emission requirements will clean up the air in the Las Vegas Valley.
Airport pollution is also a contributor. Comprehensive Planning says they cannot regulate the planes flying in and out. They can't control 100,000 tourist vehicles that come into town either. Let's clean up all of it.
Lastly, Rudolph Gunnerman in Reno has a clean fuel but nobody wants to use it. San Diego has been using the newer type exhaust systems to clean up the air. That is a lot cheaper than spending $600 on a car - that can be done for $200 -$400.

Chairman Close asked Jolaine to make a copy of Mr. Greco's document for the Commission members.

Chairman Close moved to Agenda Item # IX. Robert Hall Petition

Commissioner Doppe explained that at the original hearing on this issue in June he offered to recuse myself in front of the audience. There were no objections by either the CCHD, Mr. Hall, Mr. Mahal, nor anyone in the audience when I disclosed I am the owner of a home building company that is loosely regulated by the CCHD, at least to the extent that we have to apply for dust permits and are subject to fines if we exceed emissions from the site.
Mr. Hall's letter to the Commission has raised that as an issue now. Mr. Doppe requested an opinion from the deputy attorney general to find out if, because his presence was acceptable at the first meeting but apparently his actions were not, am I acceptable at this one.

DAG Mischel explained the State Ethics Law requires disclosure when you believe you have a potential conflict, which is what you did in June and there was no mandate for you to recuse yourself respective to lots of reasons not to recuse on matters where you might be knowledgeable.

Robert Hall interjected that he disagreed, his point is that if you have a conflict you are supposed to step aside under the current law. The City Council found that out and they have to just get out when they have a conflict. We rated the papers every day under that issue.

Chairman Close asked Mr. Hall to refer to his petition before the SEC.

Robert Hall explained the issue is very simple. I am just withdrawing my original complaint for two reasons basically:

1) **Ms. Johnson had instructions, she did a report and she said right at the beginning that she didn't have the expertise and yet they went along with the report.**
2) **My document was on past wrong-doings and asked for an investigation. Ms. Johnson was apparently given instructions to go down there and ask the people "you have been bad boys, are you going to do this in the future?" and they said "Oh, of course not!" Well that is not what I asked for and the other set of reasons actually is there has been a statement that "they have no money, they have no expertise, they have no staff, they are not set up to do investigations, they have new law".**

I am going to withdraw it then, without prejudice, because these are serious issues, I am a serious man on a very serious mission here and this is not a serious report. I am not blaming Ms. Johnson - I think she got instructions but that is not what we asked for so we will just walk away and you are relieved of the problem and we are going to go direct to the attorney general and the court.

Chairman Close explained if the petition is being withdrawn there is nothing before us so there is no action for us to take.

Robert Hall agreed and explained he would continue sending documents to the SEC for information purposes only.

Chairman Close adjourned the meeting until 8:30 a.m. on December 9.

HEARING OF December 9, 1998

Chairman Close convened the meeting at 8:30 a.m. and moved to **Agenda Item V. U.S. DOE Variance**
The Nevada Environmental Commission pursuant to Nevada Revised Statute 445B.400 received a request on September 11, 1998, from the U.S. Department of Energy, the Nevada Operations Office, to issue a variance from the 20 percent opacity restriction in Air Quality Operating Permit AP9711-0556 for operations at the Hazardous Materials Spill Center (HSC) located at the southeast section of the Nevada Test Site, approximately 15 miles north of Mercury in Nye County, Nevada.

Sharon Hejazi, Attorney with the Department of Energy Operations (DOE) office explained the variance request is from the 20% opacity restriction, which is in NAC 445B.354 and incorporated explicitly into our air quality operating permit for the Haz Mat Spill Center at the Nevada Test Site. The Center is located southeast section at the Nevada Test Site approximately 80 miles north of Las Vegas and has been operating since 1986. Its functions are mandated by the Clean Air Act. Section 103(f) specifies that the facility shall be used as an experimental and analytical research center for field testing releasing of hazardous chemicals. The purpose of the activities are to be three-fold:

1) To evaluate the existing and future models of atmospheric dispersion of gases;
2) To provide basis to four improved predictive models for future atmospheric dispersion of gases; and
3) To evaluate the effectiveness of existing hazard mitigation and emergency response procedures.

The Clean Air Act requires EPA to conduct tests at the facilities of releases of hazardous chemicals and also requires the secretary of energy to make the facility available for other federal agencies and private businesses to conduct similar activities.
Over the past 12 years the activities conducted at the facility have included a number of emergency response training activities, hazard mitigation, testing of models and modeling for improved prediction of dispersion of gases related to accidental and intentional chemical releases. The majority of tests conducted there and mandated by the Clean Air Act provision itself do exceed the 20% opacity limits. In spite of the fact that there seems to be an implied exemption by virtue of the CAA mandating the use of the facility for such tests the department has chosen from the inception of the facility to acquire permits for the facility.
The most recent permit that has been issued explicitly requires DOE to be limited to the 20% opacity restriction and that is why we have come before you today to ask for a variance from that to enable us to carry on these extremely important activities.
With respect to whether there is any endangerment regarding safety we have conducted several environmental assessments over the years. We have quite a number of environmental monitoring stations, we have also analyzed the activities at the Haz Mat Spill Center in our 1996 NTSGIF and we basically have found that there are no endangerment issues to public health and safety, the cloud of gas disperses well before the emissions would reach any private property, it is over federal land.
We have maintained and excellent health and safety record for our workers at the facility. We obviously have controlled access to the facility, no public is allowed at the time of the tests.
The current and future testing that is planned for the facility include much greater emergency response training, dispersion mitigation tests, and development of sensors to detect inadvertent as well as intentional chemical releases which are related to the national security issue.
Public benefits of the facility are definitely not tangential. They are definitely the reason for the facility being in existence.
Congress appropriated the funds to build the facility and enacted a special provision in the Clean Air Act mandating its use for research to enable DOE to assist EPA and other agencies and industry in obtaining better understanding of how gases disperse and to train emergency respondents in the most effective methods in addressing such chemical spills and accidents.
The imposition of a 20% opacity limit would mean that the majority of the beneficial activities now planned for this facility could not be conducted. The issuance of a variance however, would enable these activities to continue ensuring that the citizens of Nevada, as well as the nation as a whole, are provided with the most effective emergency response trained individuals and the most predictive models on which they base those responses.

VC Turnipseed asked test occur a few times a year, a few times a week or continuously.

S. Hejazi explained test in the past were less frequent than it is now being planned for. Our program manager told me that next year we have 33 weeks of planned activities, including preparation time, at the facility. I do not have an exact number of days for you but most of those weeks would include perhaps 5 days of preparation and just a couple of hours of tests. Tests are very limited in nature.

VC Turnipseed asked if a variance for the 20% opacity is granted how high could the opacity go.

S. Hejazi explained 100% at the point of dispersion, where the initial release happens. The dispersion area has been divided into several zones. Zone 1 is basically a radius of 5 kilometers from the initial release and after Zone 1 the cloud greatly disperses.

VC Turnipseed asked if the DOE was asking for the variance to be granted for a time certain or an indefinite period.

S. Hejazi replied that DOE, understanding the regulations, hopes it could be granted for an indefinite period but we would like to pursue a more long-term solution and in that regard we are analyzing the prospects of getting an actual explicit exemption into the CAA for the facility.

VC Turnipseed questioned the Commission's authority to grant the variance for an indefinite time period.

Jolaine Johnson, Chief of the Bureau of Air Quality, explained statute establishes the authority of this commission to grant a variance from any of the air pollution control laws that are adopted into the Nevada Administrative Code (NAC) and there are several options for duration. If there are no feasible means for correction of this over some time then the Commission can grant that variance for an indefinite period of time - of course with the option of coming back at a later date and pulling that variance. If the variance is being requested because it is too expensive to put the controls on immediately and that expense needs to be put over some period of time then the Commission can establish a certain time frame for that. There is full authority to grant this for the time period that you choose.

Commissioner Gifford asked how the BAQ felt about the request.

Jolaine Johnson explained staff has reviewed piles of documents that have been presented by the U.S. DOE in addition to the information that is in your package that address the potential environmental impact for this spill test facility. It is the opinion of my staff and myself that this facility will not pose a public health threat and that they indeed perform adequate analyses before each test to ensure that the public will not be exposed to harmful levels of hazardous air pollution. The 20% opacity limit that is the rule is somewhat of a surrogate pollution control measure. It generally

represents pollution but it doesn't directly represent a public health threat. The BAQ recommends the Commission grant this variance.

Commissioner Johnson asked if the Department of Defense (DOD) also uses the facility.

S. Hejazi explained that DOD used the facility in the past and plans to use it in the future.

Commissioner Johnson asked if the material was classified or open for public information.

S. Hejazi could not authoritatively say it was public information. Enclosure 1 in your packet summarizes activities at the facility and several tests that had been conducted over the years. Chemicals used are listed but she was not certain classified chemicals were used that are not listed.

Charles Saylor, Environmental Scientist, explained chemicals tested at the Haz Mat Spill Center are not classified

however some of the process used is classified.

Commissioner Coyner asked if the testing includes only organic and inorganic chemicals and does not include biological toxins?

Charles Saylor replied mostly organic and non-organic chemicals. There are no biological releases up there.

Commissioner Coyner asked if an environmental baseline had been done for residual amounts as the chemicals are dispersed into the soils.

Charles Saylor did not have that information with him.

Commissioner Gifford made a motion to approve the variance requested.

VC. Turnipseed seconded.

Commissioner Johnson commented that he would like to see a date certain regarding the length of time the variance would be granted.

Jolaine Johnson agreed it is appropriate to consider some length of time and suggested the permit be up for renewal every 5 years and bring it back it the Commission's attention each renewal.

Commissioner Gifford added that caveat to his motion.

VC Turnipseed added that caveat to his second.

Jolaine Johnson clarified that the letter from the U.S. DOE requests a variance from the operating permit condition of 20% opacity. It is important that this Commission adopt a variance to the Nevada Administrative Code that establishes the 20% opacity limit rather than the operating permit condition so that we can put it into the permit. The Commission's authority is to adopt a variance to the NAC.

Chairman Close asked if the Commission could adopt a variance to the Administrative Procedures Act without giving some kind of notice or something of that nature?

Jolaine Johnson explained it is not the Administrative Procedures Act that you are adopting a variance to. It is Nevada Administrative Code 445B.324 which you have the authority to do. Nevada Revised Statute 445B.400 outlines conditions and criteria for granting variance and the power to revoke. It reads "the owner or operator of a source of air contaminant or a person who desires to establish such a source may apply to the commission for a variance from its applicable regulation" - so a specific person can come and ask for a specific variance.

Commissioner Iverson stated the motion just needs to be changed to "grant a variance to DOE from the administrative code" -

Commissioner Gifford made a motion to accomplish that purpose.
VC Turnipseed seconded.
The motion carried.

Chairman Close moved to **Agenda Item X. Regulatory Petitions.**
A. Petition 1999-03, a temporary amendment to NAC 445B. The regulation amends NAC 445B.319, 445B.327 and 445B.331 by increasing air quality operating permit fees for administrative amendments, Class I and II operating permits

and change of location permits. The regulation adds new fees for Prevention of Significant Deterioration (PSD) permits and major revisions to PSD permits. The regulation increases the annual emission fees and annual maintenance fees for all stationary sources.

Jolaine Johnson introduced Don Del Porto, Supervisor of the Permitting Branch and explained background information on the fees program is provided with the Commissioner's packet. We are here today to address increased fees for the issuance and maintenance of operating permits as established by NRS. NRS 445B.300 requires that the State Environmental Commission, by regulation, provide for the issuance of operating permits and to charge appropriate fees for their issuance in an amount sufficient to pay the expense to administrate the air pollution control program in Nevada. The proposed fee structure is based upon the budgetary needs of NDEP pay expenses of administering and implementing the Air Pollution Control Program.

In 1994 the SEC adopted air quality operating and emission fees in response to the need to withdraw fees from use of the Nevada general fund. Prior to that date we had significant support from the Nevada federal fund. Today we have no support from that fund and the statutes have required that these fees be adopted to support the program.

The fees were adopted in response to new federal mandates, primarily the CAA Title V Operating Permit requirements.

The fee structure adopted by the SEC in 1995 is presented in Table I, Column I. At that time The SEC also adopted an annual emission fee that was based upon actual emissions emitted by a source over the course of a year and every source was required to pay an annual maintenance fee that was based upon the number of emission units and the type of industrial facility that it was. There was a distinction between power generation units, mining units, sand & gravel units and other industrial kinds of units. An emission unit is a piece of equipment that emits pollution and this fee structure was very difficult and complex to administer. Many small facilities with numerous emission units were paying very high fees under that fee structure. When we implemented the 1994 fee structure we collected more fees than anticipated.

In March 1996, a temporary fee structure was adopted by the SEC. Fees were substantially reduced to levels that were artificially low in order to draw down the surplus that we had collected under the 1994 fee structure. My statement in the March 1996 meeting minutes said "I would to note for the record that I currently have a 1 million dollar balance that I am able to work with for the next 3 years but at the end of that 3 years these fees will have to go up and I don't want anyone to be surprised".

We did not collect as much as anticipated this fiscal year under the 1996 fee structure and I am making serious cuts in activities, travel and contracts to accommodate the fees we have this year but we are here today to present a fee structure that will allow us to have adequate revenue for the next two years. The 1996 fee structure is also is presented in Table I in the second column.

Reserve funding is at zero and to meet its current mandates it is imperative for the continuation of the Air Quality Air Pollution Control Program that the fee structure be increased at this time. The new fee structure is designed to generate fees necessary to fulfill the air pollution control mandates. Comparison indicates a very large increase in fees but what we are working with today is a very inappropriately low fee structure.

Budgets for the Air Pollution Control Program are presented in Table 2 in response to the regulated community who were curious why fees were going up so high all of a sudden. Fiscal years 94 through 98 show actual spending budgets, not legislatively approved budgets. FY 1999 shows the authorized budget for the year. FY 2000 through 20001 budgets are currently under consideration by the budget office and will go to the legislature in January.

Significant increases in the program are discussed on Page 2 of the report. In 1996 to 1998 we were required to implement the Title V Operating Permits Program which resulted in an increased budget. 1998 to 1999 increases were due to the implementation of the new 2.5 Standard. That monitoring network has been established and we continue to develop that.

In 1999 to 2001 we will need substantial attention on the Smoke Management Program associated with Prescribed Fires that are increasing dramatically, particularly by the Federal Land Managers in the State.

We request additional funding in 2000 and 2001 to support contracts in travel and associated meetings etc. for the Regional Haze Program. We expect that federal rule to be promulgated in early 1999.

Finally, there is a substantial increase in the proposed biennial budget for our complex database. We are having problems with it and need someone to look at it so that more people are able to function in our database.

Table 3 provides the basis for calculation of fee revenue needs for the upcoming 3-year period. The project budget for

FY 2002 was estimated by increasing the 2000 budget by 5% and that should account for industrial growth and additional program requirements. The annual requirement for operating permit fees were developed by averaging the budget over a 3-year period and subtracting anticipated federal funding and motor vehicle revenue.

Commissioner Iverson noted that revenue projections for FY 1999 and FY 2000 in contracts have more than doubled from 1998 to 1999 - from $122,000 to $279,000.

Jolaine Johnson explained the change in the budget from 1998 to 1999 in contracts is a federal requirement. The federal government provided us with $140,000 this year. That money is going to the Community College of Southern Nevada and the Truckee Meadows Community College to provide training to automotive technicians on how to repair emissions control equipment on vehicles. The substantial increase you see in that year is due to that program.

Commissioner Iverson noted the indirect costs from FY 1999 to FY 2000 go from $261,000 to $424,000 and asked what that was for.

Jolaine Johnson explained between 1999 and 2000 there are substantial changes in the way we are paying for programs in the overall NDEP. In the past we have paid for information management services out of the RCRA program funded by fees from the hazardous waste facilities. As you will recall, those fees are substantially dropping so the agency has re-organized so we are seeing a substantial increase in percentage in indirect costs from 18% to 25% of personnel costs. Additionally, the budget office has increased personnel costs. We have no new employees.

Commissioner Iverson asked when you look at the total operating costs of this budget, deduct your federal grants and DMV transfer you are left with budget needs but no general fund money, it is a completely fee-based budget. To arrive at the different classes and different emission fees you are charging do you actually take into account the actual processing, administering and travel costs associated with that particular fee or is it more arbitrary. If you are charging $250 now and recommending a fee increase to $450 that seems to be a backwards way to come into this thing. Historically, the Division of Agriculture has done that, averaged it out by different fees and now we have to go back in, actually break out and justify why we are going from $200 to $250 and develop a fiscal policy that gives you a reason for the increase.

Jolaine Johnson explained BAQ has attempted to establish an annual maintenance fee that generally represents how much it costs to inspect a facility and ensure compliance, Then we have taken the administrative costs, the planning, administration, etc., and assessed both fees on an annual emissions basis. We justified our budget per state requirement and determined that we need a bottom line increase in total fees. There are lots of ways to collect that and when we talk about the options you will see that there are many things to consider.

Commissioner Iverson suggested that to help the SEC that the BAQ and NDEP come up with a written policy of why these fees in each particular area were set the way they were. Costs will continue to go up and that puts the SEC in a position of coming back in and increasing fees.

VC Turnipseed commented that some costs, utilities and rent, seem out of line.

Jolaine Johnson explained the FY 1998 budget is actual spending. FY 1999 is the authorized budget. The authorized budget for utilities in 1998 was $4,500 and we were anticipating the increased utilities costs associated with the PM 2.5 Network. So before we put the PM 2.5 Network out pulled the monitor we had at Lehman Caves because it was measuring the cleanest air in the Continental U.S. and also removed several other monitors measuring clean air around the state, so we substituted. We didn't realize the true need for that increased utilities cost. What you are going to see in 1999 is something very similar to the actual spending in 1998.

Commissioner Doppe noted that Table 4 actually applies the proposed new fees to what you think you are going to do, kind of a pro forma year for each of the next three years and asked how often the Class I permits come up for renewal.

Jolaine explained Class I permits are renewed on a 5 year basis.

Commissioner Doppe asked if you have been artificially keeping the fees low because of a subsidizing reserve balance, are the operators who are subject to these fees aware of that?

Jolaine Johnson replied they are aware and have acknowledged that those fees were very low but of course many are very concerned about the substantial increases proposed today. Every regulated source was notified both by letter and workshops held why we are proposing the substantial increases.

Commissioner Iverson asked what would happen if the Commission does not agree to fee increase. We are in a negative situation and the BAQ is in a position where you are either going to have to cut staff and can't adequately do your job. So develop a policy and build in a trigger mechanism so that when you reach a certain point your fees automatically go up and if you get too fat your fees automatically go down but you can't get into a position where you can't do your job.

Jolaine Johnson explained that was considered. The California Air Resources Board assesses fees according to a formula based upon tons of emissions however BAQ was concerned that LCB would not accept that sort of a fee structure. This fee increase is proposed in order to maintain and continue to meet the mandates established for this agency. This is a temporary regulation so we will have to revisit this fee structure after the legislative session and that will be an opportunity for us to provide more information to you.

Chairman Close requested an explanation of the PSD permit, a brand new fee for $50,000.

Jolaine Johnson explained this is a federal permit delegated to Nevada to implement. PSD stands for Prevention of Significant Deterioration and goes beyond the National Ambient Air Quality Standards. We generally issue operating permits provided the source demonstrates that they will not violate health standards. The PSD program sets another threshold, such that one source can't come in and raise the concentrations of pollutants in the air up to the ambient air quality standards, they are going to have to meet a lower threshold. They don't allow significant deterioration of an air shed. These sources are large sources that generally emit 250 tons per year of a given pollutant and they make significant modifications to that. It is a very complex program and in addition to considering the ambient air quality we also have to consider specific control measures for those kinds of sources and we have to consider potential impact to Class I areas. We can't impact parks or wilderness areas to any degree with these kinds of sources. The reason the fee is so high and the time is so long is that the analyses are very complicated and it is a very much broader program than any other operating permit programs that we do. We can only have 6 PSD sources in the state so it is very limited.

Chairman Close asked if only the new sources that would be charged the $50,000.

Jolaine Johnson explained the program also proposes that a significant modification to an existing PSD source would also have to pay that fee because we would have to go through the same analyses.
If they are not subject to a major revision under PSD then they would fall under the other programs that we have, a Class I modification and then we would consider that for significant or minor modification - there is no such thing as a minor PSD modification. It is either subject to a major modification or it is not subject to PSD at all.

Chairman Close suggested the language should read "provision of a PSD" rather than a major because that implies that there is also a minor. You have gone through this procedure before and determined it takes 1,000 hours and based upon that 1,000 hours this is a reasonable fee to charge for that service - that is ½ year of someone's work.

Jolaine Johnson agreed, that is our proposal and the work takes even more than 1,000 to complete.

Commissioner Coyner explained he had attended the work shop in Reno and referred to Table 1. There are 27 Class I sources and there are approximately 350 Class II sources, close to the 400 number and that will help you in looking at

the structure of fees and where they are coming from and this excludes Washoe County and Clark County. We are looking at industry outside of those two areas.

Jolaine Johnson explained that NRS does require the SEC to regulate fossil fuel fired steam generated electrical units in those counties.

Jolaine continued, we established a bottom line of the total fee revenue we needed in a year, then we considered the various ways of assessing those kinds of fees, outlined by the 4 bullets on Page 3. In addition to charging directly for permitting fees the state - and other states do this various ways - can charge fees for emissions, how much actual pollutant is put in the air over the course of a year. Currently we estimate about 100,000 - 110,000 tons per year is being reported to us by all facilities. For simplicity in implementing this program the current rules excludes anybody that emits less than 25 tons a year because under the current fee structure at $3.75 that only means more administrative work for those facilities and very minimal revenue.

The second way to collect fees is to charge a maintenance fee on every stationary source. Every source gets some of our attention every year and it is equitable to charge some sort of a fee that generally represents how much attention and administrative effort is required. Currently we have about 5,500 units permitted in the Nevada program as stationary sources.

Four other factors were proposed for consideration during the workshops and public comment period and Table 1 presents several options for fee structures. We took 5 options to public workshops for consideration in assessing these fees. All the proposals considered established permit application fees based upon the average time to process the various types of applications multiplied by a fee of $50.00. This covers salary, fringe, and some of the overhead costs associated with the staff person. The remainder of required fees were generated by assessing an annual fee based upon tons of pollution at $15 a ton. This is a substantial increase from the existing fee which is at $3.75 a ton. So the first option is permit fees and all the rest of this revenue would be generated by emission fees of $15 a ton.

The second proposal added a small maintenance fee. Every facility in the state that has a permit would pay us an annual fee of $250. Option 2 then had in addition to the permit fees, the maintenance fees and if you take that $250 annual fee then the emission fee goes to $14 a ton to make up the total budget difference.

The third proposal went back to the concept of charging fees on the basis of emission units. So we would charge the permit fees and then we would collect the rest of the revenue by charging the $270 for each of the 5,500 emission units that we have permitted in the state.

The fourth proposal was similar to number 2 except it increased the maintenance fee. Fees were proposed at the rate of $10,000 for Class I sources and $1,000 for all other sources in the state. When we did that the emission dropped to $8.85 a ton.

Proposal five simply dropped back to the 1994 fee structure. A very low permitting fee and maintenance fees based upon the type of industry that you were in and based upon emission units and a small emission fee.

We help public workshops and sent letters and notices to 380 representatives of all the regulated sources in the state, those are provided in Attachment 3 of your document.

Three workshops were attended by 61 people and a summary of the comments received are included in Attachment 3.

There is a correction to your document. When I wrote this we had received 30 comments and those, with the exception of #26 were provided in your packet. #26 has been distributed to you today in addition to 4 additional comments that received after the packets were mailed.

Initially, commentors requested additional information regarding our budget and specifics for the need for increased fees. That information in your packet was also provided to all of the sources.

8 of the commentors acknowledged the need for fees as proposed to administrate the regulatory program; 5 believed that the fees were too high;

3 sources believed that the fees would cause economic hardship on their business. That is how many written comments we received on that issue;

3 believed that the high fees would prevent them from expanding their operations in the state;

1 source believed the fees were excessive as compared to other states;

There are differences in state's programs so it is difficult to compare. However, the western states that we will discuss

later do not indicate that Nevada's fees are excessive.
On page 5 of your document are charts that summarize the general comments that we received to our proposals. There are some changes in that due to the additional comments we received after you received your packet.
In the first table under Option 2 we also received 4 comments that Option 2 was a good idea so under that column there the number 3 should read number 4.
In Option 3 the no column should read 10. We received 10 comments that Option 3 is not a good option.
What this communicates is that most facilities believed that it was the best to charge high emission fees and not to charge fees on the basis of emission units.
The bottom table on page 5 presents more detailed ideas of how people thought we should assess fees. Most people thought that the permit fees that were proposed should decrease and that the emission fees should be the carrier, if you will, of this program. Most people, 10 - 1, thought that emission unit fees were not a good idea.
Suggestions were made regarding the collection of more motor vehicle fees, collecting agricultural fees, collecting general funds and collecting money from Clark and Washoe County - which is a good idea if I had any authority to do it. The current authority says we have to generate this revenue by charging for operating permit fees.
Two comments suggested that we take away this exemption for sources that emit less than 25 tons;
Four sources recommended that BAQ charge directly for more activities, such as inspections. That gets rather administratively difficult;
Five commentors expressed concern that the notice was too short for this. We had a rather compressed time-frame between the time that I realized the tremendous shortfall in revenue this year and this meeting but we did hold extensive workshops and communicate with these sources.
One thing that you have to consider is if you go with a high emission fee we have one source in this state that emits about 75% of the 100,000 tons of pollutants and for them to pay $15 a ton meant they would be paying $1 million a year in air quality fees. That source, and several other sources that were in similar situations, had encouraged us to really consider what we can do to make the fees as equitable as possible.
The proposal before you today is contained the last column of Table 1.
We attempted to balance the concerns of sources who believed that fees should be charged for emissions and sources that believed that fees should be distributed across all those sources to reflect our work load.
Table 4 presents a fee structure and the revenue that we will expect to generate under that structure. Generally, we have left permit application fees as proposed at the average processing time times $50 an hour. Some sources have recommended lower permit fees and others recommended higher permit fees to additional issuance fees and we think of this as just a general representative cost to the air quality permit application. It includes an annual maintenance fee to be charged to each stationary source based upon the sources potential to emit in tons per year. We have broken that $1,000 down in Option #4 into some options based upon how much pollutants the facilities emit and that structure comes up with a final emission fee of $5.60 a ton.
Table 4 lists the sources by classification.

Commissioner Coyner asked if Table 4 is the anticipated incidence of fees as they occur.

Jolaine Johnson stated it was. Table 4 lists how many different facilities we have that would be paying those annual maintenance fees and the PSD are encompassed in the Class I sources in this case, we did not distinguish those sources as having a higher fee. Class I sources emit greater than 100 tons per year of any pollutant and have to have Title V operating permits for the federal requirements. These are generally the power plants and large mining operations. Nevada Cement, a large manufacturing operation, is a Class I source.

Chairman Close asked what type of type of a operation emits 75%?

Jolaine explained a large power plant built before the CAA requirements came on and so they were very, very limited emission control restrictions on the power plant. There are various requirements they are addressing to upgrade and they are currently considering controls that will reduce those emissions substantially, probably in the 2005 - 2008 time

frame, if at all. The CAA does not require grandfathered sources directly to upgrade and to put on emission controls but there are sub areas of the CAA that sort of push it that way.

Jolaine continued that in their packet is a comparison of the proposed fee structure with other state's programs. As stated, it is very difficult to present you with information on depending on how big their budgets are, how extensive their programs are, how much general funds and other kinds of revenue they receive. Our proposed permit fees are high compared to some states however they are comparable to those permits issued in Utah and in Arizona. We did not include California programs because they were off the scale compared to the rest of the Western States.
An error your documents lists Nevada's proposed structure at $14 a ton and we are actually looking at $5.60 at this point.

Chairman Close called upon Russ Fields.

Russ Fields, President of the Nevada Mining Association acknowledged it is never fun to look at the kind of fee increases that are proposed today. Some of our members were certainly surprised at the extent of the increases however I sat on the Commission when you recognized that there was going to come a time when these fees had to increase and here we are. For the record, you have a December 3, 1998, letter on Nevada Mining Association letterhead addressed to Jolaine Johnson from Martin Jones, the Chairman of the Mining Association's Environmental Committee. We have an air quality subcommittee that worked with Jolaine on this issue. We had representation at all of the public work shops and we did write a letter to object to one of the earlier proposals. This letter from Martin Jones does support Jolaine's November 24 proposal. We understand the need for the increased fees; we think that the mix that has been achieved here among the various sources of fees is rational; we believe that the $5.60 per ton emission based fee is reasonable; we think that the latest proposed fee shows that our emission fees will be increased by about 50%; permit processing will increase significantly over the current fee structure; and that the revised fee structure will also impose a new annual maintenance fee for existing sources. The Nevada Mining Association believes that the latest proposal before you establishes a reasonable balance between permit processing fees, maintenance fees, and emission based fees. We appreciate the difficulty in Jolaine's bureau trying to arrive at this. I appreciate the difficulty the Commission has before you now, not an easy task but we do support what she has before you and we look forward to working with the BAQ and NDEP over the next 6 months and beyond to try to maintain an equitable and fair situation with these fees.

Chairman Close called upon Ray Bacon.

Ray Bacon, Nevada Manufacturers Association explained their comments are on Item 11, Attachment 3. There is a couple of points that we made that I think go along with the general context that Mr. Iverson was headed to as far as a policy. We are not objecting to the specific fee proposal what-so-ever but we think that things should be considered for the future:

1) The fee structure should be based as much as possible on the actual amount of work that is put in. Our proposal is when you take a look at the details then lower the base amount on the permits but then have an hourly charge so that someone that truly does come in that has their act together where the fee can be processed rapidly and expeditiously by the Bureau gets the benefit of that whereas if somebody comes in and effectively uses NDEP/Jolaine's staff as their consulting group to go through and figure out what they need to do to get their permit - those people should pay more because they are effectively using the NDEP staff as their consultants. That is one thing should be considered as you look forward to a policy coming forward.

2) In general, if you take a look at the things that are coming in the future, PM 2.5 and regional haze issues, we believe that vehicles of mobile sources are probably under-paying today and probably for the future you should take a look at something which would have to go to the legislature - we recognize that- and we think that it might even be appropriate for this panel to go to this legislature to get authorization to do that is a flat per vehicle fee because if you take a look at the regional haze issues that are coming up and PM 2.5 and those other issues mobile sources are becoming a significant portion of total air pollution efforts in the total air pollution loads and that would be an authorization which would then allow Jolaine to have that as a future option and it would also Clark & Washoe County to have that as a future option, whether it is done on a state-wide basis or whether the county makes an option to do that in Clark and Washoe would be clearly up to them but especially here in Las Vegas, and especially

in Washoe County vehicle emissions are a big chunk of the problem.
Those were the two key points that we had. The only other thing that I will add is if you take a look at the budget increases that are coming up because of PM 2.5, Title V expansion and regional haze issues, clearly the federal government has done exactly what they said they were not going to do. We are facing another unfunded mandate even though they said we are not going to do that anymore, and you are placing the burden of that unfunded mandate back on the existing industrial users instead of spreading that base and we think spreading that base is critical and that is why we are looking at the mobile source issue.

Chairman Close asked Jolaine, relative to what Mr. Bacon mentioned. I was under the misapprehension that the companies prepared their own permits and things of that nature and what he has just indicated is that you are actually the consultant for the companies preparing these permits. If that is the case then what happens to the company whose own staff prepares the document - do you still charge the greater fee because it is not going to take you that much time to do this?

Jolaine Johnson agreed that the BAQ should not be acting as a consultant to these industries but we get a broad range of permit applications. Some are excellent and we are able to take the information that they present, verify the modeling, etc. and provide a very rapid turn-around on their permit. We drag information out of other facilities. We beg, plead, etc. to get enough information to actually process the permit. Over the past 3 years we have tracked how much time we are spending on various kinds of permits, and we have taken the average amount of time for various kinds of permits and charged that at $50 an hour. Mr. Bacon is right. It does cause a problem. It is really rather expensive for a source that has their act together. Their permit, rather than 600 hours, may require 350 hours to Others may require 1200 hours. We have proposed an average because I am concerned about the administrative effort required at charging by the hour - not that we don't track it but to have to bill for that would create an administrative burden that will require more staff than have.

Chairman Close reiterated it seems strange that we are the consultant to companies that require these permits. It may be a good service and one that we should provide but it seems unfair to penalize the ones that have their act together. Is there not some middle ground here where a company that has submitted to you a picture-perfect application for PSD need not pay $50,000 if all you have to do is just confirm their information compared to if I gave you one that had nothing in? I was shocked that it took 1,000 hours. That is one person working 6 months! They should hire competent people and I don't know why we should be doing it for them.

Jolaine Johnson specified that many do hire their own consultants and have good consultants but we are teaching some consultants as we go. The middle ground that we have proposed is the average number of hours. There are probably other options because it is difficult to say 300 hours for a good application and 1,000 hours for a bad application because you are arguing with the sources of where they fall. There are some difficulties associated with that.

VC Turnipseed agreed and explained the Division of Water Resources is faced with the same thing and we call it "Design by Review" - we don't actually act as a consultant but by the time you have sent the application back 5 or more times then you have essentially designed the project in-house, even though the consultant did the work and was paid. Their work is so inadequate. The difference is between consultants that really know what they are doing and what the application requires versus a consultant that does not. I think the P.E. Board tried to take care of that because after we have sent the plans back twice then we are supposed to report it to a special engineer's board.

Ray Bacon continued that you may want to consider is you work forward and do a policy, certainly not for this period of time because we recognize this is temporary, needs to be adopted in 1998 and we are not arguing that - but as you look at a policy you may want to build in incentives for people submitting a good application and having their act in place. The other thing you may want to consider is something that says if somebody is putting in a change which is going to result in a net actual reduction in their emissions level that the permit fee for something which is reducing emissions probably should be cut in half, a fee structure for something which is reducing overall pollution and not strictly air pollution. If somebody making a change to their permits which impact their air permit but really will also

result in lower water pollution or hazardous waste, that should have a reduced fee. I think industry is really saying, at least what my members are saying is "there should be incentives built into the program for doing the right thing". Mr. Bacon encouraged Jolaine to follow through with Mr. Iverson's comment on creating a policy.

Commissioner Doppe questioned if an appropriate incentive would be to have a higher emission fee and a lower permit fee if a permit application was able to demonstrate that it had more modern equipment and lower amount of emissions going into the air.

Ray Bacon replied that is part of the reason why we tend to support a higher emissions fee and lower permit fees. Take a look at the Mohave Plant - we have not created an incentive package that is strong enough for Mohave to invest the huge amount of money it will take to wind up with lower emissions. Mohave is the # 1 source as far as total emissions and is located to impact the Grand Canyon and the other Class I areas.

Chairman Close called upon Michelle Nuttal.
Michelle Nuttal, representing the Mohave Generating Station from Laughlin commented in support of the fee proposal that is currently before the Commission. We thank Jolaine Johnson, Don Del Porto, Gay McCleary and other staff in the BAQ for working so hard with all stakeholders on the incredibly difficult challenge of increasing fees. None of us want to see our fees increased, particularly by this substantial amount required to replace the subsidy that we have enjoyed for the past 3 years, we feel that the proposal today takes into consideration the conflicting interest of all stakeholders and strikes a balance. While it is not the ideal solution for any particular source or industry group, it is as fair as could be possible to everyone. Mohave's fees, under this proposal are increasing to close to $400,000 per year we are willing to support the fee structure as an equitable compromise between the interest of all groups. This is a formidable commitment on the part of our facility during a time in which we are cutting costs and reducing staff in the hopes of remaining profitable and being able to successfully transition to the competitive energy market. We are willing to make this commitment to satisfy those who feel that a substantial portion of fees should be generated from emission fees in the interest of achieving broad support for this proposal. In the future, when you are looking towards a policy, we would also support a cost of services approach where the actual cost of providing service to a facility is accurately reflected in the fees. If our facility actually makes it in the new energy market we will probably be investing $300 - $500 million for air pollution controls to reduce emissions from our facility and the fee we are paying today will be substantially reduced so in a few years we will no longer be subsidizing the program. I think in anticipation of that large fee increase that will be coming for sources it would be beneficial to look at a cost of service approach because whether our emissions are high or low the bureau is going to need the same budget in order to subsidize the activities that EPA requires it to perform. We urge the Commission to support the fee proposal before you today.

Commissioner Johnson asked if Mohave had had a time-frame established for those new controls.

Michelle Nuttal explained Mohave is working closely with the state and a number of stake-holders. Mohave is very important to the local communities of Bullhead City, Laughlin and the Hopi and Navajo Nations and we have a lot of commitments to our unions and others. There are a lot of issues associated with the plant, whether it will continue to operate under the deregulated market. We have been talking to the park service and EPA attempting to convene a collaborative process where all interested parties will work together on issues concerning the future of the plant, looking at potential air pollution reduction and taking into consideration a number of business and other considerations.
The time-frame would be somewhere between 2005 and 2008, not in the next fee-setting period but perhaps in the one thereafter. It is difficult to say what the conclusion will be.

Chairman Close called upon John Mudge.

John Mudge explained he did not wish to comment at this time.

Jolaine Johnson informed the Commission that letters received since the packet was mailed to them have been distributed to them - 4 letters support the proposal and 1 letter does not. Those letters are for the record.

Chairman Close requested these 4 letters be made a part of the meeting record.

Commissioner Crawforth asked if $50 an hour was the projected cost based on expenses divided by the number of permits.

Jolaine explained $50 an hour is a general figure that represents how much the whole air quality program, divided by total staff hours spent working on these projects and is generally representative of how much it costs for an hour of service in the bureau.

Commissioner Crawforth commented that the Division of Wildlife returns incomplete $20 applications for a deer tag so I am also incredulous to learn that BAQ helps some who is paid to do that complete permits and applications. I am supportive of user fee activities but suggest we take a serious look and maybe ask staff to come back with a policy on how we are going to do this in the future.

Jolaine Johnson explained there are limits to what we will accept in a permit application but it is a rare occasion for us to turn one back. Generally, we are an accommodating agency and most of our facilities are very small businesses that truly cannot afford a consultant who charges a lot more than $50 an hour to process these applications. We do try to provide service to small business but we do turn back applications that are sorely lacking information, particularly the major sources.

Commissioner Iverson agreed that was extremely important but he agreed with Ray Bacon's statements. However, we never want to lose the ability to sit down and to work with a small entity and I think that is one of the positive things about DEP that you are not going to find in some of the other states. When we take that service away, NDEP's face changes and we lose a lot of the credibility and interaction that we have in the past and some arbitrary decisions need to be made. If you are working with a major company who has a lazy consultant, charge them but work with a small company that needs help and guidance. Let's don't take away that human factor and we always want to make sure that DEP works with these people who need help.

Chairman Close agreed but it reiterated that it is going overboard to dedicate one person for more than 6 months on one project.

Commissioner Crawforth agreed he supports customer friendly, but helping consultants who are probably making twice as much an hour as the people who are helping them is not acceptable.

Jolaine Johnson reviewed the changes in Petition 1999-03.
Page 2, line 14, item k - change "major revision" to "modification". That makes the language consistent with the Federal PSD Rule.
On page 3, beginning on line 7 we talk about the different classifications of Class II sources based upon their potential to emit. For clarification I want to let you know that these fees are based upon how much pollution they are allowed to emit in the upcoming year not on how much actual pollution they have emitted in the past year. The $5.60 will be based upon actual emissions but the maintenance fee will be based upon their permitted allowable emissions.
For clarification I would like to let you know that the analysis that we did was based upon the types of sources, for example on line 7 it would read "potential to emit of 50 tons per year or greater" and I would like to add the language "for any one regulated air pollutant except carbon monoxide" which makes it consistent with the rest of the rule.
On line 8, after "greater" insert the phrase "of any one regulated air pollutant except carbon monoxide"
The same phrase would go in at the end of line 10 and the end of line 12.

Commissioner Doppe explained he had a difficult time with the proposal. Because the bureau is entirely fee driven it makes it somewhat immune from the ups and down of the state budget and the state economy. You can just set your fees where they need to be in order to break even, a luxury a lot of folks are not able to enjoy. At the same time, you are setting your fees wherever they need to be based on a nice orderly 5% growth rate yet some of these businesses you

are regulating are struggling trying to make ends meet. I don't agree with the concept of having an independent government growth rate that bears no resemblance to the reality of the rest of the economy which that agency is regulating. That is inconsistent. We are trying to diversify the economy and to encourage alternate business to come to Nevada and I believe a government regulatory agency that is able to act without taking that into account is counter-productive to the overall best interest of the state.
However, understanding that we have to provide funding for the BAQ, my next area of concern stems from the fact that 31% of your revenue comes from emission fees and 69% comes from administrative acts, permit fees and the like, that ratio is backwards if we are trying to curb emissions. If we are trying to do is reduce emissions it seems to me like we are doing this backwards. If you look in your packet, the comparison of your proposed fees against other states shows Nevada's proposed fees are highest for permits and administrative things and lowest for emission fees. Is there good rationale for that. Our goal should be to encourage fewer emissions.

Jolaine Johnson agreed with Commissioner Doppe and explained there are numerous industries in this state that are struggling - mining, oil production and others and as a Nevadan that concerns me. My responsibility is to implement certain requirements established by the legislature so it is difficult for me to tie directly my program to the rest of the economy, I have to tie my program, my budget, and my needs to the mandates. There is a balance here that you and I are faced with. While it doesn't seem it should be that way, I have certain work to do that isn't necessarily tied to emissions. I have to issue those permits unless the facility demonstrates that they are going to violate a public health standard. When comparing our program to other states many of them have a cap on how many tons of pollutants they have to pay for and often that cap is 4,000 tons. If we took our existing source base and applied a 4,000 ton cap I calculate that one Nevada source with very few emissions would be paying on the order of $48 a ton, rather than $5.60 a ton.

Commissioner Doppe explained he is not suggesting that we scrap the permit fees by any stretch and resort strictly to emission fees but questioning if a 69%-31% balance is correct or should it be 50%-50%. The letter from Mohave supported an $8.85 proposal per emission ton, a higher emission rate than you are now proposing. BAQ does a very fine job but I have a problem with you asking for these fee increases because you are running up against a difficult financial time. The Commission acting as the political body if you will, ultimately ends up making the decisions but soon there won't be anybody to regulate if they are put out of business because off fee increases and that concerns me.

Jolaine Johnson reiterated that the BAQ is open to suggestions or changes. The proposed permit fees are based on average hours and a representative dollar per hour. The annual maintenance fee is based upon activities directly related to the source. We calculate the number of hours it takes us to travel to and perform inspections, to write reports, etc. and that is how we came up with a percentage of how much fee to collect on an annual maintenance basis. The rest of the program is covered by the emission fees. Again, it is a balance but it can be changed.

Commissioner Doppe recalled one recommendation was a lower fixed fee plus an hourly rate and you expressed trepidation about getting into starting and stopping the clock but on the other hand it does provide the ability to charge a group that has their act together the lowest possible rate and then allocate a consulting rate to those people who don't have their act together. If you did both of those things and yet raise the emission fee you would still get where you need to be dollar-wise and it seems to be a more fair way of allocating the cost to people who ought not be paying it because they don't need some of the services.

Commissioner Iverson acknowledged that Commission Doppe is from the private sector, the state services the private sector and sometimes we forget their concerns. To address the concerns of Commissioner Doppe, Ray Bacon, Michelle Nuttal and others we perhaps could form a sub-committee of this Commission. If these fees were set by statute rather than regulation this same recommendation would be made because the legislature represents the citizens and the private sector. A fee based agency is sort of isolated from the real world. A sub-committee made up of a few commission members, someone from the private sector, someone from the public sector and maybe an ex-legislator who has been could review this and see where these fees are being generated. As we start to develop policy it would be nice to understand why that equation was developed. We know what we have to do today to keep the agency whole but we have

a responsibility to the public and to the environment. In the future all government is going to start looking at how to get money because we just can't keep going to the public trough.

Jolaine Johnson revisited the problem with the BAQ being a consultant. Perhaps we should consider assigning a fee, when you turn an application back and ask for significant revisions that there be a fee for that. That would address the issue of time spent over and above what the standard would be.
Secondly, I encourage and applaud the public relations effort of dealing with a friendly soft hand with the applicants but this is perhaps a function of economic development and general funds ought to be supporting those efforts, anything outside and above the normal regulatory part that we are doing - whether it is non-point automobile or general fund support outside of this body's power but certainly within your discretion to advise the legislature to consider those issues It is important that there be a commitment by the general public to support the issues of public help. Specifically, I would like to see a revision for inclusion of a fee and therefore additional work for inadequate applications would be provided for.

Commissioner Crawforth asked if the proposed amendments that Jolaine gave us would be significant enough to cause us problems with legislative review of the regulations.

DAG Mischel explained these are temporary regulations so LCB has not had an opportunity to review these, initially.

Commissioner Crawforth asked if considering that would be outside of what had been publicly noticed.

DAG Mischel advised it would not.

VC Turnipseed made a motion to adopt Petition 1999-03 as amended.
Commissioner Trenoweth seconded.

Commissioner Doppe believed that is a hasty move that he would not support and requested more study into the structure of the fees and into the relationship between the way these fees are being charged and several issues that are beyond Jolaine's scope.

Chairman Close agreed with Commissioner Doppe and requested modifications along the lines discussed. If the motion passes he expressed hope that you would consider the concerns expressed concern, review them, and that come back to us with further modifications to this fee structure.

Chairman Close called for a vote on the motion.
Commissioners Coyner, Trenoweth, Turnipseed, Iverson, Griswold, Crawforth, Gifford & Johnson voted for approval. Commissioners Doppe and Close voted nay.
The motion was approved.

Chairman Close asked that the exhibits on Item # 1999-03 be made a part of the record.

Chairman Close moved to **Agenda Item X. B: Petition 1999-02,** a temporary regulation amending NAC 445A.232 "fees" in the water pollution program by extending the date of expiration from July 1, 1999, to July 1, 2001. The portion of NAC 445A.232 effective from July 1, 1999 to July 1, 1999 is repealed, and that portion of NAC 445A.232 effective on July 1, 2001 is retained. This petition affects mining water pollution control discharge fees. This petition amends a 1997 action where the fees were amended with three rolling escalating fee schedules between the time of adoption and the year 2001. Those mining water pollution control fees currently in effect are proposed to be retained until July 1, 2001. The intermediate fee schedule is proposed to be repealed
by this action.

Leo Drozdoff, Bureau Chief for the Bureau of Mining Regulation and Reclamation (BMR&R) introduced David Gaskin, Regulation Branch Supervisor within the and reminded the Commission that two years ago a fee structure was developed for the Regulation Branch whose function is to ensure that the water quality of the state is not impacted due to mining operations. They approve the design, construction, operation and closure of mines.
At that time we advised the Commission that we are a solely fee-funded group and the fee structure was developed to span 6 years - the 3 bienniums, July 1, 1997 through June 30, 2003. That fee structure allowed fees to increase every 2 years, as spelled out in the regulation. At that time we made a commitment to the industry and the Commission that we would analyze those fees and determine our needs. We are here today to tell you that we would like to keep the fees that are in place today in place for the next 2 years, so as to not ramp the fees up as spelled out in the regulations. We have data on revenue collection from the past two years, we now have our biennial budget for the years 2000 and 2001 so we are in years 3 and 4 and we would like to keep our revenues for years 3 and 4 the same as they were in years 1 and 2. I want to make it clear that the last fee schedule in the regulations is for the period July 2001 through June 30, 2003. We are not proposing to amend those at all at this time.

Commissioner Doppe asked if the expenditures will be covered by revenue for this past year and for next year, not carrying forward reserves.

Leo Drozdoff explained to date we have collected $1,035,512.00. If we compare that to, not counting the reserves or carry forward, the actual planned expenditures for the years 2000 and 2001 of $1,067,156 so we are within 3% to date. Most revenues is collected to date for this year but we will see some fees come in, in the form of application fees or modification fees.
Commissioner Doppe noted the proposal is to keep fees fixed because they simply match the expenses.

Leo Drozdoff agreed the dollars that we are actually collecting versus what we are budgeted for match very closely and we have a balance forward for 1999 of $466,000.00.

Commissioner Coyner expressed appreciation, due to the fragility of the current situation with mining in Nevada. Attendees of the recent Northwest Mining Association meeting I recently are very concerned about the potential impacts on the industry due to continued low prices. So your proposal assumes no decrease in industrial activity in that time frame.

Leo Drozdoff explained it does assume that there is going to be no decrease in permit fees and we think it is fair to assume that we are probably not going to see much in the way of new applications or new fees. The Commission needs to remember that these operating permits in place carry the mines through closure activities. This year we have some facilities that have not paid and we factored that into the actual numbers. I don't think there is going to be much difference from what we have collected this year and we have factored in those facilities that are going to have a problem paying, based on what numbers we are actually collecting to date.

Commissioner Coyner stated he just wanted that caveat and revealed the Division of Minerals annually surveys exploration companies in the state as to the level of activity, why they are exploring in Nevada and why they are doing business in Nevada. We rank those factors and factor 2 and 3 in our survey was the certainty of permitting and timeliness of permitting. Leo's Branch has exhibited that they give them that. Industry gets certainty of permitting and timeliness of permitting. Jolaine would be well advised to take that as well - it may not be so much the cost of the permit or the annual cost of emissions as much as the timeliness of the permit. Often-times there is large amounts of capital hinging upon those permits. Commissioner Coyner compliment BMR&R for their efforts.

DAG Mischel questioned the end date of June 30, 2003 quoted and asked if that is in this proposal.

Leo Drozdoff explained 2003 is currently in the regulations. I just wanted to make it clear that we are not changing that last 2-year period. When we put this 6-year fee schedule in place 2 years ago it ran from July 1997 to June 2003 but what we are actually talking about today is for the middle period, July 1, 1999 to June 30, 2001, basically keeping that

the same as what we currently have.

Russ Fields, President of the Nevada Mining Association expressed agreement and support for the actions proposed by the BMR&R to maintain the permit fees at current levels for mining water pollution control and commended the Bureau for its efficient handling of matters related to the permitting process for water.

VC Turnipseed asked if Mr. Fields had a feel for whether the keeping the water pollution fees flat would offset the increase in the air fees.

Russ Fields replied that the Mining Association tends not to style our comments on a total impact but that is certainly what hits our bottom line.

VC Turnipseed made a motion to adopt Petition 1999-02 as presented.
Commissioner Griswold seconded.
The motion passed.

Chairman Close moved to **Agenda Item X - C. Petition 1999-01:** A temporary regulation amending NAC 445A.121, 445A.143, 445A.144, 445A.213 of the water pollution control regulations. The regulations are proposed to be amended to change the reference for limits in drinking water standards from the U.S. Public Health Service to those adopted by the Nevada State Board of Health. NAC 445A.143, the Colorado River salinity standards, is proposed to be amended to include the term "flow weighted average". NAC 445A.213, the minimum quality criteria applicable to interstate waters, is proposed to be repealed.

Wendell McCurry greeted the Chairman and members of the Commission and introduced himself as being with the Division of Environmental Protection. He stated there were three proposals regarding water pollution before Commission. In an attempt to obtain public input, 2 workshops were held: On November 6 in Carson City and in Elko on November 9 plus a meeting with the Nevada Mining Association on October 21 and the Lake Mead Forum on November 12. The notice was mailed to over 230 entities and the workshops were advertised in the Las Vegas, Reno and Elko papers. Written comments from the mining industry and Elko County were received and as well as some good verbal comments during the Lake Mead Forum. In addition, requests for copies of what was proposed has been received from other entities such as Fish & Wildlife, Washoe County Planning, Clark County Comprehensive Planning plus others. As a result of the comments, some changes have been made to the proposals and they will be addressed as each petition is presented.

Petition 1999-01 is to modify NAC 445A.121 and NAC 445A.143 and repeal NAC 445A.213. As a result of comments from the Las Vegas Forum and the mining industry and a law firm, NDEP's proposal now is:
Section 1. The word surface has been added to the first sentence of .121 so it reads "The following standards are applicable to all surface waters -

Chairman Close asked what line are we talking about?

Wendell McCurry answered Line 3 under Section 1 - the word surface has been added in there and the reason for this is because the authority under NRS 445A.520 for the Commission to adopt water quality standards only applies to surface waters. He stated this mistake was made years ago and it has come up a few times and staff thought it should be fixed and so this list of standards really apply to surface waters of the state and that is what that proposed change is.

On page 2, #6 - staff is withdrawing the proposed change. Because of questions raised by Dr. Larry Paulson at the Lake Mead Forum, staff found that the proposal would result in downgrading of the standard by eliminating a big long list of standards for radioactive materials and that is what the issue was raised about. Staff went back and looked at the reference and there are pages and pages, 40 or 50 pages, of standards for radioactive materials that this regulation refers to and of course there has been concern down here about radioactive material near the Las Vegas Wash or in the Las

Vegas Wash area so that is the reason that issue came up.

For page 2, #7 - staff is withdrawing the proposed change because of comments of the Nevada Mining Industry which are contained in Exhibits 3 through 6 and we will postpone action until we have revised our Continuing Planning Process (CPP) regarding water quality standards. We have announced in the workshops that we intend to revise the CPP over the next few months and after we revise that then we will go back and look at this section again.

Commissioner Griswold noted staff just wanted to delete "as adopted by the state board of health" -

Wendell McCurry stated yes. We are just withdrawing our proposal there - we were going to delete the old 62 Public Health Service and the National Bureau of Standards Handbook of Standards #69 - we removed those and put in "as adopted by the State Board of Health" but what we are saying now is to just leave it alone and don't revise anything in #6 or #7 at this time but the Commission will see staff back sometime down the road regarding those.

Section 2 on page 3: as a result of comments from a law firm we want to strike out, on line 8, annual limits and insert annual on line 7 between weighted and average. It still says the same thing to us but the comment received felt this would be more clear and less chance for misinterpretation in the future. This language was left out by LCB years ago and it really made a drastic change in what was adopted by leaving that term out. It made those numbers there instantaneous values rather than flow-weighted annual average numbers.
Section 3 is where we are repealing a duplicate - essentially a duplicate - section of regulations. Numbers 1 - 6 of what we are repealing are duplicated in 445A.212 and #7 under that has been accomplished by setting standards for Ph and dissolved oxygen to support fisheries on the Colorado main stem and in some of the tributaries.
Therefore, after responding to comments, the only thing that we are asking to adoption or action at this time is to adopt the change to NAC 445A.121 with the word "surface" plus the revised wording I just gave you for Section 2 "as the flow weighted annual average" and then repeal NAC 445A.213.

Commissioner Johnson was concerned that we are narrowing the standards and asked, but you say we don't have the authority to set underground or subsurface water?

Wendell McCurry stated we don't have the authority to establish water quality standards for ground water. The statute says set water quality standards for surface waters but the statute also provides for permitting discharges to ground water and setting strict discharge limits so that part is not being changed. The only thing that is being changed is the way this is in the regulation at the present time applied to all water of the state.

Commissioner Johnson asked, but functionally you issue discharge for surface waters too, so why have this section at all then? He stated he was not really arguing, but sees a deficiency in what we have and doesn't like the idea of reducing the amount of control that we have, understanding that if we don't have the authority we can't do it.

Wendell McCurry stated he didn't know the reasoning, way back in '73 when the statute was adopted, as to why it said "surface" waters and not "ground waters" other than the fact that back then the big push was all surface waters under the Federal Clean Water Act.

Commissioner Johnson stated he guessed there really isn't an area of opportunity for a polluter and questioned but if you don't have subsurface standards how are you going to fine someone for polluting the subsurface waters?

Wendell McCurry answered the permit requires the -

Commissioner Johnson asked well an undocumented release?

Wendell McCurry answered the statute requires a permit for any discharge to waters of the state, period, and then -

Commissioner Johnson asked, but that is a permitted discharge but a accidental release -

Allen Biaggi introduced himself as the Administrator of the Division of Environmental Protection. He answered Commissioner Johnson's question by stating the requirement that we use in statutes to regulate ground waters is a non-degradation requirement of ground waters within the State of Nevada and what we have interpreted that to mean is that there shall be no degradation of ground waters within the State of Nevada in excess of maximum contaminant levels established by the federal government. We also have very strong provisions under our spill requirements, as you have just indicated, which state that it is unlawful to place contaminants without a permit in waters of the state which include ground waters or areas where they may reach waters of the state including groundwater so that means that a spill onto the ground where ground water is relatively shallow or where the spill volume is large enough where it could reach ground water would be considered a violation and we take action on.

Commissioner Johnson asked what authority sets the MCL's?

Allen Biaggi answered the MCL's are established by the State Board of Health and EPA.

Commissioner Johnson asked by other statutory language?

Allen Biaggi answered that is correct.

Commissioner Johnson stated so when we make this change we are diminishing our ability to protect the public.

Commissioner Gifford commented on Section 2, Item # 2. I understand Item # 1 and fully appreciate that and think it should be in there but Item # 2, in terms of total dissolved solids, what mean does that have - say the number is doubled, so what? What can you do about it? I mean wouldn't you just say it looks like an item for somebody's concern but there wouldn't be anything in the world anybody could do about it is there?

Wendell McCurry answered those numbers are numbers that the 7 basin states have agreed upon to not exceed in terms of a flow-weighted annual average with the idea that there have been projects and on-going projects within the Colorado River Basin to control sources of salts, TDS. And then permits that the 7 states issue are geared towards the policies that have been adopted in terms of TDS increments within the discharges from sewer plants or other dischargers.

Commissioner Gifford stated I guess the point of my question is what is the value of having these numbers in here and what you would be telling me then is that the numbers themselves in the river, and that is not a thing we have a lot of control over other than secondary kinds of activities that might eventually contribute to either increase or decrease these numbers over the longer term but is that correct?

Wendell McCurry answered well we have control over the dischargers that go into the system but as far as the natural input of it we really don't have control over that. Since we adopted these back in 1973 or whenever it was, there has never been a violation of these numbers and at one point EPA was trying to say we had a violation because they were reading that as an instantaneous absolute number rather than a flow weighted number.

Commissioner Gifford stated I guess the point of my question is say you did get an exceedence, say by twice or three times in gross exceedence or even a little bit, it doesn't make any difference in terms of the question. I guess my question back to you is "so what - what can you possibly do about it?" "Who would you possibly blame?"

Wendell McCurry answered if there was a resulting exceedence then the 7 states would try to determine what else can be done to bring that down or to make sure that we stay within that.

Commissioner Gifford stated so this is not really a penalty clause it is a wake-up call sort of, that says that we need to look at our upstream basin planning efforts a little bit better or something. What I am doing, I guess, is kind of

questioning the value of having # 2 in there when # 1 to me would seem to carry over that kind of flavor but maybe I am just going astray here.

Wendell McCurry answered Well # 1, along with what we are repealing, is a little more verbiage than what was agreed upon by the 7 states. Then, after that was agreed upon EPA proceeded to promulgate, or threatened to, the salinity standard and at that point the 7 states came up with these 3 numbers as the salinity standard for these 3 main points. But if there was a violation I am sure the 7 states would be looking at the cause or is it just a natural occurrence because of the weather, drought, or whatever. It has never been exceeded since it was established.

VC Turnipseed commented for the education of a fellow commissioner, maybe you could explain real quickly what the Colorado River Salinity Control Forum is and what its purpose is.

Wendell McCurry answered it is made up of representatives from the 7 states and the main purpose of it is to control salinity in the system and that essentially has been their sole responsibility. They have not gotten into the other standards that we are involved with but mainly with the salinity.

VC Turnipseed stated and they also have spent tens of millions or hundreds of millions of dollars to accomplish that goal in order to keep low standards.

Wendell McCurry stated they have resulted in getting appropriations to do specific projects and of course there was a whole laundry list of projects with different priorities because of the amount of salt loads that were going into the river and so they started attacking those salt releasing projects and that has been going on for several years - 25 years.

Commissioner Gifford stated he wasn't really arguing against the standards or anything, it just seemed like that they were there and that the gist of cooperation was already contained in # 1 and so why have a # 2 because to me, that is all these numbers are, just numbers that are an agreed upon number and we are just saying that we are going to agree to cooperate with everybody which is contained, to me, in Item #1.

VC Turnipseed stated there is an additional mandate and we have a treaty with Mexico that the salinity crossing the border or into the International Canal will not exceed an amount. That is a Federal Law so all the 7 basin states have to cooperate and meet the standards that were set in that treaty with Mexico.

Chairman Close asked if there was any further testimony on this matter.
He asked if there was a motion.

Commissioner Griswold moved the Commission adopt Petition 1999-01 as amended.
Commissioner Trenoweth seconded the motion.
The motion unanimously carried.

Chairman Close moved to **Agenda Item X -D. Petition 1999-04:** A temporary amendment to NAC 445A. The amendment adds a definition for the term "rolling stock". The term “temporary permit” is also defined and exceptions clarified. The conditions and procedures for issuing temporary permits are proposed by this petition. NAC 445A.313 is proposed to be amended to include the term "diffuse source" as a clarifier of those activities exempt from the temporary permit process. NAC 445A.309 "Diffuse source" defined is proposed to be repealed.

Wendell McCurry stated in your packet you have a one page rationale explaining the 6 sections of the proposal. Sections 2, 3 and 4 are definitions for rolling stock, temporary permit and the specifics about a temporary permit. Sections 5 and 6 are to eliminate the confusion caused by NAC 445A.309 and NAC 445A.313 and to conform the regulation to the statute. The proposal is in response to confusion about the point source/diffuse source regulations which was exhibited in the Elko County Appeal Hearing by both Elko County and the Commission hearing panel. Deputy AG Mischel stated there is "potential for inconsistency between the regulation exemptions and definitions of

diffuse source and the statutory definition of point source and diffuse source" and said, "what is not clear is our regulation broadening, possibly, the definition of diffuse source". She was referring to NAC 445A.309 vs. NRS 445A.335.

Testimony provided states there is not a definition of rolling stock in either federal or state statutes or regulations. Commission Doppe indicated how confusing the regulation was to him and in reading that testimony I could see how confused people were about it. Then Assemblyman John Carpenter summed it up very good and I quote "I think there has got to be some real clarification of these regulations."
The proposal is nothing new, it is just clarifying and putting into regulation our existing practices.
There were two comment letters submitted by mining companies (Exhibit 7 - Independence Mining and Exhibit 8 - Barrick Goldstrike Mines) and also two letters were submitted by Elko County. (Exhibit 1 -Elko County District Attorney Office and Exhibit 9 - Elko County Water Planning Commission).
The comments can be grouped into essentially three issues:

1. Redefine rolling stock to clarify that it does not apply to dry washes or nonflowing intermittent streams;
2. The time allowed for action on an application is too long and 15 days was suggested; and
3. Do or do not repeal NAC 445A.309, the definition of diffuse source.

All four commentors suggested redefining rolling stock especially regarding applicability to water versus dry washes. Since our intent is not to require rolling permits for dry washes we welcome this comment and have made the appropriate change.

All four commented on the 60 day time period which came from the statutes and suggested a shorter time period.
One commentor suggested the temporary permit should be denied if not issued within 15 days and require the applicant to go the longer regular permit route. We do not feel this would be appropriate or fair. We addressed this issue by changing from 60 days to 30 days with direction to staff to continue attempting to process applications within 10 to 15 days of receiving a complete application since the majority of the applications are issued within that time frame anyway and we feel people are needing timely and quick action so that is the reason for that. I will pass out to you shortly the proposed changed to the definition of rolling stock and also a 60 - 30 day change so you can see it in front of you.
Both county comments and IMC recommended against repeal of NAC 445A.309 with the reasoning that it would make the regulation less clear and more ambiguous. This is the regulation which caused the misinterpretation and confusion at the Elko appeal hearing. Barrick did not object to the repeal of NAC 445A.309 and suggested that the statutory definition in NRS 445A.335 should be referred to.

The repeal of NAC 445A.309 will not change any exemption or requirements for the agriculture industry. Irrigation return flows are exempt from permitting requirements under both state and federal laws. NRS 445A.395 defines point source and states " the term does not include return flows from irrigation agriculture". I asked the legislature to put this exemption into the statute in 1979.

The remaining items of NAC 445A.309 are still diffuse sources if they meet the definition of diffuse source as specified in the statute. Also, there is another regulation that is talking about requiring permits and has an exemption in it and that is NAC 445A.228 and it states "dischargers of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands and forest lands, except" certain concentrated animal feeding operations, irrigation with effluent and ag or silvicultural activities which have been identified by the administrator as significant contributors of pollution are exempted from having to have a permit. So by repealing NAC 445A.309 we are really not changing anything in terms of what is required. Our only intent is to clear up the confusion that exists.

The Elko County staff attended the workshop in Elko and the Elko DA's office submitted written comments to the Commission (Exhibit 1). I have discussed the comments with Ms. Kristin McQueary and explained that routine road maintenance that she referred to in her comments can be covered under the General Permit which the Division issued in October. The General Permit allows covering routine maintenance activities under one permit instead of having to

obtain multiple permits. Also, the proposal will not pose any additional requirements on farmers and ranchers than exist now. They will need permits for working on diversion structures in streams but not for cleaning ditches.

Also, the comments from the Elko County Water Planning Commission were similar to the comments submitted by the DA's office. (Exhibit 9)

We have attempted to address Elko County and the mining industry concerns. I will hand out a new markup copy for your referral and I will explain what I have done to Section 2. As stated, we have attempted to address Elko County and the mining industry concerns, also the ranching and agriculture industry. By doing this, under rolling stock there, if we add "below the ordinary and high water mark when water is present" that addresses the issue of whether or not this applies to dry washes and at no point do we intend for it to apply to dry washes since we don't necessarily permit activity in the dry washes under rolling stock. Then although I feel it is covered in another section of the regulations but just to clarify and make sure that everybody understands I have added the sentence on the end of that "the term does not include work on irrigation ditches outside of the stream" because we don't issue rolling stock permits for cleaning out irrigation ditches or working on irrigation ditches but if they are going to be working on the diversion structure from a stream then they would have to have a permit. So that is clarifying that part.

Commissioner Griswold stated she had a quick question. The last sentence, "the term does not include work on irrigation ditches outside of the stream" - does this also include a delivery canal or a delivery ditch from the stream to the irrigation system? Where would that item fit into this?

Wendell McCurry answered if it is just a delivery ditch or canal then it would not apply either.

Commissioner Griswold asked it would be included, it would not apply to this?

Wendell McCurry answered right. What we are talking about is if you are doing something on the stream, a diversion structure or whatever, then a permit would be required for that.

Commissioner Griswold stated her problem was the delivery device is not necessarily the irrigation ditch and these do exist in many cases and possibly we should make that clear but let the discussion go on.

Wendell McCurry stated then, on the next page in Section 4, #5, we crossed out 60 days and put in 30 days and the reason for that is that essentially all temporary permits are processed within 15 days but a few do take up to 30 days from the time a complete application is submitted so that is the reason, as I stated earlier, staff would be instructed to continue processing temporary permits within 10 to 15 days, or to try to do that.

Commissioner Gifford referred back to Section 2, and asked what is an "ordinary and normal high water mark"?

DAG Mischel told Mr. McCurry that she would like to add to that. The Order in the Elko County matter defined it as the "mean high water mark" is it something that is below the mean high water mark? Is that something we can use rather than "the ordinary and normal" language?

Wendell McCurry answered I would think so.

Commissioner Gifford asked is the "mean annual water mark" a bank full stage? I am hunting for clarification.

Wendell McCurry stated what we are talking about is entire channel where the water normally would be the high water mark.

Chairman Close stated it wouldn't be the "mean high water mark", just the "high water mark".

Commissioner Gifford stated well then you get into, if you are talking about a 50 year flood or a 100 flood or bank full stage is often defined as 1.5 year return interval or the 2.33 year return interval and I think I have a hard time buying off on this as it is.

Allen Biaggi stated I think, as Mr. Turnipseed knows, this is an area of fuzzy definitions. And going back to my old hydrology days, I believe it has always been defined as "the historic high water mark, as defined in normal years" -it takes out the flood events, the massive flood events, and it takes out the low-flow years and tries to put some sort of a mean definition to where the high water mark is going to be on a normal year or an average year and what this regulation is attempting to get at is that the work would be required to have a rolling stock permit when it is being done within the confines of those two benchmarks on the stream channels.

Commissioner Gifford stated then coming back then to just quote/unquote understood terminology say among hydrology types, would it not be more beneficial to indicate a term like "below bank full stage" or -

Allen Biaggi answered Commissioner Gifford by saying I believe ordinary high water marks or mean high water marks are the typical language that would be used in a situation like this. I think it is - Mike maybe you could shed something on this - but it is sort of a term of art that it is the common usage of the term.

VC Turnipseed stated the same term appears in state law, in case law in determining where state jurisdiction ends and begins as to navigable rivers or rivers that have been used for commerce - the same term appears and people wrestle with it the same as you are now.

Chairman Close asked what term is that, Mike?

VC Turnipseed answered ordinary and normal high water mark.

Wendell McCurry stated that is what was referred to in the Elko hearing when they were quoting a section of the attorney general's opinion in referring to "ordinary and normal high water mark."

Commissioner Griswold asked Commissioner Turnipseed if he felt that "ordinary and normal" would be an appropriate term to use in this.

VC Turnipseed answered well only because it is used throughout the state and the Western United States - even though it is ill-defined but I think the purpose of the rolling stock permit is so that you are not stirring up - well I take it back - water could be present but below this mark and it would still require a permit to do this work. Am I correct?

Wendell McCurry answered that is correct.

VC Turnipseed stated I was thinking of a situation - if you don't get into the water then you presumably haven't caused any sediment, etc. to move down stream but that is not to say that next spring, during the runoff, if you would like to see the purpose of the double standard there. No, I can't really see the difference. If it is a dry wash today - in December, it may very well have water in it in May and so I am not sure where this gets you by the fact that if there is water present there you need a permit. If there is no water present there you don't. On the other side if you are doing work above the high water mark and not getting into the water there is no hazard today but there could be in April or May. Is that correct?

Wendell McCurry answered yes.

Chairman Close asked so then you want to give them flexibility - is that what you are saying? If there is no water they could do things they could not do if there was water.

Wendell McCurry answered right. If it is dry then they can go in and do their work, in fact the way some of them explained to me they are doing a lot of exploration work so they go in dry creeks and crossing and they will throw in a culvert and fill it over and go in and do their work and when they are through they come back out and yank the culvert out and restore it back to the way it was under a Forest Service approved plan.

Chairman Close asked, and that would be acceptable under your definition?

Wendell McCurry answered yes, and that is the reason I added that on there to get away from the question of whether or not we permit work in dry washes.

Chairman Close stated the only other thing that I would mention to you on that is talking about water course and your addition is a stream and I think that would be consistent - to change it to water course.

VC Turnipseed stated I would rather see you change water course to stream.

Chairman Close stated unless water course has been defined somewhere, but you have to follow one or the other, you can't have two of them.

Wendell McCurry stated neither one of them has been defined. Both of them are in the definitions of waters of the state and for consistency, it would maybe cause less confusion to change water course to stream.

VC Turnipseed explained that water course includes canals, ditches, pipelines - any possible way to convey water.

Chairman Close asked so if you take that out and you put in stream you are taking out of these other possible water courses? All these things you just mentioned?

VC Turnipseed stated they don't want to be permitting work that is over the top of a pipeline. There is absolutely no disturbance that can occur and he wants to specifically exempt irrigation ditches and canals and those kinds of water conveyances.

Commissioner Johnson apologized for being absent for a minute and asked, but do you wish to include ephemeral stream, it would be included under water course but not under stream, necessarily. I mean a dry was and that sort of thing.

VC Turnipseed stated I think that is what Marla wants to specifically exempt.

Commissioner Johnson asked so the stream would exempt that but water course would not?

VC Turnipseed stated I don't know.

Wendell McCurry explained there is something you call stream versus something you call water course. They both carry water -

Chairman Close stated Mike said that a buried pipe would be a water course, according to his definition -

VC Turnipseed stated and a canal and a ditch.

Commissioner Iverson stated someone here made the comment that they were going to put the word natural in there so that would throw in another - if it is not natural it is not a stream, river, or water course. And along with that, since we are pointing water course and that how much is the present. If you've got a stream, I mean streams in Nevada can go from the Reese River from a little piddly stream to a massive river coming down there. Is it any water?

Wendell McCurry answered the intention is if there is water present.

Commissioner Iverson: O.K.

Wendell McCurry stated and also the intention is if water is not present, if it is a dry wash, no permit.

Commissioner Iverson asked how about flowing water? If it is in the stream and it is just sitting there - I went to the Amargosa Valley, a stream one time and they were puddles, they weren't flowing but I would not consider that water in that stream - it is not going anywhere it is just stuck in there. Could we add when there is "flowing water present"

Commissioner Johnson stated "Natural flowing" -

Chairman Close stated I would think that a stream implies some movement to it and not just a puddle so that maybe takes care of -

Commissioner Iverson stated I think you are right -

Chairman Close stated a stream implies some movement and not just a puddle of water -

Commissioner Johnson stated to add to this, the presence or absence of water, not necessarily whether there will be a disturbance that will be environmentally disruptive - I can appreciate the part that small, dry washes you don't want to necessarily want to go into but when the Truckee River drys up I don't know if you mess around in the bed there that you ought to be able to do that without a permit. So I think there ought to be some discretion involved and somewhat within the high water mark I suppose assumes that there is a high water mark and that the normal is a flowing stream but there are occasions when normal flowing streams are not flowing and that disruption in the stream bed can have significant future impacts when there is water so I think you tried to eliminate the concerns of the small culvert and have eliminated an open loop-hole for other people to do things that wouldn't necessarily be appropriate.

VC Turnipseed stated he didn't necessarily agree, but those kinds of activities can be covered by other parts of this permitting system. The rolling stock permit, as I understand it, you require that it be clean of oil and grease and those kinds of things so it is dry at the moment and you are not going to have a problem with the rolling stock being in the river just because it is a rolling stock. Now there are some other things in the permitting process that they are going to have to do in order to do the kind of activity you are talking about.

Commissioner Johnson stated what we are talking about is destruction they are going to come to you perhaps, in the river system -

VC Turnipseed stated or State Lands if it is within their jurisdiction - but there are other requirements besides just the rolling stock permit. Am I correct?

Wendell McCurry answered yes. One major one is, that we have a good handle on, is the 401 Certification which the Corps of Engineers proposes a permit and they cannot issue that permit unless we say it is O.K. and we are looking at that and say "although the Truckee is dried up this is what needs to be done to protect"

Commissioner Johnson stated you still have to get a 401 permit -

Wendell McCurry stated right.

Commissioner Crawforth stated I have one question concerning again, water course, which I think we are all struggling with is it moving, how much is it moving, is that indeed the intent - you have movement in the water in most wetlands and are we going to be in conflict with various Corps provisions regarding wetlands, etc. and I think the purpose of this

is you may only have puddles left in an ephemeral stream for a short period of time at the end of the summer but those puddles are significant contributors to the viability of the life in that stream. They make the difference for a long time whether it is insect life or whatever. So I don't think we should over look, well it is just a couple of puddles left - what the heck. Are there other permitting processes that cover that and are we going to be doing something here in the area of wetlands that are in conflict with federal regulations?

Wendell McCurry answered in terms of anything involving wetlands if it is something that would require a 404 Permit again we would use that proposed 404 Permit for work in the wetlands and -

Commissioner Crawforth asked is a wetland a water course?

Wendell McCurry answered it is possible -

VC Turnipseed added it is definitely covered under a 404 Permit -

Commissioner Crawforth asked but is it a water course?

Wendell McCurry answered it is not necessarily a water course. I know of instances where there is no flowing stream, there is no defined water course what-so-ever, especially out in Washoe Valley there are quite a few places that are wetlands but by their definition of what constitutes a wetland.

Chairman Close stated I am curious about the letter Ms. McQueary sent to you relative to the tree that falls over a stream and they have to pull it out because it is flooding everybody - how is that problem handled? To me it seems to simple, just to hook on to it with a chain or whatever and yank it out of the way but before the county can do that would they have to get a permit?

Wendell McCurry answered I would think that if there was an instance like that, blocking the bridge or a culvert to just simply hook onto it and pull it out or if it is a rancher that has a culvert that is plugging up like that - very likely you would just hook onto it and pull it out.

Chairman Close asked, but if for some reason they have to get rolling stock in there to pull it out down below, we have decided upon a high water mark, is that something then that has to be permitted or can they just - it seems like common sense to go ahead and do it but is that something that would require a permit?

Wendell McCurry answered if they were going to be down in the water with any equipment but -

Chairman Close asked what happens in the meantime if this is causing a problem, causing flooding or whatever because the tree has fallen across the stream? You would have to move on it quickly, is that what you are telling me?

Wendell McCurry answered right, but if it is something like you described the first thing to do would be to go in and pull it out, although a permit is required, then go back and -

Chairman Close stated it is not an emergency safety valve or anything like that where they can go in and do it and then be charged with some penalty - that is a legitimate question.

Wendell McCurry stated but if something was plugging and fixing to cause flooding I would think you would just pull the log out of there or whatever but if it is going to be over a period of time and means working in the stream then you would be getting a permit and also we would process something like that real fast.

Chairman Close stated so what you are saying is, if a tree falls across a stream and is causing problems or potentially causes problems then your feeling is they could go in and pull it out but they could not stay and work in there for a

couple of days or whatever but they could pull out the tree, pull out the log.
Wendell McCurry stated right. There has to be some common sense applied -

Chairman Close stated make this as part of your testimony and maybe that would help alleviate some of their concerns. To me that just makes sense - you go ahead and pull the dang thing out.

Commissioner Crawforth stated following along that line, if I am operating an agricultural operation in Carson City and I know the area in Douglas County and I know you are familiar with these situations and I have a structure that is temporary and partially permanent in the main stem of the Carson River and because of water events that have occurred I need to get into the river and do some work there to get water to a crop and I can't wait 30 days to do that. What are my abilities under this regulation or are there other things that we can do to take care of that?

Wendell McCurry asked you mean like your diversion structure is fouled up? Then you would apply for a permit and show them what is proposed to be done and the urgency of it and get a permit probably within a day or two, it depends on how urgent it is.

Commissioner Crawforth stated you can then react to that.

Wendell McCurry stated they have reacted that fast.

Chairman Close asked if there were any other questions.

Commissioner Gifford stated I would like to come back to ordinary and normal again for a minute and maybe I need to direct a question to Allen but the reason that I keep harping on this - is there a standard set of instructions around so that any parties involved can go out and without any problem define where these marks are, etc. and the reason I keep harping on this is that many, if not most, of the streams in Nevada are so badly degraded that there is nothing normal about those streams anymore, at this point, and there is nothing ordinary - maybe- about them in the sense of what they were historically and so regardless of whether that is good legal jargon or not, is there a standard procedure regardless of stream condition to go out and so that if you had three interested parties, or two interested parties, and had a representative from each party they would each put the pin in the bank at the same spot?

Allen Biaggi stated I think the answer to that is no. That my evaluation of what the high water mark would be would probably be different than Mr. Turnipseed's and would be different than someone else. There is some hydrological and engineering guidance and ways to determine these marks but they are relative subjective and very difficult to define in any reproducible way. You are exactly right, stream courses change, the configurations of the bottoms change and where the ordinary high water mark may be at one end of the water shed is completely different than someone else down at the other end so it is a constantly changing and evolving mark. That is what I think Mr. Turnipseed has found is difficult about the terminology is what we found about the terminology but unfortunately it is about the best we have.

Commissioner Gifford asked what would be against the logic of just simply inserting the words "agreed upon" -

Allen Biaggi asked well who is agreeing? It may be myself and the rancher or myself and the someone from the Army Corps of Engineers and usually that is the way we issue our permits, we do it in a consensus based approach, we try to get all of the parties together and look at what the scope of the work is, how they are going to do it, when they are going to do it, and decide upon the mitigation measures that are necessary so these are not permits that are solely imposed by the division on to the individual, it is a consensus based approach and we try and work together to accomplish it.

Mr. Chairman, it is obvious that what we had thought was going to be a very simple and easy regulatory change in response to comments and concerns of this body and members in Elko County and Assemblyman Carpenter is becoming a very difficult task because of the language involved and the impacts, real or perceived, on agriculture and mining. What I would suggest is that we voluntarily pull this petition at this time and the Division would like to work with all

of the parties involved and bring this back to the Commission at a later date and we would ask that Elko County, the agricultural community, the mining community, Assemblyman Carpenter and others work with us to reach acceptable language that meets the satisfaction of everyone involved.

Chairman Close stated I think that would be a very good idea and just going along with what Fred said, as an attorney,"ordinary and normal" may be so vague and ambiguous that I would have a good defense against the Division if you ever tried to prosecute somebody who violated that standard because they would not know at what point they had violated the chapter so that is something to consider. I think that maybe some more work should be done on this.

Allen Biaggi stated as you know from your packet, that was a comment that was raised by Elko County and so we will take that comment and work with them on it.

Chairman Close asked so what does this do with Elko County and the problems they have had up there. Does this put them in a situation where they cannot do what they have to do?

Allen Biaggi answered not at all. I believe it just leaves status quo and Kristin is that -

Kristin McQueary stated for the record, I am Kristin McQueary from the Elko County DA's office representing Elko County. We are happy to work with NDEP and we think that other governments having the same issues, dirt removal next to rivers and streams, ought to be involved with this process as well. It is not just an Elko County issue it is a Nevada issue for the number of roads that are within the high water mark and as Mr. Turnipseed, Mr. Doppe and Mr. Coyner know from the hearing in Elko that the definition of "high water mark" is vastly different between perhaps the government and a state regulator but we are very happy to work with Mr. McCurry and he has been working diligently with us and other interests to try to get a working definition and we will be happy to continue doing that.

Chairman Close stated Petition 1999-04 has been withdrawn.

Commissioner Griswold pointed out to the Chairman that Assemblyman Carpenter was there and she wondered if he wished to make comments on this.

Chairman Close stated certainly.

Assemblyman Carpenter introduced himself as John Carpenter, Assembly District 33, representing Elko County, but thinks in reality all of, especially rural, Nevada and the farmers and ranchers in this state. I did ask for clarification and I think you can see that what we have is not clarification. I kind of look at this situation in the same light of what was happening years ago with the BLM and the Forest Service. The ranching community was complacent because they felt that things that are happening now would not happen and I believe the same situation is arising here. I don't think that the ranchers and farmers realize the seriousness of these regulations. We need to be able to conduct our ranching and farming operations in a manner that we have been. We don't want to degrade the waters of the State of Nevada and I don't think that we have. When we have maybe less than 3% of the people in this nation producing the food for all the 97% plus half of the world I don't think we got to that state by deteriorating our natural resources and I think that is what we are here for. I tried to make sense out of some of verbiage here and I really couldn't. If it means that every time that we want to clean a ditch or fix a structure and there is water there that we have to get a permit there is no way in the world that this agency can issue those permits. I don't care whether it is 30 days or 60 or a whole year. There is no way. Because when you are out there irrigating and all of the ranchers only have a certain time to do this, there is no way we can get those kinds of permits and I just think that it is a serious, serious situation that is going to take a lot of thought and a lot of consideration because these things can be carried to an extreme and I remember in the legislature we had a situation and I forget really what it was but anyway it was in regard to a fertilizer that EPA was wanting to control and they said "well no, we are absolutely not going to come to the - agricultural industry with this - don't be afraid" well lo and behold the next year they were down in Lovelock regulating those people. So we then had to go back to the legislature and clarify that and I think this is what is going to happen here. Allen and people here that understand

agriculture, well we may not have a problem but down the road if you start interpreting these regulations to the letter of the law agriculture is going to be in a world of hurt and we can't continue to operate so all I ask is that you appoint a sub-committee or whatever you do, so that these things can really be worked out with the help of the legislature. Some of these things may have to be put into statute, as I see it, because we have got to be able to irrigate as we have. Mike Turnipseed has all kinds of control structures on the stream of the Humboldt River and we have to keep those structure maintained. What happens if a friendly old beaver comes up there and plugs that structure up and the next morning you go up there and the water is running out the other side. Do we have to get a permit to put that water back through Mike's structure so that we are legal? There are a million things of concern that we have and we have to have common sense, I heard that word said here, maybe that is all we have to do is just say all regulations have to be common sense, forget the rest of it. I don't know if we can do that or not but it would sure simplify that. I do thank the Commission for tabling this action and maybe we can get back to something that we can all live with because it is a serious, serious problem, as I see it.

Chairman Close asked any questions? Thank you Assemblyman Carpenter.
I have several other people who want to speak. The petition has been withdrawn but if you want to make a quick comment you can. But Wendell will have more workshops and obtain public comment on this I am sure.

Rich Haddock introduced himself as the Senior Counsel U.S. Operations for Barrick Gold Corporation. I have a brief comment to make about the discussion that has gone on. First of all I want to say that I appreciate the opportunity that the Division - Mr. McCurry and Mr. Porta - has given us to address the problem. And as you can see from the discussion there are a lot of questions about ambiguity and what some of these things mean. I think though that this problem stems from a specific dispute, as I understand it, and sometimes specific disputes focus in on some facts and somebody has to back up and realize why we are doing these things. The comment that I would make is that in this context not only do we have to think of this in the context of "we have to get a permit" but we also have to look at it in the context of "we get to have a permit" and discharges to waters of the United States or Waters of the State are by statutory law prohibited without a permit so when the Bureau is trying to work with us to come up with a permit so that we can do these things, and it is not just the working in the water that requires a permit, it is the discharge from the rolling stock - if you lose an oil pan, if you have a leak - those kinds of things would be a violation of statutory law if we couldn't have a permit and so what I would say is that in this process I think we need to remember that, and try to come up with an approach that makes it so that there is not an onerous administrative burden that comes down on all of us by virtue of what we do and I think that we can work through this in a rational manner and come up with kind of a general permit that covers the activities that the agricultural community is concerned about, the mining companies are concerned about without an imposing a big burden on the regulated community or the regulators and I would just say that Barrick is certainly willing and would welcome the opportunity to work through this and I am pretty confident that we could come up with a pretty good common sense resolution although I admit defining common sense is probably harder than defining the high water mark. Thank you.

Chairman Close asked any questions?

Rey Flake introduced himself as representing the Lincoln County Commission. He thanked the Commission for withdrawing this petition at this time until it can be further clarified. We are very concerned in rural Nevada about keeping in business and keeping our people involved and keeping economic viability in our county and I think that this does need to be further clarified for that. I would also like to comment that we would like to be better notified in rural Nevada about the meetings of this Commission. As I read the notifications, they were in the Las Vegas Journal and in the Reno paper and although there are few people out in rural Nevada there is a lot of environment out there and we would like to be included in notifications of meetings of this Commission and items that are coming before the Commission.

Chairman Close asked him to give his name and address to the Executive Secretary he could put him on the mailing list. He asked if there were any other questions or if anyone else wished to testify.

VC Turnipseed stated Wendell, I don't think emergency is defined and maybe to get over some of these things that are unclear, removing a beaver dam or removing a tree from a stream, maybe it would be helpful to define emergency and it would read something like "if it was a threat to life or property or financial loss if not corrected within 48 hours or 72 hours" - some such thing and then the permit could be waived - Could you work on that?

Wendell McCurry stated yes.

Commissioner Iverson stated Assemblyman Carpenter brought up an idea or I guess a policy and I guess I need to ask the attorney or the chairman, I have only been on this Commission for 3 years, but whether is a process where rather than workshops we can form subcommittees to work with industry and with NDEP rather than just NDEP working with industry. I think the way this Commission is put together, where we have private sector individuals that are brought in here because of their knowledge where you could actually sit down with 3 members, working with NDEP, working with industry, and try to solve some of these problems. NDEP works with industry and they bring it back and the Commission has 100 questions because we are not part of the decision making policy until you see it here in a book and it is all written down. I think the legislature works a lot that way. If there is a major conflict in natural resources they immediately form a subcommittee to work with the people having the problem and they iron out that problem and I think that is something that maybe we want to consider. I know the workshops really, really good. Last night I was discussing this and a comment was made - "we went out and did workshops and we didn't get anybody in" -Well you know I used to go out to wilderness workshops with Mike Del Grosso, we would drive clear across the state and nobody would show up but Mike and I and I think that you have to look at the industries that we are working with. Mining probably has a little bit better opportunity to participate in these workshops but ranchers won't, unless they read the newspapers every day, unless they go to the public library and look at the agenda like Rey said - or unless someone calls them. They just don't have the communication and they don't know the workshops are going on. And the other thing is, it is really hard in the agricultural industry, unlike the public sector, to plan their day. If they are in the middle of their hay production time they are tied up and they are not going to come to a meeting and if they are in the middle of shipping they are not coming to a meeting. They have to make a living so I think these little sub-committees, if you can bring some people in, meet with your people and I think it is a real outreach for NDEP and the Commission to get some folks in here to solve some of these problems and then if you want to go out to workshops you've got sort of a consensus of the industry.

Commissioner Griswold commented in regards to Paul's comment - in recent years a ranch almost needs one person just to go to meetings. That sounds funny but it is true. There is hardly a week goes by that there isn't 2 or 3 or 4 meetings that you really should attend, but you can't. So Paul is right. I know that sometimes too many committees are hard to work with too but we need some sort of a way to get the message out. Lack of communication is a problem. Thank you.

Chairman Close stated I will ultimately ask Jean a question here but:

1) we have a limit on our budget and if we start having committees flying here and flying there and doing all these things we will be wiped out pretty soon and we will have one meeting a year and 50 subcommittee meetings.
2) I have always looked upon ourselves more as a final arbitrator of the issues, maybe somewhat different than the legislature is and sitting almost in a semi-judicial capacity and if we were involved in making the recommendations to us that would somewhat concern me because then we would not have, I wouldn't say an open mind but we would already have some involvement in the process. We do obviously have panels go out on appeals and things like that but I am not sure that our time would be well spent sending panels out to do the work of the staff who are supposed to be reporting things back to us. Maybe we could do it. Jean, do we have the authority to send people out to participate in the meetings with staff?

DAG Mischel answered it depends on the type of issue that is before you. You could not do that in a contested matter because as you stated you would then become part of the investigative process. In the rule-making process the changes to NAC 233B were meant to address some of the issues that Mr. Iverson raised in the form of workshops. The complaint was generally that private industry was not involved until the language was drafted and then it comes before you. But you do, even in a regulatory framework, sit as decision makers and the process has worked well in the past where you use the Division staff to do a lot of initial fact-finding and then they present that here and what the Commission has

done, when they felt there was not sufficient information to make a decision, is to send the Division back for more specific information. The alternative is to set up subcommittees and those would also have to be noticed as public meetings so you end up having meetings before your meetings - at least some portion of your body - and I am not sure that would have the effect that Mr. Iverson is looking for because then you would have your Commission members sitting down with staff making a recommendation and you lose some of that objectivity that Mr. Close was talking about. But if there are some general matters that this Commission feels warrants further outreach you could do a rural tour or whatever you think is warranted but it would have to be on a rule-making issue and it would have to be on a case-by-case basis.

Commissioner Iverson stated a concern that I have on that, and I agree - I know there would be additional expenses and time - but I heard something coming out of Commissioner Doppe today that I am not so sure that us in the public sector should take time to reflect on because I get paid every two weeks - no matter what. If you don't do a good job and you don't meet your bottom line you don't get paid every two weeks and you don't get benefits and you don't get insurance and I think that sometimes we neglect to bring that element in. And there are 5 of us on this Commission who are public employees. I wouldn't ask those questions and I think those questions need to be asked and I am not so sure, in NDEP because of the nature of NDEP - we are regulatory, we are there for the public but if we really get into asking those questions - realistic real questions that need to be addressed. I guess that is my concern and I hear the same thing from my board. I have 2 or 3 board members who are in the private sector who continually pound on us about that because it is so easy for us to make decisions and not bring in the private sector and listen to what they have to say and to their concerns.

DAG Mischel stated I think the other option that I didn't mention - these workshops on regulations are public. And what some commissions do is to make a point of having at least one commissioner or public official at the workshops to basically assure themselves that they hear all of the public comments. I assist at a lot of different commissions and I am impressed with the amount of outreach that goes out on the part of the Division and that information is available to the Commission before they make their decisions. I think they do a good job of relaying the comments that are received, they even summarize them and sometimes graph them out for you but it is not enough there is always the opportunity for a Commissioner to attend a workshop as those are publicly noticed.

Commissioner Iverson stated I know the time is running out but I want to commend Allen - we just started something in the Division of Agriculture and I think it is really important and a way to do exactly what we are talking about here. We have formed two environmental committees, one is on environment in agriculture - we have 8 members on that committee that meet periodically and Allen and his staff come in and we talk about regulations, new federal policies and new federal laws because we know there is a huge communication problem out there. Doug Busselman is on the committee and people from the cattlemen, we have picked individual farmers and ranchers - you can't pick them all - but we have tried to get people who will go back and communicate about what Allen and his staff come in and talk about. We found this out when we went through the animal feeding operations thing - we were developing regulations and permitting policies and yet we didn't have any input from the agricultural sector. All of a sudden we had 40 dairies standing up and saying "wait a minute, we want input". We have done the same thing with our petroleum people, bringing in our petroleum people to meet with Allen and these folks. In this state there is a real communication problem, especially in the rural counties - they just don't hear about a lot of this stuff.

Chairman Close stated I would say that anybody here wants to have special notices of any of our meetings that we are ready and prepared to send out notices to everyone. We periodically trim that list I guess but we will be glad to send out notices to those that request them. It is impossible to meet the needs of everybody. I would say there are people in Elko who don't know about these meetings and I can assure you that there are more people in Las Vegas who don't know about them and who probably don't care about them because it does not significantly affect them. It is up to staff to hold the workshops and make sure people are properly and adequately notified. We can consider what you suggested but on this one Wendell and staff are prepared to go back and re-visit this to try to work out the situation. The language is very difficult and it is not an easy thing to resolve. For the time being, at least on this issue, we will charge you to go back, meet and consider some of the concerns that have been expressed today.

Wendell McCurry stated our policy has always been to involve the various stakeholders or people who have an interest in developing or revising regulations. Consequently, sometimes we come back with proposals before you where consensus has been reached and sometimes we don't get that consensus. That is where the Commission members act as arbitrator and say O.K. adopt this and don't adopt that -

Chairman Close stated, and this is not the first time a matter has come before us and we have sent it back for further consideration, it happens all the time. Our goal is to take care of the people we regulate to the best of our ability to make life as easy for them as it can be and still be regulated.

Chairman Close moved to **Agenda Item X - E. Petition 1999-05,** temporary amendments to NAC 445A.228 to 445A.292. The amendments clarify wording, remove outdated language, conforms the water pollution regulations to statutes, addresses who must sign a discharge monitoring permit, clarifies establishment of effluent limits and compliance schedules and provides for minor water control discharge permit modifications. The amendments also provide for the transfer of permits to new owners. NAC 445A.105 and 445A.246 is proposed to be repealed.

Wendell McCurry stated this proposal contains 16 sections and really it is geared towards cleaning up getting rid of some antiquated wording, also clearing up some issues that may be ambiguous.
You have in your packet a one-page fact sheet that talks about the proposal and I will quickly go through this fact sheet and the proposal.

Section 1 amends 445A.228 to clarify confusing wording and specifies soil absorption systems with flows less than 5000 gallons per day are exempt because they are regulated by the health authorities so we are getting rid of any duplication and clarified that industrial discharger to a public system my be permitted by the state.

Section 2, NAC 445A.230 refers to the Refuse Act and Sections 306 and 208 of the Clean Water Act so we are proposing to take out references to those which are no longer needed, especially the Refuse Act since permits are not issued under that anymore, they are issued under the Clean Water Act.

Also in that proposal it states a permit application must be filed on forms provided by the department.
Section 3 amends NAC 445A.231 to require that discharge monitoring reports must be signed by the senior certified operator or the person directly responsible for operating the facility.

Section 4, 5, and 6 also have some relation to what we were just discussing under the other proposal but it is not dependent upon the other proposal, being enacted. It is clarifying this to comply with the statute where we have put in "except a temporary permit or a permit" in Section 4 and in Section 5.

Under Section 6 it says "pursuant to NAC 445A.234, and that is one of the sections we are revising under Section 4. The reason for this is there are two sections in the statute that exempt temporary permits from the public notice and notification requirements of those two sections in the statutes and the regulations that are adopted to implement those two sections. This is for the normal permitting process where we would have to public notice it for 30 days so temporary permits are not subject to those provisions and that is the reason we have stuck in "except temporary permit" in those sections.

Section 7 amends NAC 445A.241 to spell out the provision for continuation of an expired permit.

Chairman Close asked in Section 7 on line 15 "timely application" - is there a definition of timely somewhere?

Wendell McCurry answered 180 days prior to expiration.

Chairman Close stated it says "a person who holds an expired permit and who has submitted a timely application" - that kind of confused me. If you have an expired permit how can you have timely application for reissuance?

Wendell McCurry answered if they have applied within 180 days prior to expiration and -

Chairman Close stated so they have applied for their reissuance, you have not gotten around to it yet, the permit has expired but they can continue doing their business until you have finally worked on it?

Wendell McCurry answered yes. I believe there is also a provision under 233B that says if you have applied for a permit, whether it is ours or somebody else -

Allen Biaggi stated just for clarification, Allen Biaggi once again. The language that you are referring to about is there a time issue is actually contained in the permit itself and the language Wendell is referring to about the 180 days language of making application is before the permit expires and that is contained in the language of the permit so as long as the applicant has submitted the application in a timely fashion that application is active and valid until a new permit is received.

Wendell McCurry stated and that 180 days is also spelled out in line 11 - "must be filed at least 180 days prior to expiration of the permit".

Section 8 - NAC 445A.243 simply refers to establishing effluent limitations so the policy of the state is carried out and it also lists some parameters that are not appropriate for setting pound limits or mass limits on.
Section 9 - NAC 445A.244 adds new language - there is a provision that we have to put in a compliance schedule, interim dates and all, and what we had put in was Nine months and it was brought to our attention that the federal regulations now say One year instead of Nine months so under Section 9, page 9, line 1, line 3, line 4 and line 6 we are changing Nine months to One year to be consistent with the federal requirement.

Section 10 - NAC 445A.250 adds, in 3 places, "as a requirement of an NPDES permit" to show that EPA requirement only applies to the NPDES permit, not to the non-NPDES permits that we issue.

Section 11 - NAC 445A.253 simply refers to the UIC regulations and we just added in NAC 445A.810 to 445A.925 inclusive and that is the UIC regulations.

Section 12 - NAC 445A.260 is taking out reference to something in the statute that does not exist anymore.
NRS 445A.445 does not contain a section 9 through 12 anymore.

Section 13 - amends NAC 445A.261 to provide more specificity for grounds in modification, suspension, or revocation of a permit. So if something else is found out about the effluent which would warrant a change in limits it would be done through the standard public participation process to change the permit.

Section 14 - NAC 445A.263 - again provides for modification, revocation, or reissuance of a permit to transfer the permit, to make minor modifications and to declare what is subject to the reopening in a permit. Sometimes we will have an ownership change, say a mine changes ownership, and they want to continue that permit with the new owner and this provides how that can be done. In a lot of instances it is just simply changing the name on the permit and the new owners agree to comply with the conditions in the permit.

There has always been the issue of minor changes to a permit such as typos and change in the compliance schedule and different things like that. So we have put a section in there that would allow us to make these minor changes without having to go back through the 30 days public notice period and all of that. And then spelling out what is open in a permit action, when a permit is being modified the conditions subject to modification are reopened but if it is revoked and reissued then the entire permit is reopened and subject to revision. This question has come up different times when we were going to make certain modification and somebody wants to come in and open the whole permit process back up again rather than just the modification that we were talking about.

Section 15, NAC 445A.285, is clearing up something that is ridiculous, the way we have it worded and it has been in there for probably 25 years. Where we say treatment works, we want to change that to treatment facility because the definition for treatment works includes pipes and everything so it would be ridiculous to require a separation of 1,000 feet between a pipe and a residence because that pipe is not affecting the residence. What it is talking about is a treatment facility so in locating a sewer plant the engineer is supposed to be looking at least getting 1,000 feet away from occupied dwellings or other buildings and staying out of the 100-year flood plain or protecting from it.
Section 16 repeals two sections, NAC 445A.105, the Refuse Act, the application definition and that is no longer needed and NAC 445A.246 which gave an exemption to more stringent effluent limits for up to 10 years if the facility met the applicable standards of performance under Section 306 of the Clean Water Act when it was constructed. Section 306 of the Clean Water Act lists a whole lists of industries which EPA was directed to promulgate these new source performance standards for and it does not include sewer treatment plants, it includes mainly manufacturing plants, processing plants, power plants, essentially those but there is a whole list in the federal statute. Performance for new sources is supposed to be adopted by EPA.

That concludes my presentation. Section 9, where we changed the 12 months is the only proposed change different than what you have before you.

Chairman Close asked if there were any questions. He called for Preston Wright.

Preston Wright stated he had no questions or comments at this time.

Chairman Close called for Roberta Skelton.

Roberta Skelton introduced herself as an Elko County Commissioner. She stated our facility specialist, Mr. Lynn Forsberg put down some questions on a couple of areas but I think one area you have already addressed and that was your time-frame and this was under Section 9 - NAC 445A.243. The comment I will make is that even a year is somewhat burdensome to county and local government and other public/private industry, basically due to increase in manpower which does cost the taxpayers more money because we've got to employ an additional person to run around and make sure everything is in place.

Under NAC 445A.246 which is proposed to be deleted in its entirety. We do have some questions on that. As it now stands there is a 10 year period after date of completion or during the period of depreciation or amortization that a facility is not subject to any more stringent standards so long as the standards of performance are met. This repeal will make it impossible to receive a permit and meet the parameters needed. In short, the permit limits as well as plant and discharge parameters may become a moving target that we can never hit so we have some questions on that and we would like to have the Commissioners take that under advisement before you make a decision as to whether or not this would indeed evolve into a moving target for people that would have the permits.
Section 13 NAC 445A.261, 5-6-7 and 8: Number 5 is arbitrary determination substantial change to a facility. This is too open-ended by not spelling out a percentage of change, as an example 33% change to the overall operation of a facility.

Number 6 will allow the Department to require facilities to change any time new technologies replaces current. This is something that small systems or independent operations should not be forced to do. A permit to be issued for a sufficient time for a system to pay for improvements that meet with requirements of an issued permit.

Number 7 will allow the Department to change the regulations or standards a permit is based on and force the permittee to make changes to the operation of present facilities.

Number 8 states that permits should not be revoked upon transfer. For instance, if the town of Jackpot were to become a city, it is now in the county jurisdiction, all permits are in the name of Elko County for the town of Jackpot would not be transferable. I interpret this to mean that the city then be required to apply for a new permit and possibly change

existing facilities plan. This could force a new city to make some costly upgrades to acquire a new permit, even when the new facilities are meeting the design criteria for the existing permit. This could become more restrictive where a community system tries to become prioritized.

That is the end of my comment - I am no way considered an expert on this, I am just reporting this from the County Commission standpoint and I can appreciate those concerns.

Chairman Close asked Mr. McCurry if he's had time to think about them so he could respond.

Wendell McCurry answered yes. The first comment was about the compliance schedule under Section 9.

Chairman Close asked Mr. McCurry to give them the section and the page that he was referring to.

Wendell McCurry answered Section 9, page 9 - where the time period for compliance exceeds 9 months - those first 7 lines there on page 9, the one I was talking about where we proposed 9 months in there, the federal regulations say 1 year, so if we are issuing an NPDES permit that has a compliance schedule in it and that schedule is going over a year then there has to be interim reporting points in that to show what is being done towards meeting that compliance date. So that is the reason I was changing all of those from 9 months to 1 year in those four places. Any permit that we issue, if it had a compliance schedule in it would specify the reporting requirements and then with nothing exceeding 1 year. So I don't see that that has any additional impact on any discharger.

The next one is the very last page under the Section that we are going to repeal - NAC 445A.246. The way it is now, this would exempt more stringent standards for those industries that met the requirement of being a new source and subject to new source performance standards. It has no bearing what-so-ever on a sewer plant. And also in the federal regulations, that exemption did not even apply to industry if the permit was based upon water quality standard versus a technology-based standard and then when somebody is under that, when EPA publishes a new source performance standard they have to meet it immediately. So, on this one we are just cleaning up the regulation by getting rid of that particular paragraph.

Roberta Skelton asked by deleting this you said that did not apply to sewer plants?

Wendell McCurry answered it does not apply to sewer plants.

Roberta Skelton asked and what was the second one - did not apply to.

Wendell McCurry answered it was an industry covered under this and if their permit was based upon water quality standards instead of technology-based standards they would not have been exempted anyway, according to the federal regulations.

Roberta Skelton stated O.K.

Wendell McCurry stated the next one relates to NAC 445A.261 and referring to Sections 5,6,7 and 8. All of those sections from 4 on through 8 that we added in there is just to be a little more specific on what can be considered for grounds for modification, suspension, or revocation of a permit.

Chairman Close stated he was surprised on # 6 which allows you to modify a permit if you have received new information which was not available at the time of the permit issuance which would justify a different permit condition - I mean if it was not available at the time of the permit how can you expect the permittee to comply with something that was not available - the information was not available?

Wendell McCurry answered if the information was not available at that time or if there is something about the effluent

that was not known at that time then a couple of years later either us or the permittee discovered something about the discharge that would justify a different condition in a permit, then at the point we would go forward with modifying the permit and go through the 30-day public notice and comment period and all of that but it is something that could happen, if a couple of years after we had issued the permit we found out the discharge is toxic and kills fish really when it was started we didn't know that. Then if we did wind up with a situation like that, that required a time-frame for compliance, then a compliance schedule would be cranked into the new reissued permit.

Chairman Close asked how about # 7 which allows you to change the permit if we have changed the regulations. The permits that are now granted have to keep current with our regulations as we change them?

Wendell McCurry answered this says that we can change them. That is what I understand is in there but like with the water quality standards, we revise the water quality standards for a particular stream if that would result in a stricter limit from the treatment plant to meet those standards then we would be obligated to go back and revise the permit to address the new standards. And again, if that involves something - constructing new facilities or whatever that would be over a period of time we would have to put a compliance schedule in the permit to give them appropriate time to comply.

Chairman Close asked then everybody knows about it because that is in there permit?

Wendell McCurry answered yes.

Chairman Close stated his concern was, if no one knew about it and all of a sudden they were required to comply with the new regulation it would be somewhat unfair but they were advised of it going in then they would live with the terms of the permit.

Wendell McCurry stated one particular one, that I can think of, that was stuck in all permits was a provision if the new toxic standard was promulgated by EPA then that had to be put into the permit and that was standard boiler-plate language that was in the permits.

Chairman Close stated as long as they know going in that they always have to meet the new updated regulations I don't have a problem but if they are not aware of that in advance then I would be concerned if an existing plant or source had to modify every year if we changed the rules and regulations every year but if they know about it going in, then that is the way it is.

Wendell McCurry stated of course in reality that very seldom happens where the standards are changed such that we need to go back and issue the permit. A lot of times we try to go through the process of revising the standards in concert, or in a similar time-frame, with issuing the new permit so permits, like on the Truckee River, we went through the Commission, adopted the new up-graded standards for the Truckee then we went forward with revising the permit but everybody knew that was the next step and of course there was not objection at the hearing or in the permit process either one because we had gone through all the workshops that we were talking about a while ago - all of those activities so we had no problem.

Roberta Skelton stated I think the question came down to it was the cost to modify or change the permit to a new standard. I assume if you do a new standard or you do find more toxic materials than by some scientist or whatever, then that would go into a public process rather than just arbitrarily going in and changing the permit and saying "now you have to comply by this one now because we just found this out"?

Wendell McCurry confirmed that she was right. It would definitely have to go through the public process on any of these items in here that would trigger revising a permit, that permit would go through the normal public process, public comment and input from everybody.

VC Turnipseed asked also it would be a public process for your revised standard, is that right?

Wendell McCurry answered yes. That is definitely a public process so it is not something that I can do, sit at my desk and say "well, I am going to change this and here is your new permit". Some people might like it that simple but that won't happen.
Number 8 was the last one on there. "The department has received notification of a proposed transfer of the permit. A permit also may be revoked to reflect a transfer after the effective date of the transfer".
If we receive notice of a proposed transfer of a permit we could proceed with modifying the permit to transfer ownership or we could wind up revoking the permit and issuing a new permit to the new entity that owns the discharge and like the sample you referred to about Jackpot - if that did happen, where they became a city and they wanted to take over ownership of the permit it would be just a simple matter of us being notified according to the regulations and proceeding with the change in the ownership to Jackpot. There would be no problem with that.

Roberta Skelton stated not to carry it on farther but say that did occur and then I would assume that when you brought the permit up you would review it for compliance and probably at that time if something was not actually in compliance then at the time the new permit was issued you would have, say Jackpot, go ahead and comply with the new permit. Say Elko County has the permit and then they changed to the City of Jackpot and somewhere along the way for some strange reason something was apparently overlooked, or whatever, then you would come in at that time and require the City of Jackpot, the new town, to comply with the current regulations. I know that sounds -

Wendell McCurry answered yes, we would if that was the situation - say if Elko County for some reason had not complied with their permit and in our review of the permit we found we had to put in a compliance schedule for Jackpot now to do these certain things to comply, that would be done.

Roberta Skelton stated O.K.

Chairman Close asked if there were any questions.

Commissioner Griswold stated when you are ready for a motion Mr. Chairman, I would like to make the motion but after the vote I have one comment I would like to make about some material in one of the sections.

Chairman Close asked if anyone else wished to testify on this matter. If not, they were prepared for a motion.

Commissioner Griswold moved that the Commission accept Petition 1999-05 as amended.

VC Turnipseed seconded the motion.

The motion carried.

Chairman Close asked Commissioner Griswold if she wanted to make a comment.

Commissioner Griswold stated yes, I do. On the second page the material states that these confined animals in facilities are not exempt and in all of these there is not a reference for actual area per animal and I do know that other states do use this in their regulations and I know it something that is going to have to be worked on, calls made, and serious thought given to, and also I think we might need a definition of a feed lot because in Elko County we have animals confined to the fields in Elko County for 6 months at a time and some of those fields conceivably could be 400 - 500 acres and could have more, and maybe have had more, than 1,000 in them at one time. Am I right John? O.K. - So I do feel that we do need to think about this section and in the future maybe address it.

Allen Biaggi expressed his appreciation for Commissioner Griswold's comment and stated, as Mr. Iverson has indicated, we have a CAFO Committee that has been established between agricultural interests and DEP and that issue has come up. It was never our intent, nor I believe was it intended by the state legislature when they brought this statute up many, many years ago to address animals in a pasture during a winter when you bring them down and feed them hay. It is an

issue that we will continue to address and work on.

Commissioner Griswold stated also, we aren't a large dairy state but this is important as dairies get bigger.

Allen Biaggi stated that was correct and the actual numbers of dairy cows and the formula for hogs and chickens, etc. are contained already in statutes and regulations so that is fairly well defined but this issue that you bring up regarding pasture cattle for the winter and that sort of thing is a concern and something that we really did not have, I don't think anyone had, an intent of regulating. The feedlots and dairies were of greater concern but it is something that we will be working on in the future.

Commissioner Iverson stated that he appreciated Allen's ability and interest in working with the agricultural community. We did have a workshop in Fallon and had about 40 people attend, most of them dairy operators because the permit was being drafted and we have formed not only our own committee under the Division but also the dairymen have formed their own committee to work with Allen on this. This is an issue that is very, very, important - not only in Nevada but throughout the country. There is a lot of emphasis being put on this CAFO regulation from the federal government and there is a meeting in Denver in January of all the national associations and state departments of agriculture where they are addressing this because it is an issue that the Federal EPA is really looking at and there are some real concerns. Right now, in the State of Nevada we were very fortunate because we only talk about surface water and that is where I understand the regulation falls but there are concerns whether the idea that all surface water becomes ground water so EPA should be involved in this. There are also concerns about space and also concerns that we are going to be lowering these numbers, there is already talk about lowering the number of cattle down to 350 cows which will impact a majority of our producers in the state and as John indicated, this is one that every state in the nation is zeroing in on right now and I am not so sure, you know we have just picked up on this - thanks to Allen, bringing this forward in our workshops but this is one that every single state in the West if focusing in on right now because if we drop this to 350 head of cattle, we start talking about surface water becoming ground water and all surface water eventually heads out - you know it creates a problem and we will keep our industry informed the best we can but again we appreciate the opportunity to work with Allen on this because there are some definitions and if we can keep it in the state it helps a lot, before the feds get involved with this issue - which they will.

Chairman Close moved to **Agenda Item XI. Status of Division of Environmental Protection's Programs and Policies**

Allen Biaggi introduced himself again and stated I will make this as brief as I can. I would like to update you on a few issues that we are working on and that we feel you should be aware of.

The Chemical Action Prevention regulations have been pulled off the agenda today. That was essentially going to be your afternoon work session, it would have probably taken 3 - 4 hours to get through that very lengthy process. The regulation was removed from the agenda due to extensive revisions by the Legislative Counsel Bureau. It is about 100 sections and when it came back from LCB about 40 sections of it would have required revision by this body and we felt that was not a fair thing to do to you or to the public at this time so we decided to pull it and we will bring it back to the February, 1999 meeting. The regulations essentially carry out mandates and exercises authorities provided by Senate Bill 266 passed in the 1997 legislative session and makes a couple of major revisions:

It adds provisions requiring facilities handling small quantities of highly hazardous substances to become subject to the CAPP requirements after two releases and that has occurred here in the Las Vegas Valley in an industrial facility;

It authorizes DEP to seek delegation from the Environmental Protection Agency's Risk Management Program and authorizes the SEC to adopt regulations to enable such delegation;

It adds titanium tetrachloride to the list of highly hazardous substances;

It consolidates reporting requirements where possible to eliminate duplication of federal and state reporting.

The regulation is extensive primarily due to the incorporation of the RMP language and the intent here is to make the regulation all-inclusive and more user friendly.

I am not going to get into that any further but just to warn you that there will be a need for an extensive prolonged

hearing in February to revisit this issue which I anticipate will take 3 - 4 hours.

A couple of other things that I would like to mention. Since we are here in Las Vegas to talk a little bit about Lake Mead issues which have been in the press lately. The first is that dealing with perchlorate and I think we addressed this to you a couple of meetings ago. It is a rocket fuel that is manufactured by 2 facilities here in the Las Vegas Valley - Kerr McGee and PepCon and I think we are all aware of what happened to the PepCon facility back in the mid-1980's and it of course is no longer here and has moved operationally to Utah. We have identified perchlorate in ground water and surface waters in the Las Vegas Valley. There is not a lot known about perchlorate right now. There is no maximum contaminable level that has been established by the Federal Government; the analytical techniques to detect perchlorate in the part per billion levels are only about 1½ - 2 years old so it is a fairly new problem nationwide, and there is no identified remediation technology -in other words, how do we get this material out of the water. There is nothing other than reverse osmosis that can do that at this time. What we have with the groundwater plume here in the valley is we have a good definition of it and we are working with Kerr McGee, American Pacific Manufacturing and EPA to identify ways to clean this up and ensure that it gets cleaned up in a timely fashion. I am happy to report that the first remediation system to pick up perchlorate will begin working probably this week or early next week and that material will be contained in an 11-acre holding pond on the BMI facility and once again because there is no remedial technologies we are just going to have to store this material in this 11-acre pond until a remedial technology does come into place that will allow us to treat it. We are also looking at other remediation options nearer to the Las Vegas Wash in order to reduce the contaminant levels that are on-going in the Las Vegas Wash, in Lake Mead, and in the Colorado River System in general. EPA is hoping to come out with a clean-up number - or a health-based standard -probably in January and it is not clear at this time whether that number will be higher or lower than the provisional standard in California which everybody has been pointing to which is 18 parts per billion so it will be a monumental event when that comes out next month.

On a similar note the BMI Facility in Las Vegas which has been under-going a three-phase investigative process since about 1993, the historical review of Phase 1 was completed; Phase 2 is winding up and Phase 3, which is the remediation, we are going into right now. There was a public meeting last week in Henderson fairly well attended and there was a lot of public concern expressed and we will be working with the public here in the Las Vegas Valley to further address the concerns from the BMI complex.

The other issue here in Southern Nevada is the Sunrise Landfill and that is a closed landfill up on the hill just north of town. We are working with the BLM, the county and a developer on addressing some of the environmental concerns with capping, with ground water impacts from that facility and methane gas generation and out-gassing. We are working with those entities to install down-gradient monitoring wells and we unfortunately had to issue findings and orders on that facility to get those wells installed. We were hoping we could do that in a cooperative fashion but that just wasn't the case and we are looking into the establishment of a consent agreement with those entities to continue the further environmental evaluations and remediation on the site.

Chairman Close asked on that point, is there sufficient monies in a kitty somewhere put in by the company to take care of all these problems?

Allen Biaggi answered there is no bonding requirement such as we have in the mining program for landfills within the State of Nevada so the answer to that is "no, there is no kitty available from the companies". The Division has a very modest amount of money, $500,000 which we can use when a responsible party can not or will not do the work.

We have not had to tap into that at this time - we do have financially viable entities that are responsible, it is getting them to do the work that has been the problem.

Chairman Close asked is there some need for us to get some kind of bonding requirement for these kind of landfills. We may want to go up and take a look at that thing because there is a lot of comment on it here in Las Vegas relative to a lot of concern about it. Is there any bonding requirement that we should be thinking of in the future for these facilities to make sure that they are going to be properly closed and maintained thereafter?

Allen Biaggi answered the Sunrise Landfill is sort of an anomalous situation. It is the largest landfill in the state and I

don't perceive that there is a need to address bonding requirements for other sites. I think that this one has a lot of political ramifications to it, there was probably not the best cap that could have been put on to it and there is some changes in ownership in companies and that sort of thing so I think that this is sort of an outlaw and not the way these things will normally go so we haven't perceived the need for bonding requirements for municipal landfills at this time.

Chairman Close asked what happens if a company goes broke? Who pays for all the work that is going to be required to keep that thing under control?

Allen Biaggi answered this is a unique situation in that it is owned by the federal government and leased, under a recreation and public purpose agreement to the county and was operated by formerly Silver State and now Republic so there is a number of entities in the chain and the federal government would be one of those entities and I don't anticipate them going out of business anytime in the near future.

Chairman Close stated they are our ultimate deep pocket - is that what you are telling me?

Allen Biaggi answered I believe so but I am also confident that Republic and the county are in the process as well and will contribute significantly to this. Most of our municipal landfills are on, or have been on, BLM lands. The ultimate fall-back is this would go to be a superfund site and again would fall back onto the federal government for clean up but that is a resort of last option, that is the last thing we want to have to invoke and we certainly don't need to do that at this point.

Commissioner Johnson stated you are all looking for public entities or the public ultimately Silver State is going to finagle their franchise fees around so that the public pays for this and I don't know that having a bond would improve this for municipal systems that are essentially a monopoly but it distresses me that the owners of the private company that 10 years down the road, when the franchise comes up for bidding again, that if they don't get it they would essentially have zeroed out on assets and can walk away from that liability but I certainly don't have any solution.

Allen Biaggi stated I hear your concerns. Luckily, Silver State was a large and viable company as is Republic and so I don't anticipate a financial concern there. Some of the experiences we have had recently too from the mining industry on having bonds and trying to call bonds due with some of the financial problems with the bonds we found that is not an easy solution either. It is not nearly as simple and clear-cut as it may seem and I am sure Mr. Coyner is finding that out as well.

Allen Biaggi brought up a couple of other quick issues - On the legislative front we are tracking the Bill Draft Requests (BDR's) - we have identified 71 bills which we are tracking. Many of those are merely related to personnel issues or insurance issues but there are a few that I would like to bring to your attention that we are going to track very closely:

Senator Titus is proposing a Desert Dumping Bill, and again these are BDR's so we don't know a lot of detail on them; She is also proposing some legislation governing regulations of air pollution;

We've got two bills coming out of Clark County regarding changes to water quality standards on the Las Vegas Wash and management of ground water in the Las Vegas Valley Ground Water Basin and I am sure Mr. Turnipseed will be tracking that one very closely as well;

Yesterday Jolaine mentioned a bill to exempt certain newer motor vehicles from requirements for compulsory inspections for engine emissions;

The only piece of legislation that the Division is seeking this year is changes to the list if chemicals regulated by the Chemical Accident Prevention Program to make the listing of chemicals consistent with federal requirements -that is the only one we are specifically sponsoring;

There is also a bill by the Humboldt Water Authority to clarify allowable beneficial uses for wildlife and environmental purposes;

Assemblyman Carpenter is proposing a bill to prohibit certain state administrative decisions regarding water from being based solely on information provided by a federal agency and I believe that is coming out of the concerns from the Jarbidge issue;

The Office of the Military is proposing 9 bills which came out of the Clark Commission which was a result of the explosion at the Sierra Chemical Facility in Sparks and this makes changes to the Chemical Accident Prevention Program and the State OSHA Program to regulate manufacturers of explosives, for obvious reasons and the deaths that occurred at that facility;
There is a bill for providing incentives for cleaning up contaminated areas which I think is a Brownfield Bill which there was a Brownfield Project just awarded this week to the City of Las Vegas for redevelopment activities down town;
The Public Lands Committee of the legislature has a BDR to express their disapproval of certain regional haze regulations proposed by the Environmental Protection Agency and the Division had input into those concerns; and
A proposed BDR to make various changes to provisions governing storage tanks.
So it is a full legislative plate and we are going to watching this carefully and see what transpires throughout the session.

On the budget front for the Division budgets were submitted on August 15 to the budget office and we are continuing to work out the details with the budget office and the Legislative Counsel Bureau in anticipation of submission of the budget to the legislature sometime in January.

The Division currently has 177 full-time employees, 19 of those employees are here in this building in the Las Vegas Office and we also have two IPA's which are federal employees that are assigned to the agency. Less than 1% of our funds are general fund - our only general fund money is $327,000 in our water pollution control programs and everything else is funded through fees or federal grants. We are not asking for any new positions nor any major new programs for the biennium so what that means for us is in the last 4 years we have received 1 new position within the agency so we are maintaining a "hold the line" type budget and not anticipating any significant increases in program activities for the next two years. We don't anticipate any significant cuts in programs, as I said, most of the cuts that are on-going right now and concerns are general fund related however, the hiring freeze is making it more difficult for us to hire positions that do become vacant through retirements and attrition and that sort of thing. It is not an impediment so far to us, we've gotten approval to hire, but it does delay us a bit.

The last program issue is we had a recent meeting with my EPA counterpart, Felicia Markus from San Francisco and all of the Bureau Chiefs and their counter-parts in Region IX. We have seen a significant decrease in the quality of the relationship between NDEP and EPA over the last two years and that is probably due to national policy activities. We are seeing EPA consistently trying to make inroads into our delegated programs to get their fingers into the mining industry and to get activities that we don't feel that Federal EPA belongs in so we try and hold these meetings once every year to try to come to resolution and express our concerns to Federal EPA. Overall, I think it was a pretty productive meeting. The major issues that came out were enforcement, primarily criminal enforcement - EPA is looking for criminal enforcement activities throughout the region and specifically in Nevada and we are concerned about that. EPA is wanting to do additional inspections in the State of Nevada which we are very concerned about and again we are very concerned about the sanctity of our delegated programs. And also we discussed just general communication issues. This is an on-going process and we are constantly on guard to be vigilant on the activities of EPA in the State of Nevada. It has been an issue in the past and will certainly continue to be an issue in the future.

My last issue is one that I have some mixed emotions about and that is the fact that one of our employees is leaving us and she has been an excellent and outstanding employee and so I also hate to lose employees, but at the same time I know she is retiring and will have a great time in her retirement. So, I would like to extend my thanks to LuElla for her dedication and for her time serving this Commission and for her time with the Division. She has been a pleasure to work with and I wish I could have 1,000 more like her so I wish you good luck and I think this is your last meeting and I wish you a Merry Christmas and a very happy retirement.

LuElla Rogers thanked Mr. Biaggi. She went on to say my dad always told his family that if we surrounded ourselves with excellence and integrity it would rub off. And indeed, all of you have rubbed off. I will miss you.

Thank you and may I cry now?

Chairman Close stated no, you may not because the meeting is not yet over.
He asked are there any other matters to come before the Commission or anyone in the audience who want to make a comment on any matter that we have?

Ray Bacon introduced himself as being with the Nevada Manufacturers Association. I don't know if you can do it or not, this is going to be one of those legal questions, but it would appear to be appropriate that the issue of air quality permits or air quality fees paid by motor vehicles is going to be one of those issues that you will have to address in the future somehow with regional haze and PM 2.5 coming in. I think it would be appropriate for this Commission to send a letter to the two natural resources committees and probably the two taxation committees as well as the leadership saying that you would like that authority - whether that takes place at this legislature or whether you can do it at this meeting or not but you will need that in the future, at some point in time, and it is appropriate to either do it today or agendize it to do it at the next meeting.

DAG Mischel stated this will have to be public noticed.

Chairman Close stated I have just been told we will have to agendize this for our next meeting which is not until February and the Legislature will be over in 120 days -

Commissioner Doppe stated we don't need to take action to have the Chairman write a letter, right? He can write a letter, we are not taking action we are just asking somebody else to take action.

DAG Mischel stated if it is the Commission's decision to have the Chairman write a letter it would have to be -

Chairman Close asked what if it is just my decision?

DAG Mischel answered if it is your decision you can do it.

Chairman Close asked if he could write it as a member of the Commission?

DAG Mischel answered you can sign it as the Chair, but if you want total discussion and deliberation about it then you have to agendize it.

Ray Bacon stated but by definition when it goes to the Legislature you are going to wind up with a full discussion. The only thing that this would do is to just open the issue as far as legislative process. As regional haze and these other things come in it is going to be needed at some point in the future because otherwise the burden that is going to take place on those few entities that are paying the permits are just going to go astronomical. I think you generally agree that is what the future holds if the Regional Haze Rule comes out like it was originally proposed.

Chairman Close stated I would presume that someone is going to bring it to the legislature's attention without our doing it. It is not going to be a surprise to them nor is it going to sneak up on them.
John, you aren't on that Committee by chance, are you? We already have somebody who is aware of it and so I don't perceive that our writing a letter is going to make any difference. I am sure they are going to take action to give us the appropriate authority.

Ray Bacon stated the only thing this does is it tends to reinforce the recognition across the board statewide because this would literally be delegating a new tax authority to the SEC and it would indicate that you guys are ready to sign up and would recognize the need to do that and also the importance of doing that and it is not a small issue and I am not sure whether it will get done this session, even if we push it, but I will almost guarantee you that within 7 - 10 years it will be an absolute mandatory thing that you are going to need to be able to do, or somebody else is going to be able

to do.

Chairman Close stated I feel relatively sure that this will be a matter of concern to the legislature, as it is a concern to you and I have no problem writing such a letter if that is appropriate but I am sure they will take the appropriate action to do whatever has to be done.

Chairman Close moved to **Agenda Item XII. General Commission or Public Comment**

Assemblyman Carpenter stated I hope that I am not out of line here, but yesterday evening I had a conversation with Commissioner Nannini, Chairman of the Elko County Commissioners. He was very, very, upset. I think he is probably one of the most moderate persons we have on that Commission, but things up there at Jarbidge have just went plumb to the devil and I have some photos here and I would like for you to look at them. What has happened up there is that the Nevada EPA gave Elko County and the Forest Service a permit to go in there and do what we thought would be to stabilize the channel. The Corps of Engineers would not give Elko County a permit but they gave the Forest Service a permit and the Forest Service Permit I guess was very far-reaching, that they could not only just stabilize that but they could do a lot of other things. You will see in those pictures that there is large plumes of sediment and mud went down the river; they did not have any way to stop that mud and that - they didn't have any reservoir or bales of straw or anything. I guess the point is that Elko County went up there without a permit and done some things that they felt was absolutely right but the Forest Service has went up there and kind of done total destruction up there. There is no way that the County is probably going to be able to put the road back in and the County feels that road belongs to them, there is probably going to be a lawsuit, EPA is probably going to be drawn into it for giving a permit to the Forest Service to really ruin a county road but I thing is, and I have not talked to Allen about this - and I apologize, because I really didn't have time, but I think the Forest Service needs to be ordered a cease and desist order the same as the county did because the destruction that is taking place up there, compared to what the county did and what the Forest Service did, there is no comparison and they are going to keep - I guess their permit goes until May. The county only wanted I think a month permit to stabilize 75 feet of that bank to prevent the water in the springtime from going over the bank and doing more damage but the Forest Service has went up there and done a lot of damage. I don't know where the Fish & Wildlife Service was at but you know when the County went up there they put the bull trout on the endangered species list based upon the work that the County had done and if they had a little indigestion over that they ought have a heart attack over what the Forest Service has done which you will see in those pictures. The people in Elko County are very upset about what happened up there. The County could not get the permit to do it, yet the Forest Service was given a permit and I don't know whether EPA had anybody up there looking - I don't think the Department of Wildlife had anybody up there - but what has happened up there is that those bull trout are supposed to spawn during October and November and if there were any eggs there in this area where this sediment went down according to the experts there are no eggs left there now and so I just think that this needs to be brought to the attention of this Commission and 3 members of the Commission were up there and heard Elko County's story and I think that the direction that was given maybe has not been followed and I hate to see the state get into a situation I guess where they are pitting the county against the feds and vice-versa and especially letting the feds get away with doing what they were not supposed to do. You can look at those pictures and make your own judgement and I don't know, maybe Allen has had somebody up there but if he hasn't they should go up there and I think the Forest Service ought to be shut down until we can straighten out this whole deal of what is going to happen up there.

Allen Biaggi stated that NDEP staff also had heard the problems that are associated with the Forest Service's work up there and last week I directed staff to go up there and hopefully we have someone there earlier this week or perhaps right now. So, we will take a look at those activities of the Forest Service and impacts that they are causing to the water quality. I do want to clarify one thing. I believe that we did follow the direction of the Commission to the letter in that the Division issued the permit to Elko County as expediently as possible and we did not condition our permit on any other requirements and that permit was given to Elko County in a timely fashion after the complete application was received.

VC Turnipseed stated Assemblyman Carpenter it looks like they have repaired the road, at least part way up the canyon. I don't think they ever planned, nor did Elko County ever plan, on going clear above the big rock slide is. Can you help me with that? Is that in fact what they have done - have they repaired -

Assemblyman Carpenter answered no. They didn't repair any of the road. I think maybe you have pictures of the slides that were taken by a gentleman in Jarbidge. What they actually are doing is - if you remember when you were up there and there was a spring that black pipe was sticking out of that used to supply water to that campground. Now you will see one picture in there where they have dumped a great big bunch of rocks on that spring - I don't know what they did with the water that was coming out - but that is what they are doing with the whole road. They are just dumping a great big bunch of rocks from that spring and down to where the campground is and then I guess maybe they are going to seed it or something. But their intention is, their real intention there and I think that somebody from your subcommittee that was up there - the real intention is if they can get that road closed then they've got another de facto wilderness there and that is their intention and I don't think there is any doubt about it. As far as being concerned about the bull trout they are no more concerned about the bull trout than the man in the moon, it is just a means to another agenda that they have. You know I think when you get up there and look at it you will see that where the County went in there and done something responsible that needed to be done, these guys are just going in there and apparently they had to dig clear down to soil and everything else in order for this plume to surface when they put the water in there after they put it in this plastic ditch and I don't know what that did to the fish - whether they could get through that plastic to spawn or what but you know it really irritates the people in Elko that the Forest Service can go in there and just do whatever they want to and really raise the devil and the County be slapped with a Cease and Desist and everything else. It is a bad, bad situation and Seminoe was up there the day the County was there, Ben Seminoe, I don't think he called Allen and said "boy we had a big bunch of pollutant going down the stream and we are going to stop the operation" - I don't think he done that but he sure as the devil called up and told EPA that they should shut Elko County down. I think you need to be aware of it and hopefully Allen can use the same force and effect on them as they did on the County.

VC Turnipseed stated the violation was that Elko County did not have a permit. Now they have received one but the Forest Service has also received one. As long as they have complied with the permit then that is kind of under your jurisdiction, right?

Allen Biaggi answered that is correct Mr. Turnipseed and that is what our inspector will be looking at is the Forest Service's compliance with their Nevada State Permit.

VC Turnipseed stated and as far as the 404 Permit that the Forest Service received that they refused to give to Elko County, that is a little tough for this Commission to arbitrate or even take care of. Right?

Allen Biaggi explained that is federal jurisdiction and the Army Corps of Engineers specifically reverted the application right back to Elko County, as I mentioned yesterday in my testimony, and refused to grant that permit to the County.

VC Turnipseed asked if that was out of the Reno office.

Allen Biaggi stated he didn't recall. He asked Mr. Carpenter if he recalled.

Assemblyman Carpenter stated no, I don't. You know the whole situation is, and I didn't see the letter, but George Boucher told me that the Corps of Engineers said that Elko County was not responsible and that they should not receive a permit yet they gave one to the Forest Service and where you can see in those pictures where all that pollution is going down there, there is no question that they did not abide by the terms of the permit that the EPA granted them. There is a video here that I will give Allen and if I read some of the things why before they could put any rocks and things in the stream those rocks were supposed to be cleaned, well they had this backhoe up there and the backhoe was reaching out there and getting a rock and a big bunch of dirt with it and putting it right in that plastic trough or whatever you want to call it, watercourse I guess, and the sediment was just washing off the rock and going on down. It is a bad situation up there and like I say, I hate to see the State get in between the County and the Feds but -

VC Turnipseed stated the work that Elko County did put the stream back in its original channel. The Forest Service has not taken it back out of that channel and put it back to where it was after the flood have they?
I am not a fisheries biologist but in my viewing of that the trout habitat where the stream originally was much better than the water running down the road. They have not taken it back out of the stream channel and put it back down the road have they?

Assemblyman Carpenter answered I don't think that they did that but I think in that channel where the water is running they went over there and took some, as I understand it, with some real heavy equipment and took a lot of rocks or whatever, got clear down into the soil and then when they took the water out of the flume there and put it back into the creek where the county had it and didn't have any measures down stream to catch any of the sediment, that is what happened.

Chairman Close stated I hate to admit this, but I don't really know what happened up there. I don't know if everybody else does or not - could you give me a quick rundown as to what happened here?

Allen Biaggi answered as I indicated yesterday in my testimony this really was precipitated by a 1995 flood event which closed this road which had a lot of camping opportunities along it and provided vehicular access into the wilderness area. The 1995 event destroyed much of that road and eliminated those recreational opportunities which are essential for the town of Jarbidge, for their financial well being. The Forest Service indicated that they would open the road up and Elko County had always intended that the road be opened and the Forest Service made implications that they would open it up. In July of this year the Forest Service did a turn-about and said "no, we are not going to open this road up - we are going to destroy the road and replace it with a trail" which would provide only equestrian, bicycle and hiker access into the wilderness area. At that point then Elko County felt that it was in their jurisdiction and their powers to send equipment out and attempt to re-channel the river or move the river over to it's previous channel and attempt to re-open the road. From our perspective, as I mentioned yesterday, it is a water quality issue only and we don't have a position on the ownership of the road, whether it is a county road or a federal road, nor do we have a position of the listing of the bull trout - I will leave that to Mr. Crawforth for his activity.
So our action was against Elko County for not obtaining a permit for doing that work within the watercourse of the Jarbidge River to repair the road and to move the water back into its original channel. That is what precipitated the 3 member panel hearing in Elko that occurred in September and outcome of that panel was yes, a violation of law did occur but probably Elko County was probably justified in doing that because of the position of the Forest Service and the panel modified the order on those three points that I mentioned, to direct the Division to issue a Rolling Stock Permit to Elko County upon receipt of a proper application which we did; to direct the Division not to exceed a penalty more than $1,000 and we have not provided any penalties at this point; and the other thing was -help me Mike.

VC Turnipseed stated you forgot the first one and that was that they file an application to get a permit; secondly that you issue the permit; and thirdly that the fined be capped at $1,000.

Allen Biaggi stated that was right. So the Division was placed in the unenviable position of having two competing applications. One of the applications we were requested to issue through this body and we did that. The other one was to the Forest Service - that was a complete application as well so we issued that. To do the work you needed two permits. You needed a 404 Permit from the Army Corps of Engineers and a State Permit. The Army Corps of Engineers told Elko County "we will not grant you a permit" and sent their application back to them and granted a permit to the Forest Service.

Commissioner Coyner asked Mr. Biaggi if the USFS plan of operations or whatever they submitted when you did their permit, did that include rebuilding the road or not or did the Elko one?

Allen Biaggi stated I don't recall either permit application because I did not write the permits but Elko County's permit, as I recall, was to armor the roadway and to prevent additional erosion and sedimentation as the winter water came up and ensure that it didn't fall back onto the roadway once again. The Forest Service permit, as I recall, was a bit more

extensive and did much more armoring and put in some plastic, I believe, to reduce erosion and sedimentation. So the Forest Service Permit Application I believe was more extensive than the Elko County one.

Assemblyman Carpenter stated and I guess this is where the big rub is. Elko County just wanted to stabilize 75 feet of that stream bank so it wouldn't go over into the road and then fight over these other issues later but the I don't know exactly what the Forest Service scope of work called for because I haven't seen it but I think the point is that in doing the work that they wanted to do there is no question that they polluted that stream bed and violated the EPA's permit.

Allen Biaggi stated well I am not sure that they violated the permit because we have not seen the work and the permit calls for Best Management Practices to be put into place so what our person is up there looking at is whether or not there was a violation of the permit, whether the proper controls were put in, in accordance with the permit, and now will tell us whether or not the Forest Service acted properly or not.

Assemblyman Carpenter stated I just wanted to bring it to your attention because you know it is going to become a bigger issue. It already is a big issue and I guess that any time we in Elko County feel that we should be treated - the Forest Service should be treated the same as we were and that is kind of basically it and as far as the road and that, whether you get drug into that deal or not I don't know but I kind of think that you might which I hate to see but I guess we'll let the chips fall where they may but it is a complicated procedure up there and feelings run high and that is about all I have to say.

Chairman Close asked where are we now then? Elko County has a permit but you have been denied by the Corps of Engineers to do anything so you are really forbidden to go up there. The Forest Service proceeds forward, they have a permit that was granted to them also at the same time, or nearly the same time, your permit was granted and they have a permit from the Corps of Engineers so they are up there doing the work and you perceive that work is going to destroy the drive-able road so are we in court with somebody at this point - Elko County is in court with somebody?

Assemblyman Carpenter answered not at the present time, but I think that they have every intention to go to court to protect that road. They feel that road belongs to them. I think where we are at with the EPA is the violation of that permit that was issued to them.

Chairman Close stated Allen said that is what he is in the process of doing. He is going to investigate that to make sure that everybody is on an even playing field and nobody is getting the advantage as far as EPA is concerned, one over the other. Where you have your hard spot is the Corps of Engineers and where our responsibility is, and Allen's, is to make sure that both you and the Forest Service have been treated equally and I am sure that Allen either has or he will do that.

VC Turnipseed stated that he wanted to put things into perspective. This rock slide that occurred in the flood of 1995, there are two of them, one of them is as big as this room and the other one is about 4 times as big as this room - wouldn't you say? Maybe not 4 times as high but in volume and they dammed up the river. Over the 2 - 3 year period the river has breached through that clog of rocks so the amount of silt put in there, either by Elko County or by the Forest Service, it appears in the picture would be just minuscule compared to the amount that came down there by the big Snow Slide. I guess from my perspective you could fight over who has title to the road, who did wrong, who did right, as far as the fish are concerned the important thing is that is gets stable and that the stream stay as clean as possible - no matter who does the work. As far as the environment is concerned it doesn't really matter, whether it is the Forest Service Caterpillar in the stream or an Elko County Caterpillar in the stream as long as they do their best to keep from destroying any more habitat.

DAG Mischel asked and they needed a permit?

VC Turnipseed answered and they needed a permit, right.

Commissioner Griswold stated and to prevent further possible erosion.

VC Turnipseed stated it was unfortunate that they were not able to continue after they got the permit, well I don't know if it was fortunate or unfortunate, but the opportunity is there for the river to jump out of its channel and run back down the road again.

Commissioner Griswold agreed.

VC Turnipseed stated and then it is running against a raw dirt bank instead of in sand and gravel where it belongs.

Chairman Close stated so there is nothing for us to do. You have brought it to our attention and surely the Department knows about it and they will do whatever they can to make sure that things are equal.

Assemblyman Carpenter stated I think that is right and I think that Allen will be up there and - but let me tell you the Forest Service is no lily-white angel in this deal and I think the Nevada Department of Wildlife has got an issue and they should be there - whatever.

Allen Biaggi closed by saying I think that you are exactly right. This will be litigated, it will be litigated probably with the Division as a litigant on one side or the other, I don't know if the Federal EPA is going to bring any action - if they do bring action under the Federal Clean Water Act it is a requirement that the state be brought in so I think that this is where this will ultimately end up and it will have to be decided by the courts.

Chairman Close asked if anyone else had comments. If not - LuElla, we have some comments for you also. How long have you worked as the secretary - 10 years?

L. Rogers answered 5½ years.

Chairman Close stated we want to express our appreciation to you for the work you have done. You have handled our accommodations superbly, our travel arrangements superbly, and like today there was one change on the minutes of a very lengthy meeting and that was taking out Mike as the Vice-chairman. The work you do on those minutes is superb and everybody can understand what they have said and it comes out clearly in a way so that we don't have to give you instructions to go back and change it so I know what a difficult thing that is and I want to express my appreciation to you and the appreciation of everybody else. You have been a superb person to work with and we are going to miss you and we have a certificate we would like to present to you and that comes from the entire Commission and we are going to miss having you here with us. We also have arranged for a small party - we have a cake somewhere around here that we are going to share with everyone who has stayed to the bitter end. And now you can cry.

L. Rogers thanked everyone.

Chairman Close thanked L. Rogers and told her they would all miss her.
He adjourned the meeting.

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STATE ENVIRONMENTAL COMMISSION
EXHIBIT LOG

Hearing Date: December 8 and 9, 1998

Location: Las Vegas, Nevada

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	2 page letter dated November 24, 1998	From Elko County District Attorney's Office, Kristin A. McQueary, Chief Civil Deputy	1999-04	Yes
2	2 page document	From Jim Parsons, DMV&PS 11/23/98 Response Clark County Board of County Commissioners Recommended Improvements to Strengthen the State's Motor Vehicle Inspcection and Maintenace Program	I/M Program	Yes
3	2 page letter dated November 19, 1998	From Stephen M. Schoen, Nevada Mining Association to Tom Porta, BWQP	1999-01	Yes
4	2 page letter dated November 25, 1998	From John K. Mudge, Director Environmental Affairs, Newmont Gold Company to Tom Porta, BWQP	1999-01	Yes
5	2 page document	Comments of Barrick Goldstrike Mines Inc. directed to Tom Porta, BWQP	1999-01	Yes
6	2 page letter dated November 19, 1998	From Jonathan A. Gorman, Senior Environmental Coordinator, Independence Mining Company, Inc. to Tom Porta, BWQP	1999-01	Yes
7	2 page letter dated December 4, 1998	From Gary W. Goodrich, Manager Environmental Services Independence Mining Co. Inc.	1999-04	Yes
8	2 page letter dated November 16, 1998	From Rick Haddock, Senior Counsel, U.S. Operations - Barrick Goldstrike Mines Inc.	1999-04	Yes
9	2 page letter dated December 4, 1998	From Jonathan A. Gorman, Chairman Elko County Water Planning Commission	1999-04	Yes

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10	2 page letter dated November 23, 1998	From John K. Mudge, Director Environmental Affairs Newmont Gold Company (31)	1999-03	Yes
11	2 page letter dated November 18, 1998	From N.F. Stiren, Plant Manager Nevada Cement Company (32)	1999-03	Yes
12	3 page letter dated November 23, 1998	From Nevada Mining Association, Martin Jones, Chairman (33)	1999-03	Yes
13	2 page letter dated November 19, 1998	From Stephen M. Schoen, Environmental Coordinator Placer Dome, U.S. Inc. (34)	1999-03	Yes
14	2 page letter dated November 30, 1998	From Frank J. Luchetti, Director Environmental Services Sierra Pacific Power Company	1999-03	Yes
15	1 page E-Mail dated November 30, 1998	From Michelle Nuttal Southern California Edison	1999-03	Yes
16	1 page letter dated December 1, 1998	From Jack N. Tedford, President Nevada Chapter The Associated General Contractors of America	1999-03	Yes
17	1 page letter dated December 1, 1998	From Dennis Schwehr Director, Environmental Health & Safety Services Nevada Power Company	1999-03	Yes
18	1 page letter dated December 3, 1998	From Martin Jones, Chairman Nevada Mining Association	1999-03	Yes
19	1 page letter dated November 18, 1998	From Don W. Tibbals, Gopher Construction (26)	1999-03	Yes
20	1 page letter dated November 24, 1998	To Permit Holder from Jolaine Johnson, P.E., Chief Bureau of Air Quality (Signed by Gay McCleary)	1999-03	Yes

STATE ENVIRONMENTAL COMMISSION
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21	35 Page Packet	NCOA - Car Owner's Association	I/M	Yes
22	7 Page Policy Statement	NDEP - Bureau of Air Quality Penalty Policy Guidance Document	Ratifi-cations	Yes
23	1 Page Newspaper Article	Las Vegas Sun - 12/12/98 Article "Lake Tahoe Water Supplier Files Suit Against Oil Companies"	MTBE	Yes
24	3 articles on MTBE	1.Statement of Nancy J. Balter 2.Nancy J. Balter Curriculum Vitae 3."Causality Assessment of the Acute Health Complaints Reported in Association with Oxygenated Fuels"	MTBE	Yes
25	12 page presentation	"MTBE & Other Oxygenates in Water: An Overview" Andrew Stocking Malcom Pirnie	MTBE	Yes
26	1 page document	From Jack Greco - Proposed Amendment/DMV Regulation		