

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF December 16, 1999

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES REGULATORY

APPEAL

FIELD TRIP

ENFORCEMENT

VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES AGENDA

YES PUBLIC NOTICE

YES MINUTES OF THE HEARING

YES LISTING OF EXHIBITS

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
December 16, 1999

The Nevada State Environmental Commission will conduct a public hearing commencing at **9:30 a.m. on Thursday, December 16, 1999**, at the Clark County Commission Chambers, located at 500 South Grand Central Parkway, (Clark County Complex) **Las Vegas**, Nevada.

This agenda has been posted at the Clark County Library and Grant Sawyer State Office Building, and the Clark County Commission Chambers in Las Vegas and the Washoe County Library in Reno; the Department of Museums, Library and Arts, and the Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on November 16, November 17, November 24 and December 2, 1999 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

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

- I. Introduction of newly appointed Commissioner Demar Dahl**
- II. Approval of minutes from the September 9, 1999 meeting. * ACTION**
- III. Regulatory Petitions * ACTION**

Note: Petition 1999-08 Laboratory Certification (LCB R-070-99) was publicly noticed for this hearing, however it has been temporarily withdrawn by the Division of Environmental Protection for purposes of adoption at this hearing.

A. Petition 2000-01 (LCB R-170-99) is a permanent regulation amending NAC 444.842 to 444.960, the hazardous waste regulations. NAC 444.8427, 444.84275, 444.850 and 444.9452 are amended to reference federal regulations as they existed on July 1, 1999. NAC 444.8632 is amended to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A & B, Parts 260 to 270 and Part 279 as those parts existed on July 6, 1999. The references to the federal regulations provides for the use of enforceable documents in lieu of post-closure permits, allows releases from certain regulated units to be addressed through the corrective action program and creation of a special permit called a Remedial Action Plan for remediation wastes. The hazardous waste fee requirements in NAC 444.8452 are clarified.

B. Petition 2000-02 (LCB R-173-99) is a permanent regulation amending NAC 444.570 to 444.7499, the solid waste and recycling regulations. The amendment establishes standards for the design, operation, closure and financial assurance of solid waste materials recovery facilities. NAC 444.670 is amended to reduce buffer zones for adjoining property and public roads for composting facilities. The standard for allowable pathogenic organisms in compost is amended from zero to a measurable quantity. The regulations are proposed to address issues related to the waste segregation process and the storage of waste residue and recovered materials. The proposed standards do not apply to facilities which only accept recyclable materials that have been separated at the source.

C. Petition 2000-03 (LCB R-206-99) is a permanent regulation amending NAC 445A.232 "fees" and NAC 445A.263 in the water pollution control program. This petition affects fees other than those fees previously amended by Petition 1999-02 (LCB R-018-99) which amended mining water pollution control discharge fees. This proposed regulation increases the fees for municipal wastewater dischargers, reuse, industrial dischargers, water treatment plants, confined animal feed operations, fish hatcheries, biosolids reuse, septage reuse, and temporary permits.

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IV. Settlement Agreements on Air Quality Violations * ACTION

A. Granite Construction Company; Notice of Alleged Violations # 1386

V. Complaint of Gregory Bennett regarding investigation of a mining spill * ACTION

VI. Status of Small Source Air Pollution Control Fees

VII. Presentation Regarding the Protection of Visibility in Southern Nevada

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

IX. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (775) 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>. In addition the State Environmental Commission maintains an Internet site at <http://www.state.nv.us/ndep/admin/envir01.htm>.

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 (775) 687-4670, extension 3117, no later than 5:00 p.m. **December 10, 1999.**

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NEVADA STATE ENVIRONMENTAL COMMISSION NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **9:30 a.m. on Thursday, December 16, 1999**, at the Clark County Commission Chambers, located at 500 South Grand Central Parkway (Clark County Complex), **Las Vegas**, Nevada.

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

1. Petition 1999-08 (R-070-99) is a permanent regulation amending NAC 445A.055 through 445A.067, the laboratory certification program. The existing regulations are proposed to be repealed and supplanted with the standards of the National Environmental Laboratory Accreditation Program. The amended regulations provide for definitions, scope of accreditation, categories of certification, laboratory certification criteria, certification requirements, and proficiency testing requirements. The regulation adopts by reference many of the provisions that have been listed. Fees in NAC 445A.066 are retained but are amended to reduce the fee for toxicity bioassays from \$ 400 to \$ 125. All other provisions from NAC 445A.055 to 445A.067 are proposed to be repealed. This regulation was previously publicly noticed for the September 9, 1999 hearing which was published on August 10, August 18 and August 26, 1999.

2. Petition 2000-01 (LCB R-170-99) is a permanent regulation amending NAC 444.842 to 444.960, the hazardous waste regulations. NAC 444.8427, 444.84275, 444.850 and 444.9452 are amended to reference federal regulations as they existed on July 1, 1999. NAC 444.8632 is amended to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A & B, Parts 260 to 270 and Part 279 as those parts existed on July 6, 1999. The references to the federal regulations provides for the use of enforceable documents in lieu of post-closure permits, allows releases from certain regulated units to be addressed through the corrective action program and creation of a special permit called a Remedial Action Plan for remediation wastes. The hazardous waste fee requirements in NAC 444.8452 are clarified.

The proposed permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The proposed regulation should make it easier for affected businesses to comply by simplifying the requirements regarding hazardous waste. 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.

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3. Petition 2000-02 (LCB R-173-99) is a permanent regulation amending NAC 444.570 to 444.7499, the solid waste and recycling regulations. The amendment establishes standards for the design, operation, closure and financial assurance of solid waste materials recovery facilities. NAC 444.670 is amended to reduce buffer zones for adjoining property and public roads for composting facilities. The standard for allowable pathogenic organisms in compost is amended from zero to a measurable quantity. The regulations are proposed to address issues related to the waste segregation process and the storage of waste residue and recovered materials. The proposed standards do not apply to facilities which only accept recyclable materials that have been separated at the source.

In regards to the material recovery facility regulations most regulated businesses would incur some short and long term costs in meeting the standards. The compost regulation is not expected to have any short or long term impact upon the regulated community. 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.

4. Petition 2000-03 is a permanent regulation amending NAC 445A.232 "fees" in the water pollution control program. This petition affects fees other than those fees previously amended by Petition 1999-02 (LCB R-018-99) which amended mining water pollution control discharge fees. This proposed regulation increases the fees for municipal wastewater dischargers, reuse, industrial dischargers, water treatment plants, confined animal feed operations, fish hatcheries, biosolids reuse, septage reuse, and temporary permits.

The proposed permanent regulation is anticipated to have significant short or long term economic impact on Nevada businesses and communities requiring water pollution control permits. Water pollution control permit fees are based upon the wastewater discharge flows. The adoption of this regulation will have a direct short and long term minor adverse economic impact upon the public. The proposed regulations could impact the customer rates of wastewater processing facilities. 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 increases existing fees. The \$ 700,000 in fees raised by the proposed regulation will be used to pay for the budgeted operations and staffing of the permitting, inspection and enforcement activities of the State's water pollution control program.

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

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

Persons wishing to comment upon the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least five 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>. In addition, the State Environmental Commission maintains an Internet site at <http://www.state.nv.us/ndep/admin/envir01.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on **December 9, 1999**.

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

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STATE ENVIRONMENTAL COMMISSION
Meeting of December 16, 1999
Clark County Commission Chambers
Las Vegas, Nevada
Adopted Minutes

MEMBERS PRESENT:

Melvin Close, Chairman
Mike Turnipseed, Vice Chairman
Alan Coyner
Demar Dahl
Mark Doppe
Fred Gifford
Joseph L. Johnson
Roy Trenoweth

MEMBERS ABSENT:

Paul Iverson
Robert Jones
Terry Crawford

Staff Present:

Deputy Attorney General Jean Mischel - Deputy Attorney General
David Cowperthwaite - Executive Secretary
Karen Fleming - Recording Secretary

Chairman Close called the meeting to order and verified the meeting had been properly noticed in compliance with the Nevada Open Meeting Law. He then introduced Demar Dahl as a new Commission member.

Agenda Item I. Approval of minutes from the September 9, 1999 meeting.

Commissioner Turnipseed moved for acceptance of the minutes as presented.

Commissioner Johnson seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item III. Regulatory Petitions**

(Petition 2000-01 (LCB R-170-99) is a permanent regulation amending NAC 444.842 to 444.960, the hazardous waste regulations. NAC 444.8427, 444.84275, 444.850 and 444.9452 are amended to reference federal regulations as they existed on July 1, 1999. NAC 444.8632 is amended to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A & B, Parts 260 to 270 and Part 279 as those parts existed on July 6, 1999. The references to the federal regulations provides for the use of enforceable documents in lieu of post-closure permits, allows releases from certain regulated units to be addressed through the corrective action program and creation of a special permit called a Remedial Action Plan for remediation wastes. The hazardous waste fee requirements in NAC 444.8452 are clarified.)

Jim Trent with the Program Development branch of the Bureau of Waste Management presented Petition 2000-01. He stated the Bureau of Waste Management was proposing to update the adoption by reference of federal hazardous waste regulations. Two workshops to solicit public comment on the proposed regulations were held on September 21 and 22, 1999 in Las Vegas and Carson City. A total of eight people attended the workshops. Only a few questions were asked. For the first time the proposed regulations and minutes from the workshops were posted on the NDEP Web site and available for review and comment via the Internet. Nevada adopts federal hazardous waste regulations by reference and since changes are continually made at the federal level, it is necessary to periodically update our reference to federal regulations in the NAC so as to remain authorized to enforce these federal regulations in lieu of the U.S. EPA. This petition incorporates federal rules adopted from July 1, 1998 to July 6, 1999. He reviewed the proposed amendments first describing the sections related to adoption by reference, then describing the sections of the petition that are State-initiated changes not related to changes in the federal regulations. Sections 1, 2, 7 and 12 of the petition revising incorporation by reference date to July 6, 1999 for those

specific provisions of the NAC. Section 8 includes the general adoption by reference of federal hazardous waste regulations. By revising the reference date to the federal regulations from July 1, 1998 to July 6, 1999 we are proposing to adopt by reference 13 new federal regulations or rule changes that have been approved by the U.S. EPA during this period. Most of these rules are routine updates, corrections, and clarifications to the existing regulations. There are, however, three new significant rules.

The post-closure rule provides alternatives to post-closure permits which were previously required at facilities that closed with waste in place. It also allows NDEP to use a corrective action process to perform closure activities. The hazardous remediation waste management requirements, the second new rule, streamlined permitting for treatment, storage, and disposal of remediation waste managed to clean up sites. The new requirements make permits faster and easier to obtain, provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities and allows the use of Remedial Action Plans or RAPs as an alternative to traditional RCRA permits. This rule also finalizes streamline procedures for State authorization of certain rules. Both rules should give more flexibility to State regulators to address problem sites.

The third significant rule is the hazardous waste universal lamp rule which adds spent hazardous waste lamps, such as florescent tubes and high intensity discharge lamps to the list of universal waste. Handlers of universal waste are subject to less stringent standards for storing, transporting and collecting these wastes, provided the waste is recycled. The streamlined universal waste management requirements under 40 CFR Part 273 should lead to better management of spent lamps and will facilitate compliance with hazardous waste requirements. NDEP's normal adoption by reference deadline date of July 1 was extended to July 6, 1999 so that this rule could be adopted as soon as possible.

Mr. Trent moved on to Sections 3, 10 and 11 and explained these are State-initiated revisions to definition of hazardous waste and in these sections we are deleting the 10 percent mix provision from NAC 444.843, 8764, and 8841. This provision was previously deleted from NAC 444.850 in 1997. However, we neglected to also make this change to the definition of hazardous waste in the other sections of the NAC. This correction will make the State regulatory definitions of hazardous waste more consistent with each other and with the federal regulations.

Section 4 is another State-initiated change. It began as a minor revision to clarify that volume fees are applicable to all hazardous waste treated, stored, or disposed at a permitted unit, including hazardous waste generated on site, not just the waste received or brought into a TSD facility from off site as could have been construed from the existing language. Upon their review, LCB recommended a more extensive re-write to make this section more readable. Today's changes also incorporate these recommendations. Again, we are not changing the amount of fees due, just clarifying which activities trigger fees.

Lastly, sections 5, 6 and 9 are minor revisions recommended by LCB to replace the word "fund" with "account" in several of our regulations to make it consistent with the statute. So, if you have any questions regarding these changes, I'd be glad to try and answer them.

Chairman Close called for questions from the Commission and then opened it up to the period of public comment on Petition 2000-01. Since there were no further questions he closed the period of public comment and called for a motion.

Commissioner Doppe moved to adopt Petition 2000-01.

Commissioner Gifford seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item III.B. Petition 2000-02.**

(Petition 2000-02 (LCB R-173-99)) is a permanent regulation amending NAC 444.570 to 444.7499, the solid waste and recycling regulations. The amendment establishes standards for the design, operation, closure and financial assurance of solid waste materials recovery facilities. NAC 444.670 is amended to reduce buffer zones for adjoining property and public roads for composting facilities. The standard for allowable pathogenic organisms in compost is amended from zero to a measurable quantity. The regulations are proposed to address issues related to the waste segregation process and the storage of waste residue and recovered materials. The proposed standards do not apply to facilities which only accept recyclable materials that have been separated at the source.)

Les Gould, Supervisor of the Solid Waste branch of the Bureau of Waste Management, presented the petition. The proposed regulation applies to material recovery facilities only, commonly called MERFs. It does not apply to composting plants. The original notice of public hearing had mentioned changes to composting regulations. However, this is not being addressed at this meeting, since we have plans later next year to develop comprehensive regulations to govern composting facilities and mulching operations. We will address the other changes at that time also. He explained in general terms what is meant by the term materials recovery facility or MRF. Among MRFs there are clean MRFs and there are dirty MRFs. A clean MRF is also known as a recycling facility. It accepts only source separated recycling materials such as materials put out in a curbside recycling program. Since all the materials in a clean MRF are destined for markets rather than disposal, the facility owner has an obvious interest in the proper management and expeditious marketing of these materials. This petition does not apply to clean MRFs, rather it proposes to regulate dirty MRFs, those which accept a waste stream in which recyclable materials and other wastes are commingled and then sort out and recover the recyclable materials. Such an operation entails environmental and health hazards, as well as waste disposal issues which should be addressed by regulation.

Mr. Gould went on to describe where a MRF fits into the solid waste regulatory landscape. The types of solid waste facility can be arranged on a spectrum according to the risks they pose to the environment. On the high-risk end would be a landfill because it disposes of wastes which have to be contained indefinitely. A transfer station falls near the low-end risk of the spectrum because it does not dispose of or even store solid waste. While some incidental recycling may be done at a transfer station, its primary purpose is to achieve economies of scale by transferring waste from smaller to larger trucks for the long haul to the landfill. A dirty MRF falls somewhere between a landfill and a transfer station. All of the waste is eventually removed, but not until it has been sorted and processed. Also, a MRF may store waste for several days and is likely to store recovered materials for extended periods. The purpose of the present petition is to establish clear standards governing the acceptance, sorting, and storage of solid waste and materials recovered for the purpose of recycling. Most of Nevada's waste is generated here in Clark County and this is where the need for these regulations appears to be the greatest right now. Several facilities here take waste from construction site cleanups and recover materials like metals, cardboard, and dimension lumber. The residue must be removed to a disposal site. There have been no clear regulatory standards governing such facilities. Last year, following this Commission's adoption of solid waste transfer station regulations, some of the construction waste management facilities applied for approval to operate as transfer stations. The District Board of Health which is the solid waste management authority in Clark County determined however that these facilities do not fit well into the category of transfer station because their stated purpose is not to transfer waste, but to recover and market recyclable materials. The Health Board directed its staff to develop proposed regulatory standards appropriate for such facilities. The Clark County Health District staff discussed this issue with the Division and after further consultation with the Washoe County Health District, it was agreed that the Division would develop minimum standards to regulate these facilities. This approach has the advantage of maintaining regulatory consistency among the three solid waste management authorities while allowing the health districts to add more stringent requirements should they find it necessary. Also, the regulations would be broad enough to include facilities handling a variety of waste streams in any area of the State. So, they can be applied not just to construction waste management facilities, but to residential waste or commercial waste materials recovery facilities also.

In March of this year the Division held two workshops: one here in Clark County and one in Reno on the draft regulations for MRFs. This petition was drafted as a result of public comments and further discussion among the three solid waste management authorities. Since the revised draft contains significant changes and the Clark County workshop generated significant interest, we held an additional workshop in Las Vegas on December 6. At this workshop a few questions were raised which indicated the need for additional clarifying language in the petition. Exhibit 3 contains amendments to LCB File No. R173-99 which have been suggested by NDEP and are in response to the issues that were raised at our last workshop. These are basically clarifying changes in the language and will be presented during the discussion of the petition.

The general requirements of the proposed regulations include an approval process to be based upon an application containing plans for the design, operation, and final closure of the facility, standards of design, operation, final closure and record keeping and a financial assurance requirement to provide for the final removal of solid wastes and recovered materials from the site if the owner is unable or unwilling to pay. As part of the regulatory development process, in addition to the workshops, we reviewed available literature on MRFs, we surveyed several relevant regulations from other states, and we visited several facilities in the Las Vegas area which would be subject to the regulation if adopted. This last exercise helped us to get a feel for the actual facility layouts and operating practices. From these efforts we believe we have developed regulations which will be effective and reasonable and enforceable at regulating MRFs.

The petition starts with section 1, then section 2 contains a definition of a materials recovery facility and it distinguishes it from one which accepts only source-separated recyclable materials. Also, auto salvage yards and facilities which handle only broken concrete, asphalt, etc. are distinguished and exempted. We did receive several comments which expressed concern about how to distinguish between a transfer station and a materials recovery facility. We therefore proposed an amendment which is contained in Exhibit 3 to address this issue. The proposed amendment would be subsection 4 that's contained in Exhibit 3. It would add an exemption for "a facility that recovers less than 10 percent by weight of recyclable material from the solid waste received on an annual average. Such a facility shall be considered a transfer station." The idea here is that we believe that a transfer station may pull out some recyclable materials, the occasional refrigerator or large metals or wood pallets, but without a concerted effort they're rarely going to go over 10 percent and if they do start to go over 10 percent, then we, as a regulatory agency need to be concerned about issues of waste, storage, and processing.

Chairman Close asked how do you determine 10 percent? I mean how, there's not somebody out there separating the items as they come in obviously and you don't know what's going on, I mean how do you make that determination of 10 percent?

Mr. Gould answered we have a record keeping provision in the regulation also which would allow us to do that.

Chairman Close asked so the record is kept by the collection agency?

Mr. Gould answered it would be kept by the operator or the owner of the MRF and in the application they would need to propose what materials they would be recovering and how much.

Chairman Close asked so every dumpster, then for example, they make a determination as to what percent is contained within that particular unit?

Mr. Gould answered no, it wouldn't work that way. Since this would be done on an annual average, they would maintain records, daily records, which is contained in the later section here of basically three material flows. One is the total incoming waste, one is the materials recovered and shipped to markets, and another one is the material that goes to the landfill for disposal later.

Chairman Close stated so it's not each dump coming in; it's its annual recovery for the entire system.

Mr. Gould answered it would be annual recovery rate. He continued his presentation. The graphic on the screen up there, it shows on the left-hand side a transfer station which is really collecting less than 10 percent, recovering less than 10 percent of the recyclables. Then in the middle a materials recovery facility which would collect between 10 percent and up to 90 percent. Then on the right-hand side, a recycling facility and this is one which really is going to be handling only source-separated recyclable material so that virtually all of the material going through that facility is going to be a marketable recyclable material. Very little waste residue. And as I said earlier, we are not proposing to, these regulations are not proposing to apply to recycling facilities. We don't feel that there's a need for that.

Commissioner Gifford asked you mentioned that composting is not covered, but you used the word "soil amendment" in section 2. I was just wondering, is there any confusion by doing that?

Mr. Gould answered we are planning to develop regulations to govern composting facilities. We do envision the possibility of a facility which might contain, where both types of operations might be occurring, that is, you might be accepting materials separating some materials out of the waste stream and taking those to an adjacent site or a composting site right there. We put that in because we wanted to make it inclusive both to indicate clearly that those types of materials are recyclable materials and can be recovered. So, no I don't think that creates a problem for us.

Commissioner Gifford thanked Mr. Gould..

Mr. Gould continued. Section 3 is simply stating a requirement that an application be submitted and approved by the solid waste management authority for this type of facility. Section 4 establishes the requirements, or the information must be included in the application. Briefly, those are an identification of the location, the owner/operator and authorized agent, proof of ownership, a design report, an operating plan, a closure plan, proof of financial assurance, a list of recyclable materials to be recovered, a description of final use or available markets for the recovered materials, and other information required to evaluate the proposed operation. Now we have proposed a minor change in the wording here also in section 4. If you look at Exhibit 3, the proposed change is to subsection 1, item I to include the words "is required" and remove the words "considers necessary" so that item I would read, "Any other information that is required by the solid waste management authority to evaluate the proposed operations of the facility." That was suggested as clarifying language in the workshops which we felt was okay. And then subsection 2 going on in section 4 requires submittal of an application to make any significant modifications to a materials recovery facility.

Section 5 describes the information required in the report of the facility design. These include a site description, materials flow diagram, a statement of design capacity and environmental controls, they must be signed and stamped by a registered professional engineer, must have a general location map indicating land use and zoning, must have detailed plans and specifications to show compliance with design standards of section 7, and must be scaled, show existing and proposed contours, indicate access and traffic routes, include storm water controls to prevent contamination of ground and surface waters, show fencing, waste handling areas and other features of the facility, identify maximum processing rate and storage capacity for waste and recovered materials, maintain provisions to control dust and odors, and define the population and area to be served. That is the design report.

Section 6 describes the information which must be in the operating plan. It must include access controls, the number of employees on site, an equipment list, traffic control procedures, excluded waste with directions on where they can be taken, a program to detect and reject hazardous and PCB wastes, procedures to weigh or measure waste, frequency and method of waste transfer for disposal, location of waste and recovered materials for storage, a plan for disposal of all waste and recovered materials, operating hours, a contingency plan, and provisions to show compliance with the operating standards in section 8. That, again, is the requirements in the operating plan for the

facility.

Section 7 states the standards for design and construction and these are access controls like gates and fences, all-weather access road, weather fences, visual screening, and for putrescible waste areas, a covered enclosure with a durable surface having drainage controls. For non-putrescible waste areas, a durable surface without drainage controls.

Section 8 lists operating standards and there are a couple of suggested amendments in Exhibit 3 which I will address here in a moment. The operating standards, solid waste must be transferred to a permitted disposal site, or recovered for reuse or recycling. Putrescible waste, that is waste capable of rotting, must be removed within 72 hours. Under subsection 3 of section 8 there is a proposed language change. This one is necessary. It was pointed out in our workshops, everybody seemed to agree that this was a necessary and appropriate change, the words “outside of the covered storage areas” is to be removed from that subsection so that the sentence reads, “Nonputrescible solid waste may be stored at the materials recovery facility for not more than 1 week.” It establishes a maximum one week storage period for nonputrescible solid waste.

Subsection 4 contains two provisions: one is that a facility must market and remove at least 75 percent of the recovered materials inventoried during any 12 month period. And the other requirement is that no solid waste may be stored on site for more than 12 months. So, if the regulator observed that there was solid waste that was there 12 months before, that would have to be removed within a week. Again, we have a recommended change to subsection 4 and that is in the third sentence which begins, “Any recovered materials . . .” “Any recovered materials stored for more than 1 year shall be considered waste and must properly be disposed of at . . .” And these words to be added, “a disposal site that has been issued a permit by the solid waste management authority.” And then in brackets, “for removal at an authorized facility.” It was felt that the language there was not clear enough as to what was an authorized facility. So, we spelled it out.

Moving on to subsection 5 the operating standards. The provisions for maximum material pile sizes, pile separation distances and material storage set back from the property line.

Subsection 6 there’s a requirement to properly manage asbestos in accordance with the asbestos disposal regulations. And finally, there’s a requirement for daily inspection and litter control and compliance with local solid waste ordinances.

Move on to section 9 if there are no questions at this point.

Commissioner Johnson asked Subsection 4, and this is unclear in my mind, either you talk about recovered materials may not be stored at the facility for more than one year and it goes on to talk about recovered materials, but the waste product is not clearly defined as having to be removed in that period. Is there another section that deals with that?

Mr. Gould answered actually subsection 3 right before it states, “Nonputrescible waste may be stored for a maximum of 1 week.” And then before that putrescible waste is limited to 72 hours maximum storage limit.

Comm. Turnipseed asked back in section 6, subsection 3, one of the requirements is a list of equipment and machinery that will be required to operate the materials recovery facility. Are you looking for just a loader, a dump truck, etc? Or are you looking for a CAT 580 loader and if he sells that and buys a John Deere he’s going to be in violation or what?

Mr. Gould answered no, I don’t think that that’s the intent at all. What we want to do is see that their plan contains basically all the elements necessary to make the system work. So a loader for moving the stuff around in the yard, if

they intend to bail cardboard, for instance, we expect to see a bailer on site. If they are proposing to do some shredding or size reduction, we expect to see that kind of material or that kind of equipment.

Commissioner Dahl asked can you give us an example in subsection 5 of the material that might be being stored that would where you limit the height of the pile to 15 feet?

Mr. Gould answered okay. It could be waste, let's see let me make sure I've got this, we're in subsection 4 of section 5, is that right?

Commissioner Dahl answered yes.

Mr. Gould explained it could be waste or recovered materials. So it could be piles of cardboard, paper that's been recovered, metals, and it could be either in a bailed or unbailed form.

Commissioner Dahl stated and the distances between it, it seems like it might it make a big difference whether it was baseboard or iron, for instance. It just seems like that maybe the requirement might not be necessary for paper where for iron, of course, it could be.

Mr. Gould stated I guess that part of the reason for those separation distances is just so that the facility manages things in discreet piles and that the 15 feet height we consider important for visual screening purposes for one thing. And also, yes, if it's a lightweight material that could be removed by wind, then the height of the pile obviously could affect that too and make it harder to contain lightweight debris within the facility. Does that get at your question?

Commissioner Dahl asked did you get any comments on this from the public?

Mr. Gould asked on the size, or on the height of the pile?

Commissioner Dahl answered yeah, well, or just how it was stored and the distance between and so on.

Mr. Gould answered no, I don't believe that we did get comments on those points. I can go back and check that in a moment.

Commissioner Dahl stated I had heard some comments on that and that's why I was just wondering if they had been expressed.

Mr. Gould asked on the 15 feet?

Commissioner Dahl answered yeah, well, yeah.

Mr. Gould answered well if you have questions about these sizes, heights, setback distances, I can go into more detail about it. But we did discuss them at the workshops and it seems that there was general agreement that they were acceptable.

Commissioner Doppe asked do you have a list of those who attended the workshops?

Mr. Gould answered yes I do.

Commissioner Doppe stated I would be interested in looking at that.

Mr. Gould asked would you like that right now?

Commissioner Doppe answered please.

Mr. Gould handed out the list and then continued. Okay, I'll move on to section 9 if there's no other questions at this point about previous information. Section 9 requires that a daily record be kept including the amount of waste that is taken in, the amount of waste that is removed, and the amount of recovered materials removed, together with the names of the facilities to which the waste or the recovered materials were taken. And that also is an item which, where we would like to propose a change in language. This is section 9, subsection 1, Exhibit 3. At the workshop it was suggested that in order to have a complete record that we would have to need the record not only of how much material was removed as recovered material or as waste, but also what the destination of that material was to have a complete record of how the facility is managing its waste. We felt that that was an appropriate addition and so we would like to suggest adding a third sentence there, in the third sentence, "Any information which specifically relates to trade secrets is confidential whenever it is established to the satisfaction of the solid waste management authority, that such records are entitled to protection as a trade secret. Such information shall be disclosed to the solid waste management authority as necessary to verify compliance." And what this is referring to is (a) below there requires "A daily record of:" and if you go down to (2) "The quantity of solid waste transported to disposal sites." And here's new language ". . . and the name and location of facilities receiving the waste." And then in (3) below that we have the same additional language, that is, "The quantity of recovered materials removed from the facility and the name and location of facilities receiving the material."

Another recordkeeping requirement is that they keep a record of the rejection of any prohibited waste such as hazardous waste, of any emergencies or unusual events and of, and report in compliance with the recycling regulations, concerning the amount of recyclable materials that they have recovered. Any questions on that and the proposed changes in section 10, or section 9?

Section 10 requires, has closure standards, basically. And it requires the facility operator/owner to provide advanced notice of the closure date to the solid waste management authority and to complete final closure and cleanup within 30 days of the closing time. And closure basically means removing all wastes and all recovered materials from the site as well as old inoperable equipment, basically cleaning it up.

Section 11 deals with financial assurance and we would like to suggest some additional language in section 11, subsection 2. I'll read the whole section. This is concerning surety bonds which are used to guarantee financial assurance. "The surety bond must be issued by a corporation licensed to do business in this state and include an indemnity agreement that guarantees payment to a trust fund or to the solid waste management authority." And the new language proposed is "The trust fund must meet the requirements of NAC 444.6853 except the requirements for initial payment and subsequent annual payment specified in that section." Now the referenced NAC is our landfill regulations which have rather extensive financial assurance requirements. So, we felt that it was appropriate to reference those financial assurance requirements because they're already in the regulations.

Subsection 3 of section 11 also contains a wording change. We propose to replace the word "bond" with "financial assurance." That was an oversight. "Financial assurance" is a more general term and fits better into the, to convey the meaning. I'll read the whole sentence. "The owner or operator of the facility shall review annually the estimate of the cost to close the facility on which the financial assurance is based and submit the estimate to the solid waste management authority for its review and approval."

Section 12 contains some general prohibitions against pollution of air and water, impairment of the environment, and threatening the health and safety and causing a public nuisance. We felt that it was important to include some general provisions which indicate number one the intent of the regulations and also give the regulating agency the ability to act to help correct problems of public health or the environment that may be posed by the facility. And subsection 2 of section 12 contains the statement which we would like to propose some minor changes to and this language was actually proposed in the last workshop we had here in Las Vegas a couple of weeks ago. It should read, "The solid waste management authority may suspend or revoke its approval to operate a materials recovery facility if the owner or operator of the facility fails to comply with the provisions of sections 2 through 12 inclusive of this regulation." Now, we wanted to make clear that that ability to revoke or suspend applied to any concerns over the compliance status of the facility with regard to the whole regulation.

Chairman Close stated Paragraph 2 isn't numbered just for your information.

Mr. Gould stated you're right, it's not numbered. But it is numbered in the exhibit, isn't it?

Chairman Close explained it's numbered in the exhibit, but not in the . . .

Mr. Gould stated I would propose that the number 2 be added also to that paragraph to make that a separate subsection. We have a subsection above numbered 1 and we don't have a 2 so this would . . .

Chairman Close explained it's numbered in your handout, but just wasn't numbered in the document in our book and that was what was causing us some confusion.

Mr. Gould stated sections 13, 14, 15, and 16 are basically boiler plate language that is borrowed from a different section of the regulations which, dealing with things like severability and circumventing regulatory requirements. Unless there's specific questions on those sections, 13 through 16, I'll go on to 17. Section 17 establishes the effective compliance date for existing MRFs. They must comply with the application and operating requirements within six months and with the design requirements within two years. Now, we have a proposed change in the wording there. In subsection 1 it should read, "Submit an application to operate the facility in accordance with the provisions of section 4 of this regulation and comply with the provisions of section 5, 6, 8, 9, 10, 7 and 12 and subsections 2 and 3 of section 7 of this regulation not later than 180 days after the effective date of the regulation." The way that it was written before was to put a two year effective date on the requirements which required significant construction activities would possibly require some additional financing, design work, and construction activities and those are contained in the design requirements of section 7. There are, however, a couple of subsections in there, sections 2 and 3 which are not specifically related to the construction of the facility, such as compliance with local ordinances which should be complied with within a six month period.

In subsection 2 the statement should read, "Comply with the provisions of subsection 1..." and that is the new language "of section 7 of this regulation not later than 2 years after the effective date of the regulation." So, the addition of the words, "of subsection 1" limits it to that portion of section 7 concerning the construction design.

Chairman Close asked if there were any questions. He called upon Robert Groesbeck and Alan Gaddy.

Alan Gaddy, Vice President for Republic Silver State, stated one of the things I'm responsible for is the land filling operations at the Apex Regional Landfill. I'll leave my detailed comments to Mr. Groesbeck, our general counsel.

Robert Groesbeck, General Counsel with Republic Silver State Disposal, stated I'd like to preface my comments by saying that our company certainly encourages recycling and we support any reasonable effort to accomplish those goals. And I also want to applaud staff for their efforts in learning the recycling side of this business under the regulatory scheme that they're contemplating. The problem here, though, is the intent should be applauded. I think

the result here, however, though is much more problematic. What we're doing here basically, just to summarize, is as indicated earlier by Mr. Gould, we've got transfer station regulations that are on the books. I believe they were approved last April. What we're contemplating doing here, contrary to what Mr. Gould says, we're contemplating adopting recycling regulations. We can call it a MRF and we call it a dirty MRF, but the goal here is to recycle. Again, that's a laudable goal. I think we need to do that. I think the State's minimum standard of 25 percent is also something that should be encouraged. I am a little surprised to hear an arbitrary 10 percent threshold when in fact we've got percentages in the regulations now that look to that 25 percent goal. If we're going to adopt these regulations, or if the Board sees fit to do that this morning, I think we have to consider bumping up that 10 percent minimum. Again, if the intent is to regulate or to bring these operations under regulation, or regulatory control, that's great. But I don't think that's the goal. That is not the goal of this 10 percent threshold. It's interesting in looking around other jurisdictions or talking to other jurisdictions concerning this, particularly California, which I think most of you would agree, is probably the most progressive state in the nation when it comes to recycling. They don't even use a process like this. And in talking with them really you have two standards. You have a transfer station, again, we have regulations on the books that address that and you have recycling centers. MRFs, whether they're clean or dirty, are pushed over under the transfer station regulations. And there's a reason for that. There are health/safety issues, employee issues, health/safety and regulatory or environmental issues. The rationale goes, I believe, that if you're exposing your workforce to a higher percentage or level of solid waste, the risk obviously goes up as well, the exposure to those employees and I think that's why California has deemed it appropriate to lump them into either category. We would encourage this Board to do that or consider something along those lines.

Mr. Gaddy submitted a number of comments to staff concerning some of our concerns, one of which is this arbitrary 10 percent. We think that's far too low. If you are going to call these operators recyclers, let's hold them to some minimum standards that have teeth. We can make them accountable. They have no problem with recycling. I think the real issue here is construction and demolition waste in southern Nevada. That's the real issue. Whether that waste is being properly diverted from a solid waste stream into a recyclable arena. I submit that demonstration has not been met as of yet. Whether it can at some point remains to be determined. But we think it's a problem and we don't think we need this type of language as currently proposed to meet those goals and to insure that if, in fact, recycling is occurring it can be substantiated and documented.

Now, in looking at the notice, a couple of other issues that I wanted to address and I kind of jumped out of line. The notice provides that it's believed, or at least contemplated that the proposed regulations don't have any impact with other state's standards or local governmental agency standards. I submit to you that I don't think that analysis has been done here, with all due respect. And I'm not talking just about our company. We have contracts to service municipalities. In those contracts there are ordinances, there is as part of those, we're obligated by law to adhere to those. Other communities have similar if not identical language and in those ordinances solid waste stream is defined, specifically defined as to what a franchisee can or cannot haul. What you're doing here, and, again, I don't think it's the intent, but if adopted, I think the goal or the result is you're going to legitimize or you're going to provide an argument, I won't say legitimize, you're going to provide an argument to certain operators to go out to commercial facilities, put a box on site and say, "Hey, we're recyclers." Now it doesn't matter that 90 percent of that waste going into that given box is food waste, is cardboard, paper, whatever the case may be. What they're going to say is by virtue of these regulations, we're a recycler and as a recycler we have a right to do this. We have a right to process it through our dirty MRF. That's the problem and I think an exhaustive analysis needs to be conducted.

But at a minimum, language should be inserted in this proposed language which precludes that from happening, or prevents it. There should be some language in here that says any ordinances that conflict with this language control. The solid waste, or the local solid waste management authority language controls. There's some vague references to the solid waste management authority, but that's as far as it goes and I would request that you consider that. That's going to have potential ramifications that are huge, not only for our company, but statewide. And I know

that several workshops have occurred. I know Mr. Alan Gaddy has talked to his colleagues up north. They're a little disillusioned; they don't believe that they were in the process to the extent that they should be.

Be that as it may, I don't understand the urgency this morning in adopting these rules. They have potentially far reaching impact upon our industry as a whole. I would encourage you as a Board to send this back to staff and to work with the regulated industry, spend some more time on this, particularly look at some of the legal issues. I think by doing that, we can come up with a mechanism that works for everybody. These certainly don't accomplish that goal, in fact, I think we're opening a Pandora's box. And, again, I'll close. I'll turn it over to Mr. Gaddy if he has additional comments. But I encourage you to take a look at whether we even need dirty MRF regulations. I mean the goal is, and there was some comment initially at least, that they didn't think that some of these operators could get permitted as a transfer station. I don't think that that's accurate, with all due respect. They can operate as transfer stations if they follow the rules and regulations adopted not only by this Board, but by the solid waste management authority. They have a right to do that and nobody's disputing the fact that they have a right to engage in that business. They do and they have specific exemptions in each and every ordinance at least in southern Nevada to do so. So we encourage them to operate. But they should do it one of two ways: through a transfer station permit or through a true and legitimate recycling permit and I don't, with all due respect again, believe that we accomplish those goals here and I, again, would ask you to give some consideration to continuing this matter to a later date and if, in fact, it's your desire to vote on this item today, I would certainly request that you take a very close look at that 10 percent threshold that's in the proposed regulation and seriously consider moving that up to something much more substantial; something that has teeth.

Mr. Gaddy stated I did speak with representatives with Waste Management for Reno Disposal which handle Washoe County and they were unaware of that last-minute amendment that was made that defined what a transfer station was and that recommendation came from us that they should clarify at what point is a facility transfer station and at what facility is it a MRF? And based upon our recommendation they picked a 10 percent number. The folks up at Reno Disposal are unaware that that amendment had been made. They think that that also affects their business as well. Since this regulation doesn't require the material to be source separated, a facility could potentially operate tomorrow that would take regular putrescible and non-putrescible waste, take it to their facility and only have to recover 10 percent. The putrescible waste would have to be removed within 72 hours. The non-putrescible waste could sit there for a year. And, so, the source separation issue is a very big issue and the 10 percent goal for a facility to be considered a MRF is far too low. So, they wanted to share their concerns that they were unaware of that last-minute amendment that was made. I think we got it yesterday. So, they were concerned about that as well.

Chairman Close asked if there were any questions. There were none. He then called upon Mr. Hannen.

Larry Hannen, Nevada Construction Cleanup, Las Vegas stated I'd just let you know that in October 22nd of 1998 my company and another company applied for a transfer station license. We applied for a transfer station license through the District Board of Health and with staff's recommendation that we be issued a transfer station license. On the October 28th, 22nd meeting we were approved for a transfer station license. And on November we found out through the objections of Republic Silver State that the Board of Health was rejecting it now after they had voted on it, come one month later they rejected us. So, I mean, we've already been through this part and this is where this MRF whole idea came after this. Maybe we could go into a MRF-type thing. You know, if somebody else doesn't want us to do something else. Also, I think the minimum standards in the State of Nevada are 33 percent if I'm not mistaken, not 25 anymore. And that's just a minimum goal. The State of California has a mandate of 50 percent, mandate, you will do it. And I did work for a company at one time called Waste Management and they had stations called SWMRFs, Solid Waste Materials Recycling Facilities and they were also transfer stations, but they recycled what they could prior to transferring anything to a disposal site. So, gentlemen that's basically all I have to say. We've been through this once before and on objections of others we were turned down a month after being approved.

Chairman Close asked if there was anyone else who wished to testify in this matter.

Rod Dorensen, Evergreen Corporation, member of the Nevada Recyclers stated I think what's interesting is that the learned counsel from Republic will stand up here and he will tell you that we don't need these regulations because they fall under transfer station permits and yet the company he represents, and he, himself, at these Health District meetings where we applied for a transfer station was vehemently opposed to us gaining that status. So, if he would like to explain why he's changing his position now, I certainly would like to know. I would also like to commend staff for their work on this. A lot of effort went into this. You know, the charge is that we're not legitimate recyclers, that we're somehow conflicting with their interest. The regulations, as proposed, provide clear standards for determining whether we're recycling facilities, or transfer stations. We must submit records that we're actually recycling this material. Where we took it, where we sold it. You have the opportunity to regulate an unregulated industry. At that Clark County Health District meeting that Mr. Hannen mentioned over one year ago, I stood up and said that we welcome the regulation. Those of us that are legitimate in this business want to show that we're legitimate businessmen and that we would submit to the regulatory umbrella. And I distinctly remember at that meeting Commissioner Kinkead, Clark County Commissioner Kinkead, a knowledgeable lady, said, "Well, how do we, if they're not transfer stations, how do we govern these people's activities?" They need to be governed. We need to know what our recycling rates are. We need to know what the public health hazards may be. We need to give the local jurisdiction, the Health District staff, teeth in some regulations by which they can enforce the operations of our facilities. You have that opportunity to prove those regulations this morning that we've been going on nearly one year now. A lot of work has gone into it. Other than objections that it somehow conflicts with some private business interests, I don't know, I can't think of any compelling reason why these regulations should not be adopted.

Commissioner Doppe asked you operate a recycling center now, right?

Mr. Dorensen answered correct.

Commissioner Doppe asked and do you take on this definition that Les Gould had said before where 90, or is your stuff source-separated before it gets to you now?

Mr. Dorensen answered it's very difficult to source-separate stuff. We do what we can. We do have some customers that are pretty good, but what will happen is you'll have 95 percent recyclable material in a box. Somebody will throw something in that you've got to throw away and now it's commingled material. You've got to sort it.

Commissioner Doppe asked and you have a State license now to operate the recycling business?

Mr. Dorensen answered there is no State license.

Commissioner Doppe asked so, you're just on a county license?

Mr. Dorensen answered county license and, of course, the Health District watches our facilities. The Fire Department watches our facilities and if we move out of compliance with any regulations, we move back in, we work together very well with those people. I think they would like to see the regulations adopted. I don't want to speak for them, but I'm certain if they had written regulations and we knew what the rules of the game were and they knew what the rules of the game were, you know, there wouldn't be the kind of problems that have come up in the past. Certainly those that are not legitimate recyclers will be weeded out very quickly. Those that do not want to make the investment in their facility would be weeded out very quickly. Those that want to engage in illegal dumping on unzoned property would be quickly weeded out. So, to me this has some teeth. We welcome it. We welcome it because we're businessmen. We just want to know what the rules of the games are. So, we think

they're complete. We don't have a problem with the percentages and of course I speak for myself there, but I've reviewed them quite carefully and that's my opinion.

Commissioner Doppe asked in items like the height of the stack and the separation between the stacks don't cause you a particular concern?

Mr. Dorensen answered no, because the key to a recycling facility is maneuverability. You have equipment moving around. The key is to get the stuff out. That's the key. The problems that have occurred with other situations I'm sure you're probably aware of them both locally and there's probably others around the State, the problem is that there's no provisions made to get the stuff out after you've sorted it because that costs money and the people that don't have those resources don't want to spend that money. It's very clear in these regulations how long that stuff can stay there, how big the piles can be, and there's no question about it.

Commissioner Doppe stated with regard to the length of, it strikes me as though that once you have processed something through a recycling process, what you have out the back end has a designated beneficial use, it's no longer a waste product, it's now an asset of your company. The requirement to move that out the door one way or another within a one year period of time is something you can live with?

Mr. Dorensen answered yes.

Commissioner Doppe stated thanks, I appreciate it.

Commissioner Johnson stated a question of whether 10 percent or 25 percent as a minimum to define whether it's recycling or a transfer requirement. I can understand and I've been familiar with the tug-of-war between you and the disposal company for over 10 years on the definition of what is recyclable and what isn't.

Mr. Dorensen stated my opinion is that what we're attempting to do is regulate an industry. Try to meet some recycling goal, okay? These regulations are just step number one. I think to put too high a number on that recycling rate is a mistake because number one we don't really have the records now, which these regulations would require to determine what's a reasonable rate. We could arbitrarily say the rate is 50 percent. And is that a reasonable rate or not? If you start with a lower rate, once the records then become digested and analyzed and reviewed, there's nothing to prevent staff from coming back to the Commission at a later date and saying we want to up that percentage. But, if Nevada, which I understand is less than 15 percent recycling now, and we're trying to get to 33, it seems to me that one of the purposes and one of the responsibilities that we have here is to establish regulations which put us operating and contributing to that recycling rate and not raise the bar so high at the beginning that it's unreachable or it's unreasonable. And who's to determine? Mr., the learned counsel from Republic has his opinion, we have ours. I think after a year or so of compiling data, working with State staff, that percentage could certainly move upward and you'd have the right to vote on that.

Commissioner Johnson asked then it's your testimony that you favor the 10 percent threshold that's in the proposed language?

Mr. Dorensen answered at the present time we don't . . . yeah, absolutely.

Chairman Close asked if anyone else wished to testify.

Ms. Kumba, Developer's Maintenance and member of the Nevada Recycling Association stated she had been part of the chairman on the MRF workshop, which included working closely with Les Gould, and had been in constant contact with Glen Savage with the Health District. She stated as a member of the Nevada Recycling Association, right now we are participating and donating and cleaning up one of the yards right now that is a mulching or whatever, so I'm working very closely with Glen Savage. Bear with me please because I've also dealt with

Mr. Groesbeck on applications that we've done for our business licensing and all of the is to the effect, well we had made an application also to do the construction where Mr. Groesbeck said that because they considered us a transfer station.

My concerns are gentlemen is this: existing businesses have been approved and have been here in Las Vegas for many years. The franchise agreement has also been here many years. I'm a little bit confused at this point that we have allowed to do business and yet when we're trying to get regulated, we're trying to go ahead and do the investment where you don't have to do in for a variance. You go in for a variance for one or two years, you go back to the committee, the Commission will say, "Oh, sorry, you can't do it." Most of these companies right now want to do the investment. You want financial securities. We want to go ahead and do all of the improvements necessary, but you're talking thousands of dollars. In order to do that I feel sir that the MRF has to be passed and maintained independently. Mr. Groesbeck is referring to, of course, the franchise agreement. This is something that will come up. Now I am not a legal person so I don't know the total interpretation of it. Now, also the issue here is why are we recycling? What created this problem? I'm informed sir also that because of the dump fees you don't know what your dump fees are going to cost you until you're at the gate. If you have compacted stuff, it's going to cost you a 4 to 1 ratio. I think the inconsistencies of the dump fees, you don't know how much you're going to pay at the gate.

So, we're all trying to go ahead and see what we can do economically in order to be profitable. The builders today sir will not accept sort separating because they are moving those job sites too long. It just takes too much time consuming. They want a truck there. They want to pick up the debris and go. That means that what do we do with that? Now you're telling me that if you source-separate and only bring the recyclables, then you're considered a clean MRF. Will the builder allow it, the real estate people allow you to go ahead and do that? We don't know. We haven't met with the southern Nevada's association to find out if the builders would even allow us to do that. So, there's a lot of production. There's a lot of movement going on right now that we're also have to be competitive. Construction cleanup companies, their profit margin is not that high. This is a large investment to make it permanent. To have it stand on it's own and to be regulated and that as a business person you invest your money and you'll be able to make a profit out of it. Right now, a developer's maintenance right now is in a status right now where we're going to court because we were stopped in getting our application in and getting our licensing because of the franchise agreement. But yet existing businesses already have their licensing. But we now have to go to court because of the situation that came at hand.

Now, as far as with the threshold on the 10 percents and everything else, and also the separation of the recyclable material, normally what we do is the recyclable materials are also removed and put in the container. So, when we're doing our recyclable resorting we try diligently to go ahead and put them in the containers and then of course move them out into the recyclable facilities that will accept your cardboard, your metal, okay? And also the concrete when it's clean. My concerns are right now is the urgency of the MRF. I remember when I went to (inaudible) Kinkead and everything the urgency sir is eyesore, nuisance. It looks terrible. Well, I feel right now with this MRF regulation if it is adopted that means that if I put in my application, I want to make sure sir that when I put it in, I have the agency's blessings, meaning zoning, air pollution, all the governing agencies locally that when I come in to apply for my MRF and I'm within the regulation, I will be granted my business license. Then you can get loans and you can be productive and make it look nice. Right now we're unable to do that right now and that's my greatest concern right now. The issues as far as with the franchise agreement, that is going to be something and I am not a legal person and I don't know. But, let's say for instance if Silver State gave us a reasonable fees that you can live with that encourages the people to go ahead and remove it and take it to the landfill and not maybe have to recycle so much. Where right now we have to because the cost factors are very high.

Okay whether the franchise agreement accrues construction debris. Right now Developer's Maintenance does not accept putrescible waste. All of our stuff is construction debris, period. Okay, so right now gentlemen I think the big issue here that Mr. Groesbeck was talking about as far as the legalities is the franchise agreement. Okay, and I

am not a legal person and I don't know. But, right now I have had visitors from the Health District. I have had visitors from Air Pollution and everything and I'm asking them, "What do I do?" Now this business has been in business for a long time. I have employees. We're small businesses. Where do we go in order to become legitimate good business people that are abiding by the regulation and that's all I'm asking right now. And right now I need to see about this MRF because this is the only thing that I feel that we'll be able to pass that we will be able to do business. Okay? And I thank you for your time.

Commissioner Dahl asked is it your opinion that this regulation would increase competition in the industry?

Ms. Kumba answered I feel right now that with the MRF at this point we are going to go ahead and take away the other businesses that are not willing to go ahead and follow the regulation of the MRF. And, yes, we will make it a bit more competitive than the market. I feel that it's going to, I think it will be satisfying all of the governing agencies and it will make us to where we can be productive and continue doing business. Right now there are several construction companies that, you know I'm with right now with the Nevada Recycling Association, and we do want to become a part of the community and we do want to become legal. But give me a business license that I can permanently function and I don't have to go through these variances and go through all these agencies where I have the Health District exciting me and waiting to see how I'm a SMRF and yet I'm not, I can't delay. I'd like to move this aggressively and see if we can go ahead and get it passed so that we can get a license and I can get loans and I can invest in a property that you're willing to help me with to let me move and become legal. And it will be a competitive, because keep in mind sir, construction debris as far as with pricing, it is a competitive market. The builder will always go to the smaller. You're looking at a large investment. They tell me maybe, what, \$80,000, \$90,000, \$150,000, \$200,000 investment all to convert a proper MRF. That's why I'm asking also at this time and take this opportunity if we could to please once the MRF goes through from here, I believe it goes to the Secretary of State and then it comes down to the Clark County Health District. You let us then take all the governing and local ordinances at that time so that when I apply and I invest maybe \$30,000 on a professional engineer to do it, then I'll already know all my answers. I don't want to go into a government agency, oh, wait a minute now we have this regulation, we have this regulation. Because this is what we're going through right now currently.

Chairman Close asked if there were any other questions.

Mr. Gaddy stated I'd like to address some of the issues that were raised regarding the disposal rates at the landfill. County ordinances and I think even State law prohibits us for setting preferential rates for one customer versus another customer. Our rates are published. They're fixed. Everyone knows what they are. There's no discrepancy of what might happen, how much they're going to get charged at the landfill. There's only one rate. So, I don't understand the issue about not knowing how much they're going to be charged at the landfill. That's a fixed rate and everyone is subject to that rate and if it gets changed, it gets changed for everybody, not one particular customer because of their particular needs. And then it also struck me that Mr. Dahl being new to the Board hasn't seen some of the types of operations that we're talking about and I wonder if I could submit this to the members. I have this open to the developer/maintenance facility a July 1999 photograph of their operations. All of the facilities that we're talking about here today, the Nevada Construction Cleanup Developers Maintenance, Western Elite facilities, all of those types of operations are captured in this photo package that we have submitted to the Environmental Commission in the past. These facilities are environmental disasters. They do need to be regulated terribly, terribly bad. So, one of the things that I think is important is that if they are recyclers, they need to profess the amount of recycling that they're going to do. Ten percent is not going to weed out anybody. When you take a look at some of these photos and you just picture how much of that might be recycled in some of these photos, 10 percent isn't an accident. We want that number to be significantly greater. If they're going to recycle, do it right. And if you have a chance to take a look at those photos . . .

Chairman Close asked is that just one picture, or is it a series of pictures?

Mr. Gaddy answered no, there are about 35 pictures. There's different facilities. But I opened it just to the Developers Maintenance Facility of July 1999 photo. It goes back to around August 1998 and if you could take a look at those photos if you have any questions, I'll stand right here.

Ms. Kumba stated what I'd like to say is this, alright? Developers Maintenance purchased two compactors, okay? We went ahead into the compact world to Apex. They went ahead and charged me for that compactor \$164.40. We took the compactor back again. Right now they were going to charge me a three to one ratio because it was compacted. I have the business card, and I apologize I don't have it here with me, of one of the agents over at Silver State which tell me then that now we have to charge you a three to one ratio, okay? So, what I'm just trying to say is tell me please, if it's a compactor, if it's compacted, it's a three to one ratio. Keep in mind gentlemen that right now you're looking at I paid \$164 now you're looking at me paying \$640. By looking at those pictures and you see Developers Maintenance, that will just emphasize to you the urgency of passing the MRF in order for Developers Maintenance not to say, "Okay, I can get a permit, let me get financing, let me invest." A good business person is not going to invest in a piece of property and do anything unless it knows it's going to be able to stay and be able to be legal and be able to make a profit. All I'm asking sir is that let's do it either I'm allowed to do it and here's your regulation, or if we are not allowed to do it, tell me now so that this way I know what we need to do because I'm frustrated and all of these gentlemen will tell you they've talked to me several times, I'm asking, I've done my applications, I'm willing to work with Silver State, I'm willing to work with everybody, but tell me please what do I do when I still don't know that I can even be in business any time soon. So, by looking at those pictures, right, I agree. But give me the permanency that I need that this way I know I can get a business license and I can make a profit and money can grow an everybody's happy. That's all I'm asking and I'm willing to work with Silver State, whatever they say is fine with me. But I'd like to know where we stand. Thank you.

Chairman Close asked if there were any questions.

Mr. Dorensen, Evergreen, stated (referring to Mr. Gaddy) he's presenting pictures here. It's a heavy-handed tactic. I don't know how you can tell from a black and white photo what's recyclable and what isn't, but I think it's a good idea for you to see those pictures, not all facilities are at that stage I would have to say. But, if there is a reason to have regulations, if there was a reason to give the local solid waste management authority some teeth and some enforcement capabilities not to let that occur then I think he spoke well for passing these regulations.

Glen Savage, Environmental Health Supervisor for Clark County Health District, Solid Waste Department stated I've kind of sat back and listened to a lot of interesting comments from the regulators and from the people who are possibly going to be regulated. I just want to state that I feel that Mr. Biaggi, Mr. Emme, and Gould they provided a good opportunity, an open forum for workshops for a lot of discussion concerning these regulations. And the Clark County Health District is very much in favor of this petition. This will give us the opportunity, the framework to start regulating these facilities that are handling these type of materials.

Presently, we are struggling with the possibilities of trying to regulate these facilities as transfer stations to compost facilities to recycling facilities to even open dumps. I mean it's just spread all over the regulatory board if you will. This gives us an opportunity to take a look at the designs, the operating plans, it gives some assurances through closure plans, financial assurances that these facilities will be legitimate. The ones who are not legitimate will not be able to provide us those type documents, or those types of assurances through surety bonds to be a legitimate business.

Currently there are a number of facilities. They are located in Clark County that you might see pictures of. We have lots of photographs too that we've taken. Photographs of these facilities who are right now somewhere in between, again, a transfer station, compost facility, whatever, and it's causing us considerable heartburn in regulating them. Speaking for the zoning people, for the business license folks, and for the Health District it has become quite a regulatory nightmare. Meanwhile, they have an opportunity, that these facilities can cause possible

nuisances, they can cause environmental harm, they can cause fires, whatever. You know, all you have to do is go down to Betty Lane here in town and see one of these facilities which presently now has about 27,000 cubic yards of material that at one time possibly could have been easily recyclable, but because they've gotten completely out of hand without the proper permits, without the proper license and all, it's just become quite a regulatory mess. Again, this will give us the framework we need to regulate these folks and also give them the game plan, if you will, on what's necessary to provide us that information to get their permits or give us the opportunity to make those recommendations to our Health Board to permit them. If they cannot provide us these informations, they will not get a recommendation to our Board for a permit.

As far as issues concerning distances and isle spacing and all, those are issues that have been talked about and discussed across the country. There are fire concerns, there are public nuisance concerns. Most recycling facilities can live with those kind of requirements because they're legitimate and they know that they're wanting to move those materials out and that they can handle them properly. The ones that can't and the ones that just commingle their recyclable materials on site, yeah, they have heartburn with your distances and your heights and all that.

As far as the process, if the Commission does proceed with this petition today, this will give our Board an opportunity to take a look at this. I will have our own workshops here in the county. We might choose to be a little bit more stringent. The 10 percent might be 15 percent, it might be 20, we might be a little bit more stringent, but this gives us the framework we need to go forward to putting together a complete solid waste management program for our county. So, I really am in support of this petition and I hope you will agree today.

Chairman Close asked if there were any questions.

Clint Combs stated I reside at R.C. Farms, 555 East (inaudible) North Las Vegas. I'm here as president of the Nevada's Recyclers Association. The purpose of the NRA is to protect the interest of the small independent recycling businesses in Nevada. We also exist to help promote the recycling rate as adopted by the Nevada legislature which is now at 33 percent. We work very closely with the Nevada Department of Environmental Protection and the Clark County Health District and other regulatory agencies. So, on behalf of the members of the NRA we would recommend approval of the proposed regulations.

Chairman Close asked if there were any questions.

Vic Skaar stated I reside at 6130 Eisner Boulevard in Las Vegas, Nevada, and until my retirement in April, I was Mr. Glen Savage's predecessor and I'm quite familiar with the process here. My compliments first of all to staff that really worked hard in putting together some regulations that are needed. I think it's extremely important that you folks realize that the regulated community, potential regulated community is also supporting these regulations. They've had an input to them. They say it's now time to comply. And the staff, the regulatory staff says that these are enforceable. So, it looks like you've got a good package. Now, my primary concern is dealing with the comments made by the franchisee. And like Mr. Hannen said, my staff reviewed and accepted four of these companies behind us in October of '98 as transfer stations. Those are the regulations at the time. We found it appropriate that they could be called and fit within that rule and definition of transfer stations for what they were doing. We submitted their application through the Board of Health. The Board of Health approved them all in one month. Apparently received enough static or opposition, if you will, and the next month rescinded those that action.

Now I find, we find, that this same company that objected back in October to that action and supported these regulations are now before you this morning reversing their opinion. What is the problem here? I support passing these regulations, letting the businesses go forward. At least they have the standards and the guidelines to know how they will be regulated and to which standards they must aspire and comply with.

Chairman Close asked if there were any questions. There were none. He asked if there was anyone else who wished to testify.

Erma Whitka stated I've been in town for 21 years doing the same industry, construction, cleaning. My company is Chiquita Janitorial. In 1994, that's when the problem started. We were paying \$14, \$20, \$22 yard of my same truckload at the dump. I admire those people very much, I mean Silver State who are now Republic. They are doing a beautiful job. But, they raised my dump fees to \$165. I mean I keep going until right now, but in my mind my debris, my construction debris is 75 percent of that debris is recyclable. Thirty-five is cardboard. Thirty-five, 40 percent is beautiful lumber that can be recycled. I don't have the money to put that big, beautiful, but I think we should all get together, especially them, how can we help each other? Because maybe what they need is to put a nice transfer for construction debris only and we would be very happy to go in an dump only our debris with reasonable price. That's all we're looking for. Nice reasonable price because that construction companies developers, they don't want to pay us more money and that's all I do for 21 years and my kids they do that. I teach them to do, you know, clean and clean, I mean in three places, the exterior, interior, when the interior comes in it's cardboard, exterior is lumber. Now the what do you call it, gypsum? When it is this stage of the drywall, the drywall, they can have it, I mean, I mean it's nothing to be recycled there. It is mainly to recycle materials. I'm sitting here and that's all the problem it is. How can we solve it? We're here to help each other. We don't want to be against each other. I'm here to, if you've got a dump there and I go to your regulations and they can, we can help each other. And I'm pretty sure there are (inaudible) who are here for one cause. It's to put this in my pocket. Money, money, money. Hey, I'm here Silver State or whatever you call it, but I really respect you very much. You've been doing a great job and let's do something to help each other. Thank you very much. Do you have any questions?

Chairman Close called for further comment from the public. Since there were no further comments he closed the period of public comment. He called for further questions from the Commission members.

Comm. Turnipseed stated I have just a question for counsel. One of the requests by Silver State, now Republic, was that we make these regulations subject to various county ordinances. I don't think we can do that can we? If regulations have the effect of law, albeit it can be waived, but with 17 counties we can't make State laws subject to county law can we?

DAG Mischel answered no, it would be very difficult. You would have to structure it very specific to each provision. You couldn't draft a general provision, as Mr. Groesbeck requested. Any conflicting rules would be resolved in favor of the county ordinances because the State would not have enough information to pass that kind of State law. This, by basic legal principal, supersedes county ordinances. The solid waste management authorities are State-delegated authorities that this Commission has jurisdiction over so that in the context of solid waste planning, you could not do that.

Commissioner Doppe stated I must confess that I was a little off when I first read this thing. I thought that, you know, I read the regulation going in and I was immediately worried that it was going to restrict competition from what I think we need which is, in the recycling business. And, now having heard from the regulated parties, what I find is that it appears as though they're crying out to establish their legitimacy and separate the good from the bad. And so I was impressed, I'm impressed with their efforts to work with staff and staff to bring those forward and try and promote the goal, which I think we probably all share, which is to increase the amount of recycling that's taking place. And I had it wrong. So, interesting. I would also make the comment that I think Ms. Kumba, if I'm pronouncing that correctly, questioned whether or not the builders would support a separation on the site and I suppose they might consider it. As a builder, it's a difficult proposition because we're going through those sites pretty quickly. But, the bigger question is, I'm not sure that it's necessary because it strikes me as though that's a real good business for you people to be involved in and somewhat less so for us when we have home buyers, you know, coming through the site every day trying to get in and if we can somehow come up with a system whereby

you take the debris and that debris doesn't sit around, if it's debris, it ends up at Silver State anyway sooner or later if it's debris. But, if it's recyclable material, then it has a better use and I think that's the goal. So, I would support the petition and listen to other comments.

Commissioner Johnson stated I do have concern about the 10 percent versus 25 percent and I will be supporting the petition, but I certainly would consider changing that minimum percentage to a higher level and I think the legitimate recyclers, a 20 percent or 25 percent should be a minimum threshold that identifies a recycler from a transfer station. Ten percent is marginal in my consideration of the economics between legitimate recyclers and others. So I will be supporting the measure and I think it's a very important piece of regulation.

Comm. Turnipseed stated I just want to comment on that. We're talking about 10 percent by weight and I don't know how you would ever do it by volume. But, if whatever the recyclable material is in there, whether it's cardboard or plastic bottles or whatever, it could be 50 percent of the volume, but only 10 percent of the weight. And I think obviously if you're recycling 50 percent by volume it is probably a legitimate recycling business. But I don't know how you would ever regulate it by volume to begin with.

Commissioner Doppe stated it also strikes me as something of a self-regulating thing at some point. There's a threshold. I agree with Mr. Johnson. But at some point, part of the thing that I like best and it's an issue that we've addressed in problem areas in the past, is the lack of financial surety that stands behind a legitimate company and it would seem as though that when we are establishing the level of that surety a 10 percent recycler is going to be a much more expensive proposition to shut down to the extent that it goes haywire as opposed to a 90 percent recycler. By definition, 90 percent of the stuff is good stuff if they're accepting it at that level. So, at some point once the history is established, it's going to be very expensive, much more so anyway for a 10 percent recycler to stay in business I think than it is for a much higher level. There's going to be some sort of self-regulation that kicks in. Having said that, I don't know that anybody knows exactly. If it's 10 percent or 20 percent, that's the right number to start out with.

Commissioner Johnson stated not all recyclable material is a profit maker for the company. Depending on the markets avoidance costs, whether it costs more to ship it to a end user or to the dump is the point at which that decision is made and I wouldn't wish to see us get involved in that. But I appreciate the comment about volume being a determination of what may be an adequate recycling program. I just put in this increasing the minimum percentage to be considered as a discussion point for the Commission to consider.

Chairman Close asked is that a motion on your part or just a matter for discussion?

Commissioner Johnson answered just a matter for discussion.

Chairman Close asked Les, could you give us some guidance as to why you chose 10 percent as the break point?

Mr. Gould stated of course. There is a dirty MRF up at South Lake Tahoe that takes waste down to the Lockwood landfill in northern Nevada. It's been operating for quite some time. It accepts all waste from the South Lake Tahoe and Douglas County area of Lake Tahoe. Commercial waste, industrial waste, as well as residential waste. I asked the operator there what their recover rate was and he said 28 percent. Twenty-eight per year. Now this is in California which has very high mandates for recycling rates for every county. I did a little more research. I looked through some of the periodicals and basically what seemed to be the trend was that a dirty MRF for a mixed waste that contains a spectrum of municipal wastes is probably going to go between 10 to 30 maybe 40 percent if they really try. So, that 10 percent number seemed to be about right. In fact, there is a nonprofit organization known as the World Resources Foundation which has some information on materials recovery facilities and they said that 10 to 20 percent from municipal waste materials recovery facility is about average.

Now I mentioned earlier also that what we're trying to do here is, I guess the thrust of this thing from our point of view is partly that if somebody is going to the trouble to remove materials, there are going to be public health and safety issues that need to be addressed and once you get to around 10 percent, it's more than just a casual and incidental operation. You're probably hiring extra people to remove material, you may have extra equipment to manage it, and you're likely to be having some additional storage issues. So, we basically feel that it is a little more stringent to keep that bar down at 10 percent from a regulatory point of view because now those facilities will be subject to storage limitations, financial assurance, and so forth. It is not quite as much an issue of, you know, recycling rates for us as it is reasonable standards.

Chairman Close asked since you determined this level after the fact, it's one year after the fact, what happens if it goes to 11 percent?

Mr. Gould answered well, if it goes to 11 percent and that's well documented then they would come under this MRF regulation. But, you know, we're not going to go out and try to gather and go through a year's worth of records to see if somebody, because we think somebody might be a 11 percent. You know, if we think somebody's at maybe 20 percent I'm sure we would. And, you know, those judgements would be based on inspections and review of daily records on site occasionally. Does that answer your question?

Commissioner Johnson asked what's the more restrictive, a transfer station or a dirty MRF?

Mr. Gould answered really the dirty MRF regulations are more restrictive and that is because we see safety, public health and environmental issues associated with the processing and storage of solid wastes on site that are not associated with transfer stations.

Commissioner Johnson stated in the Reno area we have our solid waste disposal who accepts construction material that if it's pre-sorted or if it's landscaping or what will be recycled. It's sent off to a different part of the facility. If that by weight and their record they also take appliances and separate it. If they come to the 10 percent threshold, 11 percent, are they then going to be asked to have a dirty MRF facility in addition to a transfer station?

Mr. Gould answered no. That's a good question though. Since what we're trying to accomplish with this is to clean up the sorting process and the storage aspects, we're not worried about those source-separated recyclable materials that are coming onto a site. Those don't need to be counted in that determination.

Chairman Close asked if there were any other questions or comments.

DAG Mischel (Inaudible)

Chairman Close stated I can't hear you Jean.

DAG Mischel (Inaudible)

Chairman Close stated the document that we looked at with the photographs, is that ours or is that one that you need back? Since we have looked at that I think that should be then made part of our record and made an exhibit. We have Exhibit No. 3 if there's no objection those two items be made part of our record and exhibits. Are there any motions?

DAG Mischel (Inaudible)

Chairman Close stated I'm sorry Jean, I can't hear you.

DAG Mischel stated there are Exhibits 1 through 5 on this petition. You have listed 1 through 4 in your attachment.

Chairman Close apologized.

DAG Mischel stated oh, I'm sorry. One, three and four on your attachment as well as the photographs which I think have been marked as Exhibit 6 and the list of workshop participants is Exhibit 5.

Chairman Close stated if there's no objection, those items will be part of the record for the day. Any other comments? Any motions? I forgot to do this, I will be abstaining on the vote on this matter. I represent a waste company and I don't know if they have a recover facility or not, but as a precaution I'm going to abstain from voting on this matter. Are there any motions?

Commissioner Doppe moved to accept and pass Petition 2000-02 with the amendments as proposed by the Department.

Comm. Turnipseed seconded the motion.

The motion carried. Chairman Close abstained from voting on this matter.

Chairman Close moved to **Agenda Item III.C. Petition 2000-03.**

(Petition 2000-03 (LCB R-206-99) is a permanent regulation amending NAC 445A.232 "fees" and NAC 445A.263 in the water pollution control program. This petition affects fees other than those fees previously amended by Petition 1999-02 (LCB R-018-99) which amended mining water pollution control discharge fees. This proposed regulation increases the fees for municipal wastewater dischargers, reuse, industrial dischargers, water treatment plants, confined animal feed operations, fish hatcheries, biosolids reuse, septage reuse, and temporary permits.)

Allen Biaggi, Administrator of the Division of Environmental Protection, stated I've mentioned to you in previous meetings that in order for the Division to maintain viable water pollution control programs, there would ultimately need to be a fee increase for permits. Leo Drozdoff, who is the chief of the Bureau of Water Pollution Control will be before you in a few minutes to present Petition 2000-03 with the proposed regulatory modifications and fee structures. I would just like to take a couple of minutes to provide you some background information on this issue and to sort of set the stage for Leo. First a little bit of history on this issue. During the recession years of the 1980's the governor, the legislature, and the division itself recognized the pitfalls of relying on general fund revenues to operate regulatory programs. General funds can be highly variable based upon state, national, and international economies, needs and other factors. As a result, policy direction was given to reduce agency dependence on general fund revenues and to seek other sources of funding, including federal grants and user fees. Over the last two decades, the Division has worked hard in finding these alternative funding sources. To give you an example, in fiscal year 1984 the Division's budget consisted 40 percent general funds. This year, in fiscal year 2000, less than 1 percent of our overall budget is supported by general fund revenues. And this is in light of significant agency growth during that 15 year period. This shifting of the funding source does not come without some pitfalls and down sides. First, the federal government adds new requirements every year increasing permit complexity, the need to evaluate new issues, problems, and concerns. These demands are usually made without adequate funding or compensation not only to Nevada but to all states. We typically absorb these demands within our existing program structures. At the NDEP and particularly within the program we're going to be talking about this morning, the Water Pollution Control program, we've been doing more with less for literally decades.

The Water Pollution Control program, which is the subject of today's fee increase, is probably our most fiscally-

strapped program. As Leo will outline in a few minutes, in the last six years this bureau has not experienced significant growth in terms of employee numbers, yet workload has increased dramatically. Fees were originally put into place in 1990 and 1991 and have not been raised in that time despite increased workloads and inflation rates of 2 to 4 percent. We have avoided increases by modifying programs and making them more efficient and by utilizing other funding sources. Through these efforts we have been able to avoid fee increases even in light of decreased federal grants and reductions and elimination of other funding sources.

In the spring of 1998, during the preparation of fiscal year 2000 and 2001 budgets, we recognized that a fee increase was going to be inevitable. These budgets for the two year period were constructed to include the fee increases. And ultimately, these budgets were approved by both the Governor's office and the Nevada legislature. The proposal before you today in Petition 2000-03 does not increase program staff, nor the scope of programs. Rather, it is limited to maintaining existing programs and the status quo. Obviously, the Division doesn't like to raise fees and we wish we had viable alternatives available. However, this action is necessary if we wish to maintain a Water Pollution Control program within the State of Nevada. The issue of program viability is an important one. Nevada has delegation from U.S. EPA to undertake Clean Water Act functions. This delegation has been in place since the mid-1970's and means that Nevadans regulate Nevada facilities, not the federal government out of Washington DC or out of San Francisco. To continue to maintain a delegated program we need to have the necessary resources in place. Without the fee increase, continued delegation of our program in Nevada is questionable. The Division recognizes the impacts of such fee increases can have on private industry and perhaps most critically in the water programs, local governments. For the next few minutes Leo will detail the efforts he has made to be responsive to the needs of local governments and businesses in developing a fair and equitable fee schedule. While this is a painful process for all involved, it is one that is critical to maintaining our programs.

Finally, I would like to go on record with regard to grants being secured by the agency for other water pollution control activities. As the Commission is aware, the Division has two water pollution control bureaus: Water Pollution Control, the permitting, inspection and engineering review arm of the Division and subject to today's discussions and the Bureau of Water Quality Planning, which establishes water quality standards, conducts pollution prevention activities, monitoring and water quality planning. The Bureau of Water Quality Planning is receiving new federal funds for clean water projects and initiatives in Nevada. The Division will seek the authority to spend these funds before the legislature's interim finance committee in January 2000. These funds are for on-the-ground projects for local governments, subconservancy districts, and others to reduce erosion, control nonpoint source pollution, and for public education. I want to go on record that these grants have specific limitations for use and are not available for use in the Bureau of Water Pollution Control. They are available only in the Bureau of Water Quality Planning. I wanted to be up front with the Commission and make you aware of these new funds and their limitations and the inability of our agency to use the funds for Leo's programs. Unless there's any other questions for me I'd like to turn the podium over to Leo Drozdoff to provide you with the details of Petition 2000-03.

Leo Drozdoff, Chief of the Bureau of Water Pollution Control, presented Petition 2000-03. He stated Allen began by outlining the differences in the programs between the Bureau of Water Quality Planning and the Bureau of Water Pollution Control. I thought it might be helpful for our new Commissioner as well as all of you Commissioners to overview our program a little bit to give you some context of what we're talking about today. In fact, what I plan to do is run you through three stages of our presentation. First is the overview of the bureau, second overview just a brief chronology of the process we went through to review and ultimately propose these fees and then we'll go over our proposal in some depth. So, briefly, the Bureau of Water Pollution Control consists of four branches. We have the Permitting branch, the Technical Services branch, which is essentially our engineering function, engineering and inspections, we have our Compliance and Enforcement section and we have our Administration branch. What we do, obviously we issue permits, that's a main function of our bureau. In fact, we issue permits to wastewater treatment plants, reuse sites, industrial dischargers, confined animal feed operations, fish hatcheries, water treatment plants, and other miscellaneous discharges.

Our Technical Services branch reviews submittals that accompany these types of permits such as design plans, goes out and conducts inspections. Obviously we have a monitoring and enforcement branch that will make sure that facilities are in compliance with their operating permits. Some other, and that's essentially the operation that this fee proposal is meant to handle. We have some other areas within the bureau. We issue storm water permits, underground injection control permits. We also review subdivisions. We have a biosolids permit. We have a State revolving loan fund. To date we've loaned approximately \$110 million to local governments for infrastructure needs. We do some outreach to local governments via what we call the circuit-rider program and we manage the operator certification program for the State of Nevada. Other than the main permitting arm that I talked about earlier, those other programs are not part of this discussion and our purpose is just to kind of lay out everything that we do and then limit the discussion on the action at hand.

At about August of this year, as Allen said, we knew going into the budget, the budget cycle that fees would be raised or needed to be looked at. August it became clear that the revenues that we were collecting were substantially lower than what was necessary for this fiscal year and for fiscal years to come. We have in place necessary controls for this fiscal year, but it became evident that future fiscal, to meet the budgets for future fiscal years we felt a fee increase was necessary. So, what we set out to do was try to present our information in an open way. As typical with our regulatory development programs we scheduled some workshops. We had workshops in Las Vegas, Elko, and Carson City. We also public noticed these workshops in most, if not all, of the major newspapers in the State. We also sent our proposal, or at that time what we had was two options to be heard to every permitted facility, all 310 permitted facilities that we have. All of this stuff, depending on the level of detail that you're interested in, what's before you is our proposal. We do have copies and we can certainly put them on the overhead of the options that we sent out. But to summarize what we did was we put out, we felt that two options had viability. One option essentially built on the fee structure that's been in place for the last decade, that is, it's a fee structure based on permitted flow, establishes categories, and as permitted flow increases, fees increase.

The second option that we put forth was similar, but what we did was we provided a minimum floor for permitting for any facility and we set that floor at \$3,000 and then factored into the equation a multiplier, if you would, a flow multiplier which the more flow you discharge on a given rate, the higher your rate would be. We sent those options out and that was what we based our, or that's what the regulated community based their testimony on when we presented it. What I'll do is I'll refer to our what we call the response to comments from public notice and that is in your package. But perhaps before I do that I'd like to go through some of the specifics of the dollar amount and that's also in your package under "Fact Sheets."

Allen touched on these points. Essentially the bureau has operated its budget, operated its bureau on operating fees that have been in place since 1990 and '91. Over that time, we have seen federal grants decrease from about, to the tune of about \$150,000 a year. We've seen transfers from other bureaus within the Division eliminated, notably \$150,000 from the hazardous waste fund. We talked about the fact that the fees have been in place since 1991. Inflation during that time was approximately 35 percent. Internally, within the bureau, the, if you would, the storm water and UIC fees, which we do have in place and which we're not talking about raising at this time, we had collected excess fees, if you would. And those fees went towards shortfalls, if you would, in our main permitting program. But the fact is, currently the storm water program is looking to implement what is called the Phase II Storm Water Rule-of-Thumb, the federal environmental protection agency, similarly the underground injection control program will need to implement what's called the Class V Permitting Program in that program. So, we felt that it's appropriate that these, if you would, subprograms of the permitting group be self-sufficient and we have had some increased costs due to administration, data management, small business assistance, etc.

We presented all of this in our public notice out to the regulated community and we can go through in whatever detail you'd like. But the bottom line is our legislatively-approved budget with a note about reserve, those familiar with State budgeting will know that sometimes there's an artifact in reserves and balance forwards. Our bureau had a large reserve in its budget that wasn't appropriate so we reduced that to a relatively small reserve to about \$37,942

as opposed to the \$500,000 reserve that was in our budget. That makes the true needs of the bureau established. And that is the note that we incorporated into the fact sheet. We have a very good record of the fees that we've collected. Since we've been collecting the same fees for the last eight years we felt fairly confident in the number that we put forth, approximately \$470,000 and we estimated our shortfall at around \$700,000. And it was with that fact sheet and the two options that we went out to the public.

After we had these meetings, these public meetings, we did receive approximately 24 letters on the subject and 32 people attended our workshops, 21 spoke. This is summarized in our public notice summary, which is in your package. And we got a fair amount of feedback. We definitely got some comments that said, "Please don't raise fees period." We got comments to the effect of, "We prefer option 1" or "We prefer option 2." We did get some letters of support that said, and statements of support that said, "You know we recognize that the fees haven't been raised in a while and it's in our best interest to have a strong state program." Much of the testimony was based on the fact that people understood that fees needed to be raised but this was a large increase, sort of all of a sudden. Once we got that testimony and saw that there was some question we also had a, I won't call it a workshop, we basically had a meeting. We asked the Nevada Association of Counties and the Nevada League of Cities to get together and make sure that people understood what we were doing. And we sat down with Bob Hatfield and Tom Gradey a couple of weeks after our workshops to kind of digest where we were and where we were headed.

Page 2 of our response to comments sort of guides us to our proposal today. What we found was most of the regulated community preferred option 1 which was the option I've referred to which is more or less what we have in place today based on permitted flow rates and different categories and fees increasing as discharge permit flows increase. There was a small group of folks, sort of the small to mid-range, both wastewater treatment plants and industrial facilities that preferred option 2. As an artifact of option 2, where I said we set a minimum criteria, or a minimum permit fee cost of \$3,000, they sort of fell in a category that that option would work for them, but they were a small group. The larger group, both small dischargers and large dischargers liked option 1. So, what we did was we sort of made a hybrid and we didn't feel that it was appropriate to pit one group against the other so we just simply incorporated, added more categories, if you would, and incorporated, made it possible to incorporate the types of fees we put forth in the second option into this hybrid first option. That's what we mean by we reduced some proposed fee increases such as small to mid-range wastewater treatment facilities, industrial activities, etc. Now this is an important point, this next one, adding an inflation factor to prevent large future increases. As I said, this was heard at all of the workshops, this feeling that, you know, we're in the same business too. We have rates, we have rate payers. It doesn't make sense to every 10 years come across with large rate increases. It would be preferable to have smaller incremental rate increases and it would help us because then we would know years into the future what we're looking at. Right now we're changing the rule so to speak on these folks, what they've budgeted for, etc.

So, we did put in the regulations an inflation factor and it's 2-1/2 percent a year or 5 percent every two years. Now, certainly in the last couple of years the inflation factor or the CPI has been below 2-1/2 percent, but certainly earlier in the decade it was above 2-1/2 percent. We felt that was a reasonable number.

This is probably the most significant - we put in the regs. an opportunity for permittees to apply for a minor modification at no cost to reduce their permitted flow limits. And what this is all about is in one of our workshops the City of Ely, the City of Carlin, said, "You know we are really feeling it right now. We've had impacts from mine, well I won't call them closures, mine shutdowns, large portions of our population are moving out especially BHP out in Ely." And the folks in Ely took a look at our option, if you would, and if you go to our table in the back, just to sort of bring this point home, where we list all of our permitted facilities. On the fourth page you'll find, nine rows down, you'll find the City of Ely and it's nestled right below Fernley and a couple of those down below the City of Mesquite. And their point was, you know, the City of Fernley, or the Town of Fernley, City of Mesquite are booming. They're doing quite well. They can handle an increase. "Our actual flow limit is, although we're permitted at 1.4 million is probably somewhere in the vicinity of \$600,000 to \$700,000, or \$600,000 to

\$700,000 . . .

Chairman Close stated Leo I apologize for interrupting you but it's about five minutes to 12:00. I think we'll take our break now. If we get out a few minutes earlier we can get to lunch and come back much quicker than if we waited until 12:00.

Mr. Drozdoff stated okay. I'm just about done if . . .

Chairman Close stated you have one more minute.

Mr. Drozdoff stated okay. So, the bottom line is, cut to the chase, we put forth this new option. We sent it back out to everybody that commented on it. We have not heard, the only responses we've heard since have been, there have been a few, but the only responses that we've heard since are positive. We think we've accommodated every comment other than, "Please don't raise fees" that we've received in our workshops. We believe that the proposal that we've put before you today is going to meet the needs of the bureau for the years to come. And, as Allen said, it's important to note that we have not, we're not looking for any new staff, this is just to cover the operation today.

Chairman Close called for a lunch break at 12:00 a.m. and reconvened the meeting at 1:15 p.m. He then called on Mr. Drozdoff to continue with his presentation.

Mr. Drozdoff stated I thought what I'd do is just add a couple of items regarding our process and then get into the proposed regs. and there's some complicating factors I suppose with the proposed regs. which we'll discuss in a minute.

I just wanted to finish up by highlighting a couple of points in the public notice summary that we were discussing or looking at before lunch. That business about allowing facilities to apply for a minor mod and I guess the disparity that we do have in this State between some facilities and some municipalities that are growing and doing quite well and others that are just the opposite and some way to see if we can make something like that work. I talked at length regarding the City of Ely. So, I just wanted to highlight this point, which we have received positive feedback on which is that we are going to allow facilities that are greatly below their flow limit to apply for a minor modification at no cost, which in turn would reduce their fee. And our feeling is that that's fine, things will work out. When the facility is doing better, when the municipality is doing better, then they will be asked to reapply, I believe that would be a relatively straight forward process, but there will be a cost at that point to reapply, but our feeling is that the facility or the municipality should be doing well at that time. And we also committed to continue to search for other funding sources applicable to the discharge, applicable to our bureau.

Well, I'm going to say a little bit about the rate of the fee increase. We kind of glossed over it a bit. It's a big increase. When we're talking about raising fees from approximately \$500,000 to about \$1.2 million everybody's fee under the option that we've proposed will be raised, but it's not an across-the-board increase. The larger municipalities are going to be asked to pay a larger share than they've been paying in the past. Their increase is dramatic. A large municipality such as Clark County, Las Vegas, Henderson, Reno/Sparks are going to see their permit fees go from approximately \$3,000 to \$40,000 so it's a big increase. But we did work with those municipalities carefully. I don't know if our overhead is going to work or not, but we did try to put together some costs and we would be pleased to add this as an exhibit.

Chairman Close stated that's already been marked in as Exhibit No. 2.

Mr. Drozdoff stated the bottom line is this methodology that we have in place we feel is pretty good. It's not perfect. We realize that. There's 310 different facilities out there. They all have their own unique sort of criteria. What we've tried to do to make ourselves and the municipalities, the large municipalities, understand our reason for it is to really take a look at where we spend some time and I think there's wide agreement between us and our regulated community that we want to be able to work with them. We don't want to be able to not have a meeting because we don't have resources to do it. So, what we put forth in this exercise is to show that there is a large difference between permitting of a large facility, be it industrial or domestic versus a small facility.

What I thought we'd do is talk a little bit about the proposed regs. And I think as we discussed at lunch, and we apologize for this, the Legislative Counsel Bureau provided us with their draft, or their proposal for our reg. here at 5:00 yesterday. And we have had a chance to go through it. I would describe their redraft this way: it's pretty much in line with what we have in mind and would be glad to work from it. There are a couple of areas that we do need to clarify. But, again, since this is a fee proposal we've thoroughly checked that aspect of what they've put together and there's no changes that we see as a result of it. There are some minor, I would call them very minor editing issues that I'm sure we can get straight. But if you'd like to work off of the December 15th proposed reg. from LCB that would be fine.

Chairman Close asked so what you're referring to is you want the one we just got handed a few minutes ago, that's what I'm going to work from, not the one in the book?

Commissioner Gifford stated I was just wondering, in terms of putting this together you make the statement that fee, well fees are necessary to maintain existing staff and services. And you're projecting for quite a ways into the future and I was just wondering given the growth of the State and so forth and as Allen eluded to to start with, things are stretched anyway, not only dollar-wise, but people-wise. Is it wise to limit yourself there with new things coming on line, increased demands and so on and so forth? It seems to me it could be a little bit short-sighted. But, I'd just appreciate your comment on that.

Mr. Drozdoff stated we did think about that and it's obviously a valid point. I guess our feeling on it was this: we felt that we're asking the regulated community for, as I said, a rather hefty proposal. And I do feel that with what we have in place we are equipped to handle what's before us now. Now if something else should come our way such as some other federal direction or, you know, some shift in State policy, I guess our feeling would be at that point, it would be appropriate to revisit them, but we shouldn't, we feel comfortable with what we have right now and if we get something, it is thin, I think that our, you know our group of 22 and the various activities that I've listed at the outset, I think it's fair to say that it's a busy group, but I think we feel comfortable with what we have and if something else comes along the way, I guess our preferred option would be to come back before the Commission.

Commissioner Gifford asked when you say comfortable do you mean politically or do you mean you can really carry out the job?

Mr. Drozdoff answered I think that we feel comfortable right now that we can really carry out the job and if something else comes along the way we would tell the Commission and regulated community about it and address it at that point.

Mr. Biaggi stated just to add on what Leo has already stated is that we're also looking at alternative funding sources to address the issue that you're talking about. That maybe we are a bit understaffed and maybe we need to look at bringing on some new positions and that sort of thing. We didn't feel comfortable doing that with this proposal. We just want to maintain the status quo. We're doing fine. We're holding our own and our head above water. But we'll be aggressively looking at other funding sources, be they general fund, federal funds or other sources. So, we're not going to remain static.

Comm. Turnipseed stated I appreciate the bureau's activities, but I heard Tom Porta yesterday talk to the public land's committee about TMDLs and new directions from EPA. Do you think that some time in the future we'll be looking at dollars per, rather than per gallons, some criteria based on loading? Will that be forced upon the State?

Mr. Drozdoff answered well the TMDL, the Total Maximum Daily Load, is a sort of a way to measure water quality goals in a loading sort of situation. I wasn't at the meeting you reference, but Tom and I have talked about it quite a bit and I think that, and we currently are in sort of a total maximum daily load environment right now. We do have existing TMDLs. What EPA is proposing is a rather major overhaul of that aspect of the program. I think that the flow still works in that environment because the load, if you would, is basically a component of flow and pollutant.

Comm. Turnipseed stated I suppose municipal discharges are about the same blend of all of the various pollutants. But I was thinking more of shifting weights from, you know, maybe industrial dischargers versus municipal dischargers, versus clean water dischargers, it was just a question. I don't expect to change the regulations anyhow. I was just kind of curious.

Mr. Biaggi stated Mr. Turnipseed I think something that you need to recognize with regard to TMDLs is that they apply only to impaired waters and certainly not all of our waters are impaired in the State of Nevada so not all of them will have TMDLs associated with them. So, it's probably not going to be a viable alternative to attach a dollar figure on a per pound of pollutant because it wouldn't capture all of the waters within the State that are subject to discharge requirements.

Mr. Drozdoff stated at the outset of going through the regs., let me just mention what I think up front. What I think, the only three general areas that we are going to need to work with LCB on. One has to do with dates. The fee section of the regs. encompasses both the Bureau of Water Pollution Control and the Bureau of Mining Regulation and Reclamation. The Mining regs. have two tables as a result of they have fees basically effective until July 1, 2001 and fees beyond July 1, 2001. That's why there's a lot of tables in there. Both LCB and ourselves felt that rather than mess with that we'll just work under that format. But, LCB forgot to put those dates back in. So, that's why it looks like there's just a lot of tables. The way it will work is under section 1 there should be an addition in there that that part will say, "Effective until July 1, 2001." That's omitted. That needs to go back in. The second area that we'll need to clarify with LCB is the business of mining dewatering or discharge from mining facilities. Again, because this section of the regs. pertains to both the Mining bureau and the Water Pollution Control bureau, most, 98 percent of activities associated with mining facilities fall under the Bureau of Mining Regulation and Reclamation. I would say about 2 percent falls under our bureau. That 2 percent specifically is mine dewatering that takes place at discharges to rivers and streams, to surface waters. That falls under NPDES Federal Clean Water Act; that's why it's in our bureau. The Legislative Counsel Bureau I think tried to separate completely 100 percent the mine dewatering aspect and that's not correct. We didn't want to affect the mine dewatering that discharges to groundwater that is handled by the Bureau of Mining Regulation and Reclamation. They're out of our program and I think we gave that information to LCB and they crafted something along the lines that all mining dewatering is excluded. So, that is, again, a minor nuisance that I'm comfortable we can correct.

And the third point, Mike, is just like you had sort of eluded to. We want to have this modification based on flow and the Counsel Bureau described pollutants and that's probably not going to, for the reasons Allen mentioned and some others, it doesn't apply to all of our discharges and it's not the best, it doesn't work with what we had envisioned.

So, those are the three areas that as we go through that we'll need to keep in mind that we will be working with LCB. In my opinion, these are minor in nature and I feel very comfortable that we can get it straight with them.

So, going through the petition, and I'm not going to, unless you'd like, I'm planning not to read all of the categories for all of the different discharges unless you see something. I just think that would kind of get old pretty fast. What

we'll do is just talk about the changes that are in here.

Chairman Close stated I want to make sure that we're looking at the final version here. Well, we're not looking at the final version because you have told us that there are things yet will be changed in what you have given to us today to look at. Jean indicates that what you have, what went out to the public has the changes that you're talking about in that document. Is that correct, or?

Mr. Drozdoff answered that's essentially correct. Maybe we'll do it in two phases. We could talk about first what went out to the public versus what's in here and then we could talk about what's in here versus what it needs to be like.

Chairman Close stated and that's I guess our concern that if, I mean we should not be voting on something I guess that is not going to be, that's going to be changed from what we finally vote on because we can only vote on what is here. We can adopt some changes to this document. I don't know if we can adopt prospective changes that have not yet been addressed.

Mr. Drozdoff stated it might help to take a look at it. Really all that LCB did was it added some definitions like . . .

Chairman Close stated well, no, that's not my question. I mean I understand that all the things that LCB did is in here. My question though is now are there other things that you want to change that are not in this document?

Mr. Drozdoff answered no, I would describe that our presentation to the public would be completely in line with, if you would, the LCB version with its corrections.

Chairman Close asked and so what corrections, I mean you're going to give us the corrections today, we're going to adopt the corrections, is that what you're suggesting?

Mr. Drozdoff answered sure.

Chairman Close asked are we going to just rely upon you to go back and get it worked out some way after you leave here? Do you see my question Jean?

DAG Mischel answered yes. I think there's some confusion because you said we'd work it out with LCB. This is the time now to put back in the language and then LCB sometimes if they find that what the Commission has done was contrary to statute or constitutional provisions will kick it back to us. But what Leo's statement meant was that it won't cause a problem for LCB to insert the effective dates and clarifying the mine dewatering provisions. That stuff went out to LCB, it went out to the public, but LCB neglected to put it in. So what Leo will do when he goes through the LCB file 206-99 is reinsert that language for adoption. There won't be anything renegotiated. If the LCB says, "Well we took that out once and we're going to take it out again" it would have to come back before the Commission.

Mr. Drozdoff stated yeah, that's correct. Thank you Jean. If we use, so that we're all looking at the same thing, this is the document that has December 15, 1999 as the fourth line in the header. In section 1 we just want to add back "effective until July 2001." Then after that, the first category that we have is discharge of domestic wastewater and as I said this category, what we did was essentially add more categories, added higher flow volumes, and to kind of give you some sense of the change you can refer to, well too much paper in front, but we also have a chart that's in your booklet sort of that table we were referring to before. This small little chart. And what that does is that lists every facility that we have permitted and outlines its existing fee as well as its proposed fee. And what you'll find, to generalize it, what you'll find is, as I said, there is an increase for every activity. The smaller municipalities and

the smaller industrial discharges, I would, in my view, would see a relatively modest change, let's say from \$800 to \$1,000. And those at the upper end of the scale, based on flow saw a dramatic change from lets say \$3,000 to \$40,000. And that essentially runs, is consistent.

The next category that we have in place is discharge of treated effluent for irrigation. With that type of discharge we purposely kept those fees low and that is consistent with the Division's policy. Near as I can tell the Commission's direction, which is to encourage beneficial reuse of wastewater. We didn't want to price the reuse market out of business so those fees, again, saw a modest increase, but nothing like the large municipalities or industrial facilities.

The third page, this is the second an area for clarification based on my comment earlier. "Discharge from remediation, dewatering other than for mining," again, we could probably make that work by saying "other than for mining, groundwater discharge from remediation dewatering" "other than," I'm sorry, "discharge from remediation surface mine dewatering or dewatering to surface waters or from a power plant, manufacturing, food processing facility," etc. That would accomplish what we're looking for.

Chairman Close asked do you want to give me that again?

Mr. Drozdoff stated, "Discharge from remediation, dewatering to surface waters from mining activities or from a power plant, a manufacturing, or food processing facility." Again, what we're talking about is four such facilities; three operated by Barrick, I'm sorry, three operated by Newmont and one operated by Barrick. They clearly know which bureau they work with on this permit.

Page 4 just sort of continues the same theme which is more categories just like the municipal wastewater treatment plants with, again, a large increase for the large facilities. And the same argument can be made as we've presented on our table. We spend a lot more time working with mine dewatering facilities than we do let's say for a little pump and treat facility cleaning up a groundwater issue.

The rest of these categories, discharge from a treatment plant, concentrated animal feeding operation, concentrated or from animal feeding operations that does not discharge wastewater that is impoundment only. Discharge from fish hatcheries and other permitted discharges, those categories essentially are in place today in our existing fee schedule. What has changed is the numbers and that's why they're shown in bold. But, again, we can go through this at whatever sort of detail you'd like, but all of the existing operations are in that table in the package that is presented to you. So we're not adding any new activities. We've broken some out and we've basically changed the fee amount. One point of clarification on the bottom of page 9, temporary permit, we issue temporary permits currently and we charge \$250, so there is not a change to this activity. The difference is that we, currently it falls under something called other permits for discharge and we just clarify that it's a temporary permit.

Item 2, this area is basically the Bureau of Mining Regulation and Reclamation's program and, again, the same sort of difficulty occurred which is the third line talks about renewal permit for dewatering of a mine. And we probably want to just simply say, "Renewal of permit for dewatering of a mine who discharges to groundwater" and that will make that section complete. What this essentially is saying is the fees that the mining companies pay to the Bureau of Mining Regulation and Reclamation haven't changed at all.

Chairman Close asked so, can I have your language again on Item No. 2, Page No. 10?

Mr. Drozdoff answered starting at the third line, "Renew a permit for the dewatering of a mine" insert "which discharges to groundwater" and then strike "discharging water from a mine" and then continue with "that is submitted to or acquired by the director." Page 11, same issue, instead of "Dewatering of a mine" imply add "Dewatering of a mine discharging to groundwater." The balance of these pages through the middle of page 14 are,

again, the Mining bureau's. For some reason, LCB made some tinkering there, so I guess Dave Gaskin will have to make sure they're okay. But, having some experience in that bureau, I don't know why they chose to change those. They weren't directed to change those, but it's just an English, I guess LCB didn't like the fact that instead of chemically processing limits 1,000,000 to 2,000,000 they wanted it put in tons per year or more. It's essentially, that's right, it's just sort of, I guess, better English. But they weren't asked to do that. I don't see a problem with it though.

Starting at the middle of page 14, LCB mis-changed "Runoff of storm water" as opposed to "Stormwater runoff." That's fine. Then again for some reason greater, it's going to page 15, for some reason greater was not seen as, more is better than greater I guess. So, again that's fine.

Item 3, currently what's in our regulations now dealing with concentrated animal feeding operations is 100 square feet and LCB felt better if we converted that to acres and that's all that .0023 means, it's .0023 acres which equals 100 square feet. That does not change anything about our program. It just changes the units.

Page 16 item 4, this is the third area that I talked about that we would need that I'd like to change. And all we'd simply like to do is starting at the second line of item 4 "must be based upon the limits for" and just add "permitted flow" then strike "the discharge of pollutant set forth in the permit and not based on the design capacity of the facility" because that is, Chairman Close, this would be an area of where if we don't make that change, that would be different than what we told the regulated community and I'm confident that LCB, once they understand what we're after, will be okay with that. So, again, it's simply insert "limits for permitted flow" and strike "the discharge of a pollutant set forth in the permit and not based upon the design capacity of a facility."

Item 8, this is one of the changes in the regs. that we took from our workshops where we had some facilities ask that instead of making one lump sum payment, and since this is perhaps a big change for them, if there was a way to work out a payment plan that is basically paying in installments. We think that's fine. We obviously don't have any sort of interest-bearing accounts and we're comfortable that we can work if these fee increases are truly a hardship, we have no problem working out payment schedules. And that's all item 8 has to do with this.

Item 9, LCB just felt that they wanted to have some terms defined; concentrated animal feeding operation, domestic septage, and sewage sludge. But, again, that's what we do, there's no problem with that. They come right out of the CFRs; we use them.

Section 2, again, this has to do with the date. This should just simply, we should just add "effective after July 1, 2001." And then the same thing that I just discussed just sort of happens again which is we'll need to make, I don't know if we need to go through them again, they're verbatim. Basically, the item is repeated and we would just simply need to repeat the changes. Should we go through them, or?

Chairman Close asked are you referring to us reviewing the numbers?

Mr. Drozdoff answered no, the numbers are exactly right.

Chairman Close stated if there are procedures in there, I want to review those, but . . .

Mr. Drozdoff stated if you look at page 20 you'll recall that we had the same paragraph discharge from remediation, dewatering, other than for mining, what I'm talking about is we would make the same changes to this same paragraph that we made 10 pages ago. It's the exact same language. Remember this is in place because there's two tables in the regs. because some fees are prior to July 1, 2001 or some become effective after July 1, 2001. Does that make sense? Really, other than that there was no changes through the balance of the document which brings us just about to the end, page 30. We will need to change item 4 on page 30 again to say, "Based upon limits for

permitted flow” and strike “the discharge of a pollutant set forth in the permit.”

Item 8 on page 31 talks about that 2-1/2 percent a year increment, or a 5 percent every two years and you’ll notice that we have spelled out how much that increment is for the next, well, for the future, from July 1, 2002 until, okay, item 1 should be for fees due on July 1, 2002 and July 1, 2003. Basically it stays the same and then two years after that, July 1, 2004 and July 1, 2005 there’s a multiplier of 1.1025 that’s simply 2-1/2 percent a year for that period of time. That’s what these factors are 1.1576 and 1.2155 or simply 2-1/2 percent a year times the number of years into the future. I want to make it clear that that is based, that recommendation came from the workshops that folks wanted to know what their fees would be and they didn’t really feel that they wanted to have a large increase hit them again.

Chairman Close asked on page 31 where it says “Flush” on the left-hand side. It says, “In establishing the annual fee for the review and services pursuant to this subsection the director shall round to the nearest dollar.”

Mr. Drozdoff answered I don’t know what “Flush” means. I think that’s just a note that . . .

Chairman Close asked that’s just a direction to . . .

Mr. Drozdoff answered yeah, that’s something that LCB probably put as a note to themselves. All of the text of that means is when you take let’s say \$2,000 and you start multiplying it times 1.2155 you’re likely to get cents and I think everybody would rather not deal with cents and it just means round to the dollar. But the “Flush” has no meaning from where I sit.

DAG Mischel stated Mr. Chairman we probably should back up to page 26 too there’s a parallel change that we’ve made in a similar section.

Chairman Close stated okay, you’re right Jean.

DAG Mischel stated the third line. “Renew a permit for the dewatering of a mine which discharges to groundwater.”

Chairman Close stated that’s correct.

DAG Mischel stated and delete, “or discharging water from a mine.”

Mr. Drozdoff stated okay. The balance of changes on page 32 are just English changes. You can see the regs. used to say, “. . . and valid costs such as” and now we have, “. . . cause including without limitation.” Again, I don’t think the changes anything. Instead of “permittee” we now have “holder of permit” which is okay. You’ll note on item 4(h) here we do have, we’ve added, which is very consistent with what we told the public and consistent where we had “reduce the limit of flow in gallons per day of the discharge authorized in the permit.” That’s critical and that’s in there and that’s correct. That’s our petition. And I do apologize for the sort of minutia that we had to do. I think that they’re relatively minor changes and I apologize that we weren’t able to work it out with LCB prior to coming here.

Commissioner Gifford asked would you just remind me again in terms of coming up with your application fees for example and I realize there are different kinds of waters, but I just kind of needed a reminder because for different gallons, or the same gallons in different categories you have distinctly different application fees for example. And could you just remind me of the philosophy there that you use in setting these application fees and why the same amount of discharge for one kind of use, say a million gallons, wouldn’t be the same as a million gallons somewhere else?

Mr. Drozdoff stated sure. There are nuances. There are differences with the types of discharges. An industrial discharge may be different than a municipal discharge. But what we tried to do was make, actually to make the municipal, the application rates, application amounts for municipal wastewater treatment plants pretty consistent with industrial discharges. What we did try to do is in areas like reuse, anything to do with recycling, whether it's wastewater reuse, whether it's biosolids reuse, we tried to keep those permit levels down. Similarly, when it comes to like concentrated animal feeding operations, you're into a whole different ball game and those application fees are based on what, essentially what's in the regs. currently. They're just broken out so that people could see them. By in large, the only major changes to application fees had to do with wastewater treatment plants, municipal dischargers and industrial discharges and those are pretty close to each other.

Commissioner Dahl stated Mr. Chairman I will abstain from voting on this. I am a trustee for a small utility that's on the list here and I would like to make an observation, which you already have. It's a big one-time increase that we're proposing here. And a question, if that increase were half of what you've proposed, would it require that you reduce the size of your staff?

Mr. Drozdoff answered yes it would and as I said we're not, this proposal is just to catch, just to bring us even with status quo. We're not looking to add folks and there's not a whole lot, the numbers come right out of our legislatively-approved budget and should we fall short then, yeah, we would need to reduce our expenditures and I would probably guess 90 percent of our budget or 85 percent of our budget is salaries and benefits and indirect costs associated with those salaries and so that would essentially be the only way to balance that, to reduce the expenditures.

Commissioner Dahl asked have you calculated what size of a reduction that would necessitate?

Mr. Drozdoff answered no I have not. I would say that if we were faced, I would say that a pretty good estimate for a full-time employee, plus benefits, plus indirect costs is probably around \$75,000. That would probably be the sort of rate that we would have to go depending on how much less we came forth, then we probably would be looking at that type of decrease. Every \$75,000 an FTE.

Commissioner Dahl stated just another observation. I see where Barrick Gold Mine is going from \$3,000 to \$40,000 . . .

Mr. Drozdoff stated that's correct.

Commissioner Dahl stated and a couple of weeks ago had laid off 86 employees from the mine.

Mr. Drozdoff stated that's correct.

Commissioner Dahl stated and I understand this is based on flow and so on and there's an increase there and so on, but I just wanted to make that observation.

Mr. Drozdoff stated it's a correct observation. Just like the discharges from larger municipalities went up. I would note that simply because we only have four mine dewatering projects, three with Newmont, one with Barrick, we I guess went the extra yard with them and certainly not only just sent them stuff, but we had personal discussions with them so they knew what was going on. Newmont testified at one of our workshops, essentially in support of one option over another. Barrick knew what it was and didn't testify.

Comm. Turnipseed stated then of course, Barrick ceased discharging to the river, and I don't remember the date if it was February or March of '99 and what is the permit status? I guess if they want to maintain the permit to discharge they have to still pay the annual fee.

Mr. Drozdoff stated that's exactly right.

Comm. Turnipseed asked otherwise it just expires, or do you cancel it? I don't know the terminology.

Mr. Drozdoff answered the permit is valid through the life of, it's a five-year permit and it's valid through the life of that permit and I think Barrick's permit expires in 2002, which means that if Barrick chooses not to reapply, the permit would simply go away at that point, or if they chose to say \$30,000 for something that we may not need, they're certainly capable of writing a letter asking right now for a cancellation of their permit and they don't want to do that. And I was told that they plan to reapply anyway because they may need that capacity some time in the future.

Comm. Turnipseed stated well, in the event they don't or ask you to cancel it, then that's going to put you presumably \$40,000 short of your goal.

Mr. Drozdoff stated it is. You know there's a lot of stuff like that. You kind of do the best you can making a lot of observations and a lot of assumptions. You know, again, we have 310 facilities. We think it's likely that some of those will take advantage of reducing their flows. We have looked at, you know, we have looked at those types of scenarios and you don't know, I mean you can only assume so much and we don't know who's going to come in the door tomorrow either, so we feel comfortable with what we have and we feel comfortable that there will be some people who apply for a reduction or elimination of their permit, but I think we feel comfortable that we'll make up that if presumably somebody comes in the door too.

Comm. Turnipseed asked so there's some degree of certainty in your crystal ball?

Mr. Drozdoff answered yes.

Commissioner Gifford asked on page 31 Leo, and it just seems and I can't quite put my finger on it, but under subsection 8 at the top where you're increasing by 5 percent?

Mr. Drozdoff answered yes.

Commissioner Gifford asked and the first one, your multiplier is 1.05 and the rest of them where you have it looks like an extra quarter percent tacked onto the next one and three-quarters onto the next one and so forth. Where are those extra numbers coming from?

Mr. Drozdoff answered it's really just math. If you take, it's 1.05 to the first power, which is, if you consider the current permit fee times one, then that's your first, that's where you're at until 2002 and 2003. After those two years, it's a five percent increase. So you're essentially saying permit fee times 1.05, five percent, and then what happens is it's permit fee times 1.05 to the second power, and then for the third power and that's how it works.

Commissioner Coyner asked I know this is probably not pertinent to today's discussion, but it's here and on the mining end, since I know you know that well, the chemically processing definition, does that include heap-leachable ores and mill ores when you say chemically processing?

Mr. Drozdoff answered yes.

Commissioner Coyner asked and both are included in that?

Mr. Drozdoff answered yes.

Commissioner Coyner stated okay. And then I guess I've got a general observation on the acceleration factors. We just went through the air fees and in that case I don't believe, and correct me if I'm wrong, we didn't put any sort of inflation factor into those fees. And do you see this as a, you know, I understand that your testimony was that the regulated community would like to see inflation fees built into the schedule, and Allen maybe you can more correctly address this, do you see this as the wave of the future that we'll be including these in other fee structures as well?

Mr. Drozdoff answered well I guess, and Allen probably has some thoughts on it, my thought is that I don't necessarily see it as a wave of the future, but I think it's something that makes sense and at least, again, it was asked for and I think it's something that we should try. I think it would be helpful to kind of see how this goes. I'm comfortable that we can administer it from the bureau's standpoint. I think it does have some merit or else we wouldn't have proposed it. But I think that there's probably a cautious, Allen can probably talk to you about how he sees it affecting other bureaus, my sense is that we'd probably be cautious about just implementing it, but we'll certainly learn how it works.

Mr. Biaggi stated Mr. Coyner this is sort of an unusual response to a request by the regulated community that we're willing to try so that they know their long-term exposure to permit fees for the next foreseeable period. You reference the Air Quality program and if you'll recall in our discussions of the Air Quality permit fees, we have made a commitment to this Commission to review those fees on a yearly basis and modify them accordingly. So that's the variance process that we see ongoing there. I'd also like to point out that the Division, as I mentioned in my opening remarks, is very sensitive fees to business and industry. You'll recall that the Air Quality fees were dramatically reduced in 1996 and that went in place for a period of approximately two years. We have dramatically reduced hazardous waste fees in response to business concerns at the Beatty landfill and just this year this Board approved not increasing the Mining fees because we were doing fine with fees there. So, we try and take a look at the fee structures appropriately and if we see that there's room to hold fees or reduce fees, we'd certainly do that and bring that before this body.

Commissioner Coyner stated Mr. Chairman, I'd respond at least in part to that one comment that said so industry knows where they are in the future. I think that's a little misleading in that if you're looking out to 2010, you might know what their inflation factors beginning to be characterized by this fee structure. But it certainly doesn't entail some guarantee that the absolute levels are going to stay where they're at. In other words, we could come in for a permit or fee schedule increase in two years from now, four years from now, that again, would dramatically or could shift fees.

Mr. Biaggi stated that's exactly correct. I mean, there's lot of things that could bring us back before this body to either increase fees or decrease fees and so there is that uncertainty. However, saying that, what we heard from the regulated community in the workshops was that they didn't want to have us come back in another 10 years with a dramatic increase such as this. They wanted to see a slow ratcheting of those fees in line with the inflation factors that we do know or anticipate.

Commissioner Johnson stated when I originally reviewed this I had serious concern about this guaranteed escalation and nothing's been said that dissuades me from the opposition to that. I think it's appropriate that this body review those fees. In addition, I think that there should be some future obligation against the general fund and I think that if we build in these guaranteed escalations there will be less likelihood that we would see a response from the legislative body or the administration when it comes to budget time because it's all taken care of and the political heat is diminished. I think, and certainly not having been present at the public hearings, but I think you're reading the regulated community is looking for certainty in fees and as we've just heard, there is no guarantee that this two percent is what will be there. I certainly would like to see a review, whether it's an annual review as the air quality, or some periodic budget cycle review. I think it is the duty of this body to make those determinations and I would be very reluctant to give this to 2010 authority because I think it would subvert some of the political pressures to

deal with the issues of adequately funding the program. I also would think that in your original background information that I think that you should give the broad mission statement of your agency. It isn't to issue permits and enforce those standards, you have a much broader task at hand. I think that is important and that's the clean healthy waters of the State and I certainly will support any fee increase that you, as an expert, present to me that's necessary to maintain that broad mandate. But, I think that for the record you should state that mission statement.

Mr. Drozdoff stated I'd be glad to state our mission. I was simply trying to provide a functional description of what the bureau does within the framework. Obviously our mission statement is essentially defined by statute when it gives direction to the agency on how it will protect public health and the environment for the citizens of the State of Nevada while at the same time ensuring the safe development of agriculture, mining and other resources. I have no problem stating that. In terms of the inflation factor, you know, that's fine. That's not ours. We didn't put it out when we went, we didn't propose it. I really felt though that that was something that we heard long and hard and if the Commission feels that it wants to review these fees, that's fine. Because essentially that's what we had in place, just, I guess, again, part of our mission is working with the regulated community and this was something that was stated. And I guess last week, I think the agency has a fairly good track record of sort of keeping an eye on fees. I mean, Allen said it at its outset, "We do take raising fees seriously." I think we have a good track record of saying if we're collecting too much fees we'll not impose them. I think we have a good track record if something else comes along the way that we will come back to the Commission and say, "You know, we thought this but we got this," which sort of gets to what Commissioner Coyner's comment was. This was simply an attempt to meet the, what I do believe I heard directly from the, you know, I would state categorically that this was precisely what people asked for. And in that regard I didn't misread it. In terms of your point that there may be, you know, other factors over the next 10 year period, whether it's funding sources etc., they come into play clearly and I think the way I would envision that if this was passed is simply say, "We've got a new funding source; this isn't appropriate." We've simply tried to meet what we feel the regulated community asked for, but it's your call.

Chairman Close stated I presume that what you're not telling anybody though is that this is the absolute rate that they'll be charged for the next 10 years. I mean you can come back in and you can increase it. You can come back before the Commission and say that we need more money in year 2006 or 2004 and, if justified, we would probably grant it to you and so where they wanted to have a guaranteed fee for the next 10 years so they can budget for it, the bottom line is that this is an estimate as to what you think the increases will be. If there are other funds that come to you can ask to decrease them and that would be good. On the other hand, if there is a problem that exists and you need more funds you can come back and these numbers really just go out the window if you can show us a need and we agree with that. And so what you're doing is you're showing them what you think it's going to be, but it's illusory because it can be changed from year to year depending upon need. Is that your true statement?

Mr. Drozdoff stated that would be a true statement.

Chairman Close stated I don't want to have somebody in the audience or whom you met with who wanted this fee schedule have some idea that this was a guaranteed contractual situation that you were not going to change the fee or increase the fee from that amount.

Mr. Drozdoff stated no and I don't think we ever gave that impression. I think the spirit of this is that, what we're basically saying is, "Based on today's," like you said "today's knowledge and today's program direction, this is what we think it'll take over the next 10 years if any factors come in - new funding sources, new program mandates, etc." (Inaudible) regulated community I think understands that because we would go through the whole regulation change again, workshops, etc.

Commissioner Doppe stated I think it's a good idea what you've done. As a person, a private industry member who pays fees to a variety of different government groups from time to time, I think perhaps what you guys do, you sometimes you've done too good of a job at holding the line and then the pressure builds and builds and builds and all of a sudden bang you have jumped up 70 to 300 percent every eight years and I think that the regulated community tends to forget all of the money they saved for the seven or eight period when they moving at all, but boy they sure don't have any trouble remembering what's going to come next year when all of a sudden their fee goes up six times. And it's hard for, I suspect we're running into a little culture clash here between the way government works and the way business works. It's hard for government, perhaps, to provide for an orderly planned increase like that when there are a lot of unknowns and it's hard for business to adjust to an 800 percent increase after seven years of flat fees. And I think anything you can do to try and introduce some sort of orderly planning like that is going to be very much appreciated by the regulated community. I'm not surprised at all that they are suggesting this and asking for it and hopefully cognizant of the fact that it might not be quite this way.

Mr. Drozdoff stated well, that's correct and thanks. And don't get me wrong, I would like, we did propose it after we heard it because we do like it. Obviously, if the Commission feels differently then that's what you do. But, we stand by it. We like it. We think, I agree with you, I think it's a good idea and I really would like to try it and see how it works and, you know, then we can provide some feedback on whether it makes sense on other programs or whether it doesn't.

Commissioner Johnson stated I think the uncertainty, and I agree with Mark, I am not objecting as a guideline and a more timely and routine review of the Department's needs, or your particular portion of this. I just see that we're defining for the next 10 years a hard rate if inflation in the economic cycle changes, we've indication that 2-1/2 percent is adequate if your workload increases for whatever reason where you have to add staff you have to raise money and this is a cultural thing. I certainly think that the ability to project into the future what it's going to cost you to do business is vitally important. But I think the fix to that is the encouragement of the agency to review on a more timely basis so that the 800 or 300 percent rate increases are not demanded. And I understand, and Air Quality was very different being than this one. But, and I appreciate the changing character of the source funding that you identified earlier and management techniques, but I think the cure to the problem is more timely review rather than making a regulatory mandate of what those fees should be and it's not a serious thing to me, but the philosophy behind it is.

Mr. Drozdoff stated no. I understand your point Commissioner and I think there's debate on either side. I guess I kind of look at it like, almost like prepaid tuition. I mean, what you're basically saying is you certainly don't know where things are going to be 18 years from now, but assuming things stay the same, assuming that there isn't big change, there isn't a big mandate, there isn't a big something or other, you know, I think the bureau is functioning well, but we're basically saying is if we're able to sort of just sort of keep up and not a whole lot changes, this should do the trick. Clearly, if something prompted a necessary review of our bureau, or of our agency, or of things beyond what we saw today came into place, as I said there's certainly debate on either side of it and we think it makes sense. I think that reviewing the bureau makes sense. I guess our feeling is coming back before the Commission every year, if that's the preferred option, we'll do it. I don't know. I don't know if it's the best use of everybody's time.

Comm. Turnipseed stated two comments: first of all, this falls more in line with this administration's philosophy in that this governor feels that it's a bit short-sighted to budget for two years at a time. I've heard him say on numerous occasions that we ought to be thinking about at least projecting our budgets out to eight to ten years. The second comment is I have a commitment from the U.S. Geological Survey and I'm involved with them in a co-op program for stream gauging and, of course, Congress approves their budget every year and the legislature approves my budget every two years, but built into that budget is a 5 percent escalation factor built into my portion of the stream gauging co-op program. The administration expects it, the legislature expects it, the legislature funds it. Now, oftentimes inflation does not amount to 5 percent. But nonetheless I give it to the GS and I don't know what

they do with it if they don't match it. I don't know whether they give their employees Christmas turkeys or what. But, it's comforting to know that the inflation factor for me for the budget cycle coming up for the GS program is going to be 5 percent. I don't have to go ask them every year or every other year or whatever what the inflation factor they expect is. They obviously can't predict what Congress is going to do by their October 1 deadline and oftentimes Congress doesn't approve their budget by October 1. They don't know what they're going to have for money until sometimes November or December and oftentimes that's 1-1/2 to 2 years after my budget's already approved. At any rate, there's some value in having a commitment from the Geological Survey that there will be a 5 percent inflation factor, no more, no less.

Mr. Drozdoff stated I agree. I do see the upside and just to clarify this one is 2-1/2 percent a year or 5 percent every two years.

Chairman Close asked if there were any other questions. He stated we have witnesses to testify on this matter. He called upon Bill Shepherd.

Bill Shepherd, Clark County Sanitation District stated first let me state that nobody likes a fee increase and the district is really no exception to that, but we do understand the need for the fee increase. We're willing to support this water pollution control program. The district has really seen every increase over these fees because we run facilities everywhere from 44,000 gallons per day up to 90,000,000 per day and in looking through and over the fee increases, they seem reasonable and equitable across the board and we feel that it is important that NDEP have sufficient funds to do their work which is really vital in protecting the public health and the environment. So given that that a fee increase is necessary and understandable, we support the fee increase that the district is proposing at this point.

Chairman Close asked if there were any questions. There were none. He then called upon Kurt Segler.

Kurt Segler, Utility Manager for the City of Henderson, stated we too are in support of the proposed change to the regulations. If I may I'd like to speak to two things as to this increase in fees, the need and the methodology. Mr. Biaggi spoke at the beginning this morning about Nevada being a delegated state under the Clean Water Act. I think that's very important and something that's not lost on the regulated community. We would much prefer to deal with Nevadans on Nevada issues than with someone outside the State as to our environment. So their need for supporting this program was ably explained to us. As to the methodology, it would be fair to say that the regulated community should support the efforts that are undertaken by the State to regulate us. That we bear some financial responsibility, which I believe that this change in the regulation would permit. And as to the inflation factor, Mr. Doppe has pointed out this some certainty for us, not as to guarantees by any means, shape or form. But we were paying \$3,000 last year, the City of Henderson will pay \$30,000. We would certainly much prefer a 2-1/2 percent increase per year as keeping up with the financial needs of the Division. So with that, we support the regulation as it is proposed.

Chairman Close asked if there were any questions. There were none. He then called upon David Mendenhall.

David Mendenhall, Environmental Manager for the City of Las Vegas, stated we feel that the City of Las Vegas will not be adversely affected by this fee increase. We, as Mr. Segler stated, it's very important we feel that maintaining Nevada as the delegated state for this program is vital. NDEP has worked with all of the dischargers in the valley regarding these fees and we feel a good effort has been made to spread out the load. So, the City of Las Vegas also supports this proposal.

Chairman Close asked if there were any questions. There were none. He asked if anyone else wished to testify. Since there was no further potential witnesses, he closed the period of public comment and asked for a motion.

Commissioner Johnson moved that Petition 2000-03 be accepted as amended.

Comm. Turnipseed seconded the motion.

The motion carried. Chairman Dahl abstained from voting on this matter.

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

A. Granite Construction Company; Notice of Alleged Violation #1386

Eric Taxer, Supervisor of the Compliance and Enforcement branch for the Bureau of Air Quality, reported I'm here to discuss ratification for a penalty that was negotiated with Granite Construction. Granite is a large and diversified construction company that operates numerous sites throughout Nevada. On May 24th of this year an unscheduled inspection was conducted at their facility located near Hawthorne. The inspection was precipitated by the observation of a white plume that appeared to be coming from their facility. Upon inspecting the facility it was determined that the plume was indeed coming from Granite from their lime silo. It was due to the fact that the baghouse was not functioning properly due to poor maintenance; specifically, several of the bags had fallen off, several of the bags had torn and the bolts to the motor had sheared which prevented the bags from being pulsated and interfered with the cleaning process of those bags. An enforcement conference was conducted on July 9th. During that conference it was noted that a prior inspection had occurred at the facility in April, on April 13th. Site emissions were noted from the facility during that inspection and a verbal warning was given the following day to notify Granite to correct that problem. During the conference it was decided that a NOAV would be issued for the May 24th incident because a verbal warning had already been issued and an NOAV was issued for operating the silo without the proper air pollution control equipment operating appropriately. A corrective action plan was agreed to during the conference and it was decided that the corrective action plan would provide a method to ensure that air pollution control equipment was maintained at all of Granite's locations. That plan was to have been submitted in August of '99 and that plan was submitted in July, approximately a month before the due date. That plan included documentation, or included a methodology of documenting maintenance frequencies at all of their air pollution control equipment sites and provided a form that would be filled out and maintained on site and at the main office of the maintenance frequencies and how it was to be conducted. NDEP has determined that this plan is adequate and to satisfy the corrective action plan requirements of that issue.

In addition, a penalty was negotiated in the amount of \$9,670. This considered five different factors, noted a moderate potential for harm from the facility which incorporated an evaluation of moderate to a relatively high amount of emissions release from the silo. It incorporated an evaluation that the silo was fairly close to the highway, approximately 225 feet which would increase a potential health risk to the public and also considered that there was probably a load to about the low to medium toxicity rating of the lime emissions. The issue represented a major deviation from the regulatory requirements. And we also considered an economic benefit in the amount of \$1,750 that considers labor and repair cost savings from not maintaining the equipment adequately at the site.

Additionally, a degree of cooperation rating of 25 percent was added onto the negotiated base penalty which represents the verbal warning that was given to Granite prior to the actual observation on May 24th. So Granite had the opportunity to correct the violation prior to the May 24th observation.

And finally, a degree of a factor of 55 percent was also added to the base penalty, which represents Granite's past history of noncompliance. It incorporates, it counts up the number of different past violations, incorporates similar violations and it factors in the most recent violation and together those summed up to a factor of a 55 percent increase.

At this time NDEP recommends ratification of this negotiated settlement.

Chairman Close called for questions from the Commission. There were none. He then opened it up to the period of public comment.

Mike Robinson, Granite Construction Company, stated I'm available for any questions.

Chairman Close called for questions of Mr. Robinson from the Commission. There were none. He called for further comments from the public. Since there were no further comments, he closed the period of public comment. He called for a motion.

Comm. Turnipseed moved to accept the negotiated settlement with Granite Construction under Notice of Alleged Violation No. 1386.

Commissioner Coyner seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item V. Complaint of Gregory Bennett regarding investigation of a mining spill.**

He called for Mr. Bennett and noted that he was not present. He stated Mr. Bennett had notified us earlier that he would not be present. I'd suggest we take the matter off the agenda and if he submits another request to us we'll consider it at an appropriate time.

Chairman Close then moved to **Agenda Item VI. Status of Small Source Air Pollution Control Fees**

Jolaine Johnson, Deputy Administrator for the Division of Environmental Protection with oversight of the air, water, and mining programs gave this presentation. She stated David is providing to you a copy of the basic portion of my testimony today and then, of course, I'll be happy to answer any questions that you may have. On September 9, 1999, I presented the Commission's Petition No. 1999-03 to you for adoption of the proposed fees to support the NDEP Air Pollution Control programs. For your reference, the fee structure that was adopted at the hearing is presented in a spreadsheet at Attachment A. And if you'll refer to that I'll just very briefly review the structure of the fee program. If you'll look at page A-2 of your handout. Generally, stationary sources of air pollutants that hold air quality operating permits with the agency pay three types of fees. The first is the permit fees. Those fees are due when a source submits an application for an air quality operating permit. Those permits are valid for a five year period and then require renewal. So you'll find under the permit fees you'll find subcategories of permits. A PSD permit is a very complex federal permit. Class I permits meet the title, Federal Title V program and Class II permits are State of Nevada operating permits and we have a few categories there: new, renewal, and modifications of those permits and appropriate fees.

The second fee that a source will pay is an annual maintenance fee. This fee is charged to every operating source in the State once a year. Those fees are due by July 1st of each year and, again, those are broken down based upon four or five subcategories that generally represent the complexity of the source and the time and effort that is required by the Division to manage that source in our system.

And the third type of fees that sources pay, again, this is paid on an annual basis, are fees based upon the emissions. Each year at this time of the year we send a notice to sources asking for information about their production over the past calendar year and we calculate from that their emissions that they emitted over the past calendar year and then the July payment includes a fee of \$5.60 per ton for every ton of emissions that the source emitted in the previous calendar year. So that's the three basic types of fees that are set up in the current regulatory structure for air quality.

Also during the September 9th hearing I presented a policy proposed by the agency at the request of the Commission during a previous hearing. That policy defines how fees would be determined for this program in future considerations. The Commission provided DEP with general consensus of approval of that policy. It was not

adopted at that time, but there was general consensus of approval. A copy of the policy is presented at Attachment B. During the September 9th hearing, however, issues were raised and discussed by interested stakeholders and members of the Commission. The Commission adopted the fee structure during that meeting, but presented us with instruction to further consider those issues and return with recommendations for appropriate amendments. I'm not here today to propose amendments; I am here today to provide you with an update of some of our findings on this issue and to request some further guidance on how to proceed. My presentation today will provide you with our findings to date regarding those issues and inform you of our future intentions. Any feedback that the Commission could provide us in regards to our findings and direction will be greatly appreciated.

A summary of the issues raised - I'm going to talk today about the two major issues that were discussed at our last meeting when those fees were adopted. The most substantial issue during that hearing was regarding Air Pollution Control fees in an economic hardship situation and we specifically addressed the Walker River Construction Company who had been faced with their \$2,000 permit renewal fee just prior to the hearing and they were very concerned that that presented them with a great deal of economic hardship and we were, essentially we had proposed at that time to request a waiver from the Commission for the fee structure. However, it was discussed that that wasn't practical and it could set precedent that would be very difficult to deal with in the future and you have asked us to go back and look at the issue and consider a subcategory of these kinds of permits and how we might be able to reduce that economic burden on sources like the small Walker River Construction Company and perhaps other similar business concerns.

The instruction that we took from that meeting was that on adoption of the petition was that you were requesting that we return to you with a breakdown of small operations based upon plant size, on emissions, employees, or any other appropriate criteria.

The second issue that was addressed during that hearing was the issue of emission fees. Previously, the fee structure had exempted sources that emit less than 25 tons per year from having to pay the annual per ton emission fee. During our last hearing and after public workshops, we came back and we suggested that that exemption be removed and that all sources would now begin to pay the annual emissions fee no matter how little of the pollutants that they emitted. The exemption that we had presented was originally adopted to avoid the administrative burdens on the NDEP and on the facilities associated with invoicing and payment of fees which would amount to \$100 per year. When the new structure was proposed and adopted, an annual facility maintenance fee was assessed to each source and that required the agency to invoice each of those sources on an annual basis anyway and for those sources to have to pay an annual fee. The workshop stakeholders recommended that the annual emissions fees be paid by all sources because they would be invoiced anyway to pay the maintenance fee. Commissioner Johnson during the last meeting requested that the DEP and the Commission reconsider the exemption as further evaluation of small source fees is undertaken, and I'll talk about that more in a moment.

Now I'll talk a bit about our findings. The DEP has identified all stationary sources that have permitted emissions of less than five tons per year. We sort of set a cutoff at five tons per year and decided to evaluate the practicality of reducing fees for those types of sources. You have Attachment C. It presents information about all of those sources. Essentially there are 96 of them out of about 430, or about 25 percent of the sources that we permit emit less than five tons per year, a pretty significant portion of our sources. In Attachment C, on the first page of Attachment C we've highlighted Walker River Construction simply as an example for you since they were the focus of our considerations in the last meeting. Just to consider what's in Attachment C under Walker River Construction, they have one emission unit, that is they have one unit that operates somewhat independently and it emits pollutants that we give consideration to. They have a permitted limit of 2.56 tons per year of particulate emissions. Their actual emissions for 1998, calendar year 1998, was .06 tons. So, they indeed are emitting very small amounts of pollutants certainly compared to some of our major sources. The fees that that source would be subject to are the \$250 maintenance fee paid on an annual basis. The next column shows the renewal fee. This type of source is subject to a \$2,000 fee every five years and so we've divided that by five to present this on somewhat of

an annual breakdown basis. With .06 tons of pollutants they would pay us 35 cents for their annual emissions fee and for a total of \$650.35 on a generalized annualized basis. So, that's laid out for all of those small sources.

Again, each source is subject to an annual fee of, or an annual maintenance fee of \$250, an annual emissions fee of \$5.60 a ton, and a five year permit renewal fee of \$2,000. Based upon this information, the sources which are permitted to elect to emit less than five tons per year pay a total annualized fee of between \$650 and \$678. Now the NDEP has also researched the fees assessed by Washoe County as this comparison was raised during the public testimony on September 9th. You may recall there was another gentleman, Mr. Chism, representing Yerington Ready Mix, who indicated that a source such as his, or actually he was speaking of his son or son-in-law I believe, operating in Washoe County and that his fees were substantially lower than the fees that they were being subjected to in Yerington and Wellington in this case. So, we researched those fees and you can find those fees in Attachment D. And if you look at Attachment D, page D-1, again we've highlighted Walker River Construction Company and we show, based on Washoe County's fee structure, that that source would pay an annualized fee of \$34. As was testified to, substantially lower than the 650-some dollars that our agency is charging this type of a source.

We've also provided some tables from other air quality jurisdictions in the area. Spokane County is given on page D-2 and Walker River Construction pays essentially \$291 a year in Spokane County if they were located there. In Arizona you'll see that they would pay an annualized fee of \$955 and in Utah they would be exempt from fees. So, there's a, you see that what we found is that there's a very broad range of fee structures to be compared to.

On further review of the Washoe County fees we found out the county does reduce fees significantly for these smaller sources and makes up the revenue need with higher fees on the larger sources and high fees, certainly compared to our annual emission fees, very high fees on annual emissions. So, they've adjusted the balance, if you will, on how they assess those fees.

The fee structure that we found in these other entities is largely driven by the availability of other revenue sources. In 1994 when Walker River last renewed their permit they testified to this in the last meeting, when they last renewed their permit they paid us a fee of \$225. So they were shocked when they came back to us five years later and we said that you needed to pay us \$2,000. It was certainly very difficult for a small concern to face that difficulty. We went back to 1994 and, indeed, we have a receipt for his payment on his permit of \$225. And then I looked back at the budgets for those years and our budget, the Air Quality budget at that time was supported two-thirds by general fund. During that session of the legislature, it was required that the agency make up all of its revenue by charging fees to stationary sources. So, that's my example of how it depends, the fees are going to depend largely on the other revenue sources that you might have. The other thing significant about Washoe County is that they receive significant funding through the fees collected for smog check programs on vehicles, much higher than the fees that are received by our agency.

The fee structure which had been proposed by DEP through public workshops and the SEC hearing were based upon what we believed was an equitable balance between the fees for direct services provided and fees for pollutants emitted and you'll remember we had a discussion about that balance. As presented in the fees policy, the fees policy is, again, presented at Attachment B during your last meeting, the permit processing fees are determined by multiplying the average number of hours it requires to process that type of permit by a general staff cost fee of \$50 an hour and charging that fee for every one of that type of permit that comes in for processing.

Despite the small amount of emissions of a specific operation, the amount of time to process the permit can be very high. In fact, some of the smaller companies require more effort than the larger ones based upon the ability of the company's resources to prepare a permit application. A larger company tends to have environmental staff experienced, possibly engineers, that have the experience necessary to fill out a good application, whereas we spend a lot more time on some of these small companies getting them through the process.

By regulation, the DEP is required to determine whether the source will meet all applicable requirements when they submit a permit application and our particular emphasis is on the ambient air quality standards. This entails the calculations of emissions and the modeling of those emissions to estimate the impacts that the source has on the air quality. By regulation, sources which emit less than 25 tons per year aren't required to perform an environmental evaluation and they aren't required to perform the modeling analysis to demonstrate with the ambient standards. Sources that emit less than 25 tons per year come to us and the agency performs that modeling calculation to make sure that they are not going to violate health standards.

As discussed below, the DEP will further consider ways to reduce the workload associated with these smaller sources. The point I'm trying to make here is that a policy presented this philosophy of charging an equitable amount of money for the amount of time that it takes to process a permit and the direction to us to come back with a subcategory for some of these smaller permits is somewhat conflicting with that in that these facilities take a certain amount of time and the structure is based on that much time and the staff cost. So, we'd appreciate some guidance from you or direction from you on the difference between the policy and this effort on our part to reduce the fees for small sources. And I will look to that I think when we're finished. Maybe some of these other things will help us with that discussion. The other thing that you need to recognize is that if we reduce the fees for some of these small sources, again, there are 95 of them under five tons, we have to make that up somewhere else. So, essentially, we looked and I think about a \$65,000 annual revenue from these 95 sources if we give them reduced permit fees we have to find another way to generate those fees, perhaps through higher emission fees, perhaps a 50 cent per ton increased emission fee which would put more of the burden back on those larger sources or the larger emitting sources anyway.

A suggestion was made during the September meeting that consideration be given to the number of employees a company had as a criteria for reducing a permit fee. We found some real road blocks with this. Based upon evaluation of small business information, we found that the number of employees is really not representative of the amount of emissions, the time required to process a permit, nor the ability of the company to pay the fees. We are also concerned that it would be difficult to determine at what point in time is appropriate for counting the number of employees that a company has. That is, a company may be experiencing a slow time when the permit application is submitted and then increase staff substantially during the next season. So, there were some difficulties with that.

It was also suggested that we consider fees based upon the size of the operation. The DEP has noted that there are significant differences in the number of emission units operated by the different facilities listed in the table of Attachment C. If you will refer again to page C-1 and look down that first column you see that there are anywhere from 1 to 45 emission units associated with the same small sources. An application review can, or does get more complex and lengthy as those numbers increase. So, we would like to go back and give further consideration to charging for permits based upon the number of emission units.

Finally, we have considered the ability to base the permit application fee on the total amount of emissions to be permitted. As discussed above, there are difficulties under the current permitting process with setting fees based upon emissions because we do have to do those environmental evaluations. Small emitting sources can require considerable time to process based upon several factors. However, DEP is giving further consideration to streamlining the permitting process. When we were doing our research we discovered, as you recall, under Utah's program a source like this is exempted from fees. We found that the State of Utah does not permit these kinds of sources. They actually register these kinds of sources. In other words, the source will inform the facility that they're going to operate at this level, with this much emissions, with these kinds of controls, and that Utah leaves it at that. What we'd like to do is give further consideration to the concept of a registration program for some of these smaller sources. We need to look carefully at this and determine what kind of criteria besides the 5 ton threshold may be appropriate because a 5 ton source can cause ambient air quality exceedences in some circumstances. So, we may need to look at other criteria such as how remote that facility is, or distance to sensitive receptors, and those sorts of things. We want to model through some of that and come up with a threshold and criteria that would give

us some assurance that that source isn't going to cause a problem for its neighbors.

And finally, DEP has given consideration to the exemption of sources which emit less than 25 tons per year from the annual emissions fee. According to the 1998 emissions inventory, the total amount of emissions from sources emitting less than 25 tons was 462 tons. This amounts to about \$2,589 on an annual basis when we collect our annual emissions fees. Again, the agency didn't make this decision based on economics. The agency made this decision at the recommendation of the stakeholders who said, "As long as you're invoicing those sources, you should get the fee." What we would propose at this point is that we take this back when we go back to the regulated stakeholders with other issues related to fees and open this up again and then come back to the Commission with a further recommendation.

That's my testimony today. That's an update on where we are with this process. I'd be happy to take any questions and certainly any guidance that the Commission would like to give the agency at this point on how to proceed.

Comm. Turnipseed stated I think I was one of the commissioners most empathetic to Walker River's predicament last time and I've since changed my position. I think they ought to be treated like everybody else. I can't find it in the minutes, but I believe the gentleman's testimony was that he charges 50 a yard for a five sack mix and \$550 to \$630, depending on the size of the septic tank. I would bet that Commissioner Doppe pays at least \$80 a yard delivered. I would, in Gardnerville or Minden (inaudible) probably more than that out of Carson City Concrete. I think he's just simply charging too little for his concrete. If he could kick that up by \$10 or \$5 a yard, and easily recover the difference between whatever he's paying now, \$265 a year to \$400 a year in annual fee. That's just my feelings.

Chairman Close commended Jolaine for her work on this.

Ms. Johnson stated I've had a lot of great help on this.

Commissioner Johnson stated I had concerns and requested consideration of some of these issues. I think you're asking specifically for guidance on the issue of what basis you should assess your fees and I've kind of reconsidered also that there may not be the necessity to protect the small emitter. It might not be as onerous as I had originally thought, but I do find the registration for these very small emitters, whatever is inappropriate. I wouldn't propose what would be an appropriate classification, but I think that there is a class of small business out there that should be dealt with differently than \$650 a year for their review on an annualized basis and that was the thrust behind my original consideration and asked for a discussion on this point. This issue of whether we can simply look at the Utah model or not, I think this is highly attractive to me. I mean it's obvious whether that very small emitter is right next door to my house or Mark's house how you deal with it, or any person's house, but it can't simply be based upon that they do one ton per year or something, but as a model it would be appropriate to look at. And I would make that suggestion that we continue looking at that kind of procedure for the very small business person.

Ms. Johnson stated I too am very excited about this concept and the staff is too. In streamlining, I don't know, one-fifth or one-quarter of our sources into a program that doesn't require modeling and review every time they come in for renewal would be a real benefit to us. The staff is strapped with the resources needed to deal with the more serious issues. But you're right and I do think that there are a lot of these little sources, particularly these little concrete and batch plant operations and they're miles away from a sensitive receptor, someone that would breathe those emissions, and so there's just no likelihood that they would impact that source. We'll model through that and come back with some further considerations on that. It would require substantial regulatory changes, so we would have to come back with a package.

Chairman Close asked if there were any other questions. There were none. He stated since there's no action for us to take, we'll accept your report and you'll continue reviewing the situation for any modifications that you want to make in the future. Is that where we are?

Ms. Johnson stated well, I would ask for just a little bit of guidance on, and I've heard a bit of it, but I . . .

Chairman Close stated you may not get much more than you've got, I'm (inaudible).

Ms. Johnson stated okay, well maybe I should quit while I'm ahead then.

Commissioner Gifford stated it would seem to me just, you know, trying to look at it somewhat objectively here that the guiding light, so to speak, has to be to some extent revenue generated in the sense that you have to stay in business. On the other hand, from an environmental standpoint it would seem to me that one of the drivers there would be the total pollution, you know, over a period of time emitted by a source or multiple sources and to me it would make a lot of sense to structure something accordingly where the dollars match up more with the emission totals and so if you're the small person on the block, so to speak, as a result of that you're just going to have a lower fee because you have a lower amount of emissions and that to me is consistent with our overall, as a total here, objectives in terms of trying to, you know, have breathable air and whatever else goes into it. And so I just offer that as a suggestion and whether that will help you or not I don't know.

Ms. Johnson stated well, herein comes the confusion that we have. We presented a policy during the last meeting that basically says we'll charge for the permits, we'll charge for the cost to process permits and then we'll generate the rest of our fee revenue by approximately 50 percent through a maintenance fee or an annual fee to all sources set up on a categorized basis and 50 percent on emission fees. So, that policy is presenting the basic structure for fees and I would like to know generally if there's a consensus, that that's still the way we want to proceed so that I can proceed with all of these considerations that I'm making in regards to fee sources and future fee revenue.

Commissioner Johnson stated I would like to see the Division maintain the general principal of charging for permit processing based upon the staff time requirements. In addition to this, I would like to see continued study on a registration process that may exempt some of the very small emitters that I had concern with earlier.

Commissioner Doppe stated I still think that that's the appropriate way to divvy up, start with what it takes, as Commissioner Johnson is suggesting, and then figure out how to charge that based on a method that gives 50/50 weighting to an annual automatic dollar amount and then the rest based on emissions. I do think, though, that you have the opportunity, if in fact, 25 percent of the people, companies whoever that you regulate are these very small groups. If you can somehow just like say, "Look, you know, your life was revolutionized. All you have to do is fill out this piece of paper and send it in" or something to that extent and then now you can focus. You've got to make up the \$65,000 some way. But if your total budget is \$1.8 million it ought to be easy enough to come up with the \$65,000 from the others to give them better service, free it up from the responsibility of having to spend time on these people who collectively don't really amount to much by way of a pollution threat anyways. So, I think that that's the direction that you ought to be continuing to push ahead and explore.

Ms. Johnson stated okay.

Comm. Turnipseed stated it seemed to me like Southern Cal Edison and Mojave far and away paid the largest fee and I don't remember what it was . . .

Ms. Johnson stated a lot.

Comm. Turnipseed stated and probably they should, but it was several tens of thousands of dollars right?

Ms. Johnson answered hundreds of thousands of dollars. They emit something on the order of 60,000 to 70,000 tons of pollutants at \$5.60 a ton. So, \$350,000, it makes up a substantial portion of our total fees. Of course, you know, they're going to put some

controls on here pretty soon, and then we're going to be really back at the drawing board. Controls are a good thing; don't get me wrong. But it will reduce our fees substantially and we'll have to spread that out a little more over the other sources.

Comm. Turnipseed stated I guess personally I agree with the other Commissioners that it's probably about the right mix, 50 percent of the fees generated by the permittees on some kind of baseline basis. Obviously by the various categories and classes of permits and the other 50 percent by pollutants. Now maybe you could tweak that some and make it 60/40. I don't know what would be fair, but certainly, I mean I'm faced with the same thing. It takes the same amount of time to process an application for one gallon as it does for 10 million.

Commissioner Gifford stated I'd disagree a little bit with that philosophy. I think government is probably the only group that spends an astronomical amount of time on things that don't amount to a hill of beans and in the interest of my tax dollars, let's say, I'd a lot rather you be spending time with larger items and the smaller stuff spend less time on. And so as soon as you tell me you're spending quite a bit of time on small stuff, then I would just say your priorities are wrong and you need to realign those and adjust your fees accordingly. And, so wherever the bigger chips are that's where your time is and the smaller ones, even if it comes down, as Mark was indicating to, you know, sign off on a sheet of paper something, you know, similar to that to get rid of the smaller items then you just do it. I mean it seems so logical from my standpoint paying the tax dollar here or a business dollar I mean it just seems like it's logical and it's logical to me from your schedule. I mean I would rather think about you spending time with bigger ticket items than the smaller ticket items kind of a philosophy and so, anyway, there it is.

Ms. Johnson thanked the Commission.

Chairman Close moved to Agenda Item No. VII. Presentation Regarding the Protection of Visibility in Southern Nevada.

Michael Naylor, Director of Air Pollution Control for the Health District, stated I think this is some old business from last spring, or last winter. Commissioner Johnson asked about some discussions on visibility and it hasn't been on the agenda since I think around March. So, I'm going to give you an outline of what we're doing in the Las Vegas area with regards to visibility impairment. We have two machines called transpiezometers that measure haze or visibility impairment. One is located in the central Las Vegas valley and one is located in the southeast valley and they measure visibility impairment across the line of sight. There are similar instruments in quite a few of the national parks. They, for example, measure visibility across the Grand Canyon, at a couple of places with transpiezometers, other national parks use these, also a number of cities are using them, Denver and Phoenix have installed several of these devices. Now what I'm showing on the diagram here is that in the central valley, see a line in the southeast valley see a line, it's a telescope and beam of light and a meter registers how much of the light is attenuated by the amount of haze present and as haze increases, the light is extinguished is the term we use. The light is extinguished as the haze gets thicker. The line of sight in Henderson is a little bit over three miles and the one here in the downtown area is about 2-1/2 miles. The transpiezometer in the downtown area is located at the Bank of America parking lot, parking building, just a few blocks from here and then it shoots a beam to a parking garage at Sunrise Hospital at Maryland Parkway. And then there's a similar arrangement in the southeast valley. But these measure visibility on a continuous basis every hour of the day and the data is relayed to the Health District every hour.

These devices measure light, the light extinction coefficient and that coefficient can then be converted into a formula that gives you the visual range. We find that there's a natural background amount of haze, in fact the blue sky is a form of natural haze. But, the amount that's above natural background is due to particles that are in the air. When you look at PM10 we treat all particles as a sign. If they're smaller than 10 microns they count as PM10 it doesn't really matter what they're chemical makeup is, they count as PM10. When it comes to haze, the chemical nature makes a big difference. First of all, PM10 measurements aren't a very good indicator of haze because haze is

due to the finer particles known as PM_{2.5}. And among the 2.5 particles the most efficient particle that causes haze is known as elemental carbon or soot carbon. And to give you an example of how the chemical content makes a difference, you'll see ammonium sulfate and ammonium nitrate have a value of 3, likewise fine organic particles are a 3, but elemental carbon has a value of 10 and then very fine dust particles that are smaller than 2-1/2 micrometers are 1.25 and then coarse dust particles that are still smaller than PM₁₀, they count at 6/10ths.

So, we find actually in the valley that dust particles make up most of the PM₁₀, but when it comes to haze it's going to be the finer particles. We also know that most of the PM_{2.5} particles come from fuel combustion. The sources of fuel combustion have been looked at quite a bit here in the valley. This is our estimate for 1998. We're estimating about 5,000 tons per year of PM₁₀ particles, which happen to be mostly PM₂ particles, but about 5,000 tons a year are emitted into the air shed. You'll see the two biggest categories are under gasoline power and diesel power and diesel fuel burning is roughly 66 or 2/3, 66 percent of the total PM₁₀. If you look further, you'll see that we have the diesel power broken into several groups, but the two biggest groups are the on-road diesel trucks and buses and then the off-road construction and sand and gravel process equipment. If you look at the fine print, you'll see we're actually using more fuel off-road, that is 146 million versus 125 million on-road. I think we have actually an unusual amount of diesel fuel used here in the valley and it's due to our unusual amount of construction occurring here.

It also turns out that EPA has been regulating new trucks and buses for over a decade and the new trucks and buses are relatively clean. They have not been regulating bulldozers and trenching machines and other off-road equipment. They're just now getting around to that. So it turns out that the off-road equipment emits per gallon about three times as much of the pollutants as does the on-road. So the off-road side ends up becoming a big part of the emissions of PM₁₀. Now we took that information and applied it, I'm skipping some pages that might be in your handout, we combined that information with our PM_{2.5} information that we collected and we combined it with information that Desert Research Institute collected when they did some, a chemical analysis of the PM₁₀ in 1995, 1996. So, DRI was able to tell us how much ammonium nitrate was there, how much ammonium sulfate, what were the level of organics, the level of elemental carbon and then the amount of coarse particles. So they told us what the concentrations were and you'll see on that Table E that coarse particles are 70 percent of the PM₁₀ and fine particles are 30 percent. But then if we remember that not all chemicals are created the same, the elemental carbon is much more efficient at causing haze than the dust particles, we then calculate some haze products and it turns out that elemental carbon on this particular day is estimated to cause 42 percent of the haze, organic carbon about 16 percent. Then we took another approach, or another analysis that same day and went to source categories and you'll see here that the fuel combustion particles are divided into two subsets: the diesel particles and other fuel combustion. And on that particular day the diesel particles were 38.9 percent of the total, whereas the geological and other coarse particles were about 37 percent.

At the top you'll see secondary particulate at 4.9 percent. We're kind of blessed that in this area the amount of haze due to secondary particles is not very much. The main culprit for haze in southern California and through a lot of the eastern seaboard is secondary particulate, mostly ammonium nitrate and ammonium sulfate. But around here secondary particulates are not that significant.

Finally, we've done a pie chart that's more of a generalization of a number of days that we looked at and I've added, it's not in your handout, but this is a tentative estimate. This is still kind of a moving target and there's no exact numbers. What we're finding is a general pattern that diesel particulate seems to be accounting for about half of the visibility impairment and then other fuel particulate, about 15 percent. The geological is showing up as a minority for visibility even though the geological particulate accounts for most of the PM₁₀. Another question, or some observations, one is, and I'm asked all the time and people usually don't ask me they tell me the answer, is the haze getting worse or not? And I think the popular opinion in the street is that it's getting worse. And we've looked at our transpiezometer system as maybe one way of gauging that and but we think most persons look at the whole air shed. They look either to the west or the east or the north, they look across the whole valley and they're

not looking in the same way a transpiezometer would and I think the intensity of haze at any one point in the valley may not be getting worse, but the haze is spreading out and occupying more of the valley and that, if nothing else, would make it look like the haze is getting worse.

It also turns out that haze and PM2.5 kind of go hand in hand. We're actually finding out that even on a relatively hazy day, our PM2.5 levels appear to be in compliance with the new EPA standards. The courts have told EPA they can't enforce that standard for the time being. So it's not legally enforceable, but nevertheless at this point it looks like or PM2.5 may be in compliance with the EPA standards. Does that mean the air is healthy and we have nothing to worry about? I would say no. They're finding that particulate matter is kind of a risk-based pollutant that there's no absolutely safe level. That, you know, every microgram that you breathe will increase some risk of respiratory problems and therefore you want to keep these levels as low as possible. That they found that on days when particulate matter increases by 50 micrograms per cubic meter versus the day before, that hospital admissions show a distinct relationship. You know, hospital admissions will go up maybe 3 or 4 percent on the days with dirtier air. They're also finding some increases in the daily mortality rate with modest increases in particulate matter. So whether we're in attainment or not, it's probably we can't rest on that. I think the message is that we need to keep trying to reduce particulate matter. Now here are some of the trends from the transpiezometer and this is the number of days and it's less than 10 miles. Some of you flew in here this morning and I assume some of you had a chance to see our haze between 8:30 and 9:30 this morning coming to the building. And today, for example, it was measuring about 14 miles from about 7:00 in the morning to about 10:00. The visible range today was roughly 14 miles. So this day would not have counted as being under 10 miles. But this, and assuming that we don't have much more the next two weeks, this graph shows some improvement. But if we look at the number of good days, we don't get the same picture. On this one you want as big of a number as possible on days when it exceeds 50 miles. And that graph is kind of uncertain as to whether things are getting better or worse. Certainly 1998, last year, was not a good year. There were only 36 days when the visibility exceeded 50 miles at 8:00 in the morning. That does not show very many good days.

Another parameter is the noon measurement. The inversions always lift by mid-day and you'll see that in the last two years we've had fewer 50 mile visibility days at the noon hour than the previous years. So these last two drafts show that the visibility may in fact be declining. Now there's a number of current developments. We have a Senate Bill 432 which sets up a legislative committee of the legislative commission, I believe it's called. There are I think three senators and three assemblymen from the Las Vegas area on that committee that is supported by a 16 member technical subcommittee which includes a number of people here in the room today and they have just hired a consultant to undertake an air quality study of the Las Vegas area. They're looking both at visible pollutants, I mean, they're looking at haze and other pollutants as well. They're looking at the institutional structure of how it's regulated, if there's enough funding, and if enough controls are being applied. For example, should, one of my favorite issues is should diesel trucks and buses undergo an annual smog check? When that bill was first introduced that's exactly what it would have provided for, but the legislature watered that part down, so to speak, and it became a study. I'm still an advocate of annual inspections of diesel trucks and buses, but so far the legislature hasn't seen fit to do that. But that type of question will be one of the things that the consultant looks at. Also, with some money that Lake Tahoe Regional Planning Agency didn't take, some excess reserve money was applied from DMV to the Health District to Clark County, right here in the building. They are hiring Desert Research Institute to do several things, in fact that work will start next week. One of those will be a real-time photography project at Palo Verde High School which is on the west-end of the valley and not only will they be taking pictures several times each morning and elsewhere throughout the day looking to the downtown area and those pictures will be posted on their Web site on a continuing basis. And then there'll be an update of the measurements of PM2 or at least the chemical components of PM2.5 and PM10 and both urban and rural areas. They'll be starting that project soon and they'll be applying this chemical mass balance method that I've talked about earlier to determine where those sources of PM2 are coming from.

Finally, they'll be using some new remote sensing devices. Remote sensing for carbon monoxide has been around

for a long time, but they're adding to that remote sensing for particulate emissions using Lydar and they will be able to measure particulate emissions from on-road trucks and buses as well as off-road diesel powered equipment. So I think that information will give us a lot of insight into how to handle those things. There's still a lot of uncertainties and one thing this analysis points a finger at is diesel particulate, but another group has been discovered in Denver and I just read about it yesterday for the Phoenix area is the group of gasoline motor vehicles known as gross polluters. There is a subset of the dirty cars out there that put out a fair amount of soot and it could be that what we're assigning to diesel may, indeed, be due somewhat to the dirty cars. But I think that the DRI work should help give some more insight on that. So that's kind of an update and I guess another point is there is no air quality standard for haze. There is no barometer on whether we're in compliance or not. Haze in urban areas is not regulated by EPA. The closest they get to it is PM2.5. But, how far you can see or not is not an explicit parameter regulated by local government at this time and I think the Senate Bill 432 effort will look at actually setting an enforceable visibility standard. So, that's all I have. If you have any questions?

Comm. Turnipseed stated Michael, on the number of days that you can see 50 miles versus less than 10 miles or whatever and the various years, there's not a great deal of difference. But have you correlated that any with days after measurable precip. or days after of wind exceeding some velocity or anything like that?

Mr. Naylor answered no we haven't, although it would probably be good to do that. And certainly how many days had low wind speeds, it does appear to be a large function of weather and I'm not sure there would be much of a rainfall connection, but certainly the number of stagnant days per year would have a large variation and we're just in that kind of weather right now where it's stagnant and I'm sure tomorrow we'll see thicker haze than we saw today. But, to explain those changes in the trends we haven't really looked too far what could explain that.

Comm. Turnipseed stated Roy, to my right, and I were commenting on the haze. We saw haze all the way to Tonopah coming in this morning and I asked him, you know, if he was burning again and he said, "No but California is" and there were controlled burns and I'm sure that at least in the north when California or at the Tahoe basin their doing controlled burns significantly affects our air quality in the north.

Mr. Naylor explained that's certainly a factor. It's, I think, an issue throughout the southwest where controlled burns can be an issue.

Commissioner Doppe stated Michael, a question - back to the wind again. On the 2.5 I understand that, did you just, it strikes me as someone who drives across the west, from west to east every day, on the windy days it tends to blow the haze out of here it seems like. Its the days following the windy days seem to be the clearest; however, the PM10 probably, that's when you get your PM10 exceedence days, is that (inaudible)?

Mr. Naylor explained there's a window there where, like as the wind speed goes up at a certain point you get the minimum amount of pollution. As the wind speed goes up further, they should start slowing back up. But I would say 15 miles an hour would be the ideal speed to blow out all the smog, carbon monoxide and haze and yet keep the dust down. But when it's below 15 you get more haze, when it's above 15 you get the windblown dust. So, it's hard to get it just right.

Commissioner Johnson stated Mike, seeing how it was my letter that has you here today, I wish to thank you and applaud you in running the inventory and submitting this report to us. I think it's very important that we recognize that visibility is a statutory requirement that was enacted in 1971 that visibility is defined as an air pollutant in our statutes. Granted, the federal requirements are not there, but I think that in recognition of that there is a State standard on visibility. It's 30 miles. I had originally anticipated asking whether you had adopted a local ordinance on what's an exceedence of a standard and I think that grew out of the fact that there was some interpretation that you didn't have the authority and I wish to see that at some point the Commission indicate whether or not they wish to ask for a legal opinion or advisory on the basis of whether you or the County Board had the authority to establish

the standard or not. Establishing standards, has that been a point of discussion within your community in the last six months or so?

Mr. Naylor answered it hasn't and I guess the other issue is if one does set a standard, do you enforce it? I mean, do you set a deadline where you'll reach attainment of that standard. How much should the community have to pay to reach that standard? There would need to be a plan and there's no mechanism to go through all that exercise at this point. But if 30 miles was the magic number and it couldn't be exceeded more than once a year or whatever, that would be a horrendous undertaking to achieve that goal.

Commissioner Johnson stated well I think my point, and I don't wish to belabor this because I'm appreciative of the efforts that you have made and have continued to over a fairly long period at least of inventorying and the direct relationship to the 2.5, but I think the beauty of this is that this is one of the ideal things that we always say, "Well if it wasn't for those bad guys in Washington we could handle this problem." Well we've had the statutory requirement to deal with this for over 30 years, or nearly 30 years and the point that we, this body, or other bodies haven't taken that to set a standard at all, not one exceedence per year, or if we had 365 exceedences, that's our prerogative to establish that. But that we haven't done that says something about our initiative and lack thereof in the requirement to see federal standards implemented at some time because we tend not to look at issues unless we're forced to. And historically, and I think, and I'm not, I don't wish at all to make this reflect upon your division or department, but it's a general criticism that we talk in the pollution control area of compliance to the federal regulations not upon maintaining the standards that we have under political pressure in 1971 adopted a statute that defines visibility standards right there with health and safety issues and we neglect over the long term to deal with this issue of setting standards (1) or setting some plan or allocating resources to deal with it I think is something that we need to address in the future and this isn't a call to action, it's simply a prod to see that we continue along the road and I understand that there are other higher priority issues of health and safety that we need to address and in some ways the 2.5 criteria will reflect upon action that will help, hopefully, help our visibility problems. But I think the quality of life as those people who talk to you and presuppose the answer to your original question people think that it's of value to be able to see the mountains and it leads to their pleasure and that's an important consideration.

Mr. Naylor stated it certainly fits within the primary definition of air pollution. Haze is air pollution, no question. And it would be good to probably have a general plan. Perhaps as the Senate Bill 432 process unfolds, that would become crystallized. I would say in 1970 when that statute was passed, there was a very poor understanding of the causes of haze. But I think in the last few years it's been much better understood and the sources and the inventory. So, other states are moving ahead on that. Colorado I think does have an aggressive program to improve urban visibility. So I think it's an appropriate mission, you know, for the next several years.

Commissioner Johnson stated my wish is to see that the issue be raised and that at some point those people will fund those programs or authorize the funding, will accept that and provide the programs to address the issue.

Chairman Close asked if there were any other questions. There were none. He then moved to **Agenda Item No. VIII. Status of Division of Environmental Protection's Programs and Policies.**

Allen Biaggi, Administrator of the Division of Environmental Protection, stated since we've got a high-tech facility here I'll just throw my notes up and you can follow along with me as I read them, that is if we can get it zeroed in so you can actually read them. Well, hopefully you can. I've broken my presentation down today into four general categories: planning activities, program issues, ongoing cases, and personnel. First off, with regard to planning activities - Governor Guinn has instituted a fundamental review of state government to look at the functions and structure of state government with the goal of improving its efficiency. There's been a fundamental review committee that's been established consisting of 18 members of government and the private sector and the Department of Conservation and Natural Resources of which the Division of Environmental Protection as an agency

has been selected as one of the departments to undergo this fundamental review. I've provided to you today the fundamental review package of the Division of Environmental Protection that was presented in our first meeting of this committee which was conducted at the end of October of this year. Mr. Turnipseed, Mr. Trenoweth were also there with their respective agencies as was Mr. Crawforth. Overall, I believe for all of the agencies within the Department, the meeting went well. There was some very positive and constructive dialogue between our office and the fundamental review committee and we're awaiting some further discussions with the committee on where they wish to go. So this is certainly not completed as of yet and activities will be ongoing throughout the next year. Are there any questions on that before I move on?

The next item is the internal strategic plan and I mentioned this at the last meeting. The purpose of this effort solely undertaken by the Division is to undertake an internal staff-level review of policies, procedures, and programs with an eye on the development of specific action items and time frames for improvements for the Division. This is intended to provide us with a direction and road map for the agency for the next one to five years. I'm happy to report that we're substantially along. The issues have been identified both for the Division, each of the bureaus, and each of the programs within those bureaus, time frames for resolution for those issues are being attached to those items and I'm hopeful, or I, we will have a document available to provide to the Commission at the next meeting which I believe David has scheduled tentatively for February? March, February. So, we'll have that available at that time. Any questions on that document?

Finally, under planning activities, David, Marcia and J. C. Goodman are in the process of putting together for the entire Division a business planning process document which is designed to assist the regulated community on how DEP does business in its programs and the permitting processes and procedures we have. This is the draft which I have reviewed and will be giving back to David, in fact, right now. And he will be modifying this and we will be presenting this to the regulated community. I think this is a tremendous effort that David has done and it will really be a benefit to the regulated community to know what is required of them. What are the time frames for securing a permit? What are the regulatory responsibilities? What are the regulatory functions? Where can they go to get the regulations? It references our Web site which has been very successful. And so I think this is going to be a real positive step forward for us and for the regulated community to understand one another's needs and how best to comply with the activities of the Division.

Moving on to program issues - we've heard a lot today and over the last two or three meetings with regard to fees and adequate funding of our programs, of course, are of a great concern and as I've mentioned today, DEP is sensitive to the cost that we impose on business, industry and government and Leo said it very well this morning that our mission includes an economic component to it. We have to be sensitive in our decisions to the economic realities of business, industry and agriculture in this state. As I mentioned earlier today, DEP yearly evaluates our needs and we reduce fees if we're able. As I said, this has been done for hazardous waste with economic concerns at the Beatty landfill, the Air Quality program in 1996, and with the Mining delay increase of this year. There are a lot of other issues on the horizon, however, that are going to impact the economics of the Division. Jolaine touched very briefly on probably the major one and that's the Mojave settlement that was agreed to just within the last two months and I'm going to talk about that a little more. But it has the potential to impact the Division to the tune of hundreds of thousands of dollars and the financial stability of our Air Quality program. Additionally, the Hazardous Waste program is somewhat uncertain, probably within the next five to ten years in light of the closure of the Beatty landfill and that's a significant revenue stream for us in our Hazardous Waste programs and other programs. So, I know you're probably tired of hearing about fees and about the economic activities of the Division, but I guess I'm here to warn you today you ain't heard nothing yet. We're going to continue down this road over the next few years.

With regard to ongoing cases, there is a case that I think Mr. Coyner, Mr. Doppe, and I'm not sure who else was on that panel. SMI Joist? Joe, you were on that? And I'm happy to report that I think we're reaching at least a conceptual settlement with SMI Joist and it doesn't appear that that hearing will go forward in January as we had

intended. So I think that's good news for all of us. That was probably going to be a very complicated and prolonged panel discussion consisting of multiple days. Things could still fall through, but I think we have reached sort of a meeting of the minds of that and SMI Joist has been very cooperative in the settlement negotiations and I think we've really made some good progress there.

I can't say that we've made good progress on Western Elite. For a little bit of background, Western Elite is a recycling facility, composting facility that accepts and processes construction and demolition waste for compost. It was mentioned in some of the testimony this morning. This facility is located in Lincoln County. We issued some violation notices to it for violation of State solid waste requirements and its operating permit of exceeding allowable waste volumes. The State Environmental Commission panel, over a three or four day hearing, ruled in May 1999 that Western Elite violated the limits of their ability to accept material and the SEC upheld the Division's actions and directed Western Elite to maintain their waste volumes at 15,000 cubic yards. Western Elite has filed in Lincoln County court two actions. One is a stay of the stayed Environmental Commission's decision to allow them to continue to accept waste. And number two, they have filed a petition for judicial review of the SEC's action. DEP opposed the stay. We argued this matter, or the AG's office on our behalf, argued this matter in court on August 26th. The judge has yet to rule on that. The opening brief for judicial review is due on 12/23 and that's the opening salvo for Western Elite. We're continuing to negotiate with Western Elite; however, those negotiations so far have been unacceptable. They're continuing to take waste despite the orders of this body and it's estimated that right now in Lincoln County there's something in the neighborhood of 500,000 to 700,000 cubic yards of waste being stored on that site. There's a new proposal that Dave Emme and Les Gould are working with the Lincoln County Commissioners and others on in establishment of a board of directors to oversee that facility to bring it in compliance. So we will continue to work diligently on both the legal front and the negotiation front in an attempt to resolve this issue.

Commissioner Doppe stated as one who spent a great deal of time on that, I often sit in reflection and you've just confirmed my worst nightmare, by the way, that this thing continues to grow unabated despite our collective best efforts for two years to put the kibosh to them. And it really calls into question what do we need to do? You and us to where we're able to get a handle on these things, if assume the worst and assume that their intentions are bad, and if someone is fundamentally looking for a gray area, or worse thumbing their nose at us, what do we do that doesn't take two years to stop them (a); (b) allow an operation that conceivably if it goes the way that I'm sure you suspect and I guess we do too, is to turn from 15,000 permitted to 700,000. What do we do in the future to stop that?

Mr. Biaggi stated well, that's a good point. And, you know, we have always in the Division had the philosophy to work with business in good faith to bring people into compliance without having to levy unnecessary fines and penalties and heavy-handed actions. This is a case where that hasn't worked and despite our efforts to bring them into compliance, to negotiate in good faith, it just hasn't worked. And, so, we're going to continue down the legal path and I see that that's our really only recourse at this point is to pursue this within District Court, within Federal Courts, if necessary to bring this back into play. Unfortunately, this has gone down a road so far now that if the facility owners and operators walk away from it we're standing here left holding the bag and trying to decide what to do with 600,000, a big bag. It's a tough case. This one's a very difficult one for us.

Comm. Turnipseed stated I missed what you said. They've had a hearing on the stay of motion and that's under advisement?

Mr. Biaggi answered the hearing of the stay took place on August 26th and the judge has yet to rule on the stay. But yet they're still taking the waste.

Comm. Turnipseed asked who's the judge?

Mr. Biaggi answered I don't recall the name.

Comm. Turnipseed answered it's either Judge Hoyt or Judge Pepez.

Mr. Biaggi stated no, it was a judge I believe out of White Pine County who is sitting in for the normal Lincoln County judges.

Comm. Turnipseed stated well maybe that's the same JD.

Mr. Biaggi stated okay.

Comm. Turnipseed stated and I thought there was only Judge Hoyt and Judge Pepez, but they could have called in an outside judge, but in whatever District Court that is, that's either Judge Hoyt or Judge Pepez and Judge Pepez is fairly sensitive to environmental issues. That's why I was wondering if it was him. He used to work for the Fish and Game, was on the Department of Wildlife Commission, fairly up on environmental issues. That's why I asked. The only thing I might suggest, and sometimes it works and sometimes it doesn't, is a temporary restraining order. I've tried it and won and I've tried it and lost.

Mr. Biaggi stated we're in close contact with the Attorney General's office and there's been a lot of strategy that has been going on here. So, I can tell you that there's still legal maneuvering going on and legal actions are still moving forward and we have informed Western Elite in no uncertain terms that we're willing to continue to negotiate in good faith, but that will not delay our legal actions to bring this facility back into compliance.

Commissioner Doppe stated I guess one of the lessons I learned in this thing is that the concept of good faith has got to be from both sides and the moment that we are reasonably sure that there's no good faith being exercised on the other side, I think we need to shorten that leash down and do restraining orders and whatever else we need to do and, you know, if we're going to end up going to legal blows, well, heck let's just get there and let's get there when there's 100,000 cubic yards instead of 500,000. If there's a lesson to be learned, I guess that's it, in hindsight.

Mr. Biaggi agreed. He stated the next case is another one that is I think near and dear to many of your hearts and that's Jarbidge. For background, our portion of the Jarbidge case is relatively simple. Elko County conducted some work in the Jarbidge river to reconstruct South Canyon Road without a permit. DEP issued a stop order and a finding of violation in July 1998. So, despite all of the hubbub over Jarbidge over the last few months with regard to the road issues, with regard to trout and all of that, we have just a very small sliver of that and it's very, very much confined to the fact that Elko County attempted to do work in the stream course without a permit. I think, as you know, the State Environmental Commission heard this case in September 1998 and upheld the Division's order and modified it to some extent. Elko County appealed that action for judicial review in August 1999. The Elko County judges have recused themselves because of their perceived conflicts of interest and a hearing of this is now scheduled on February 1, 2000 in the court of Judge Richard Wagner in Lovelock. So, it'll be heard at that time and hopefully a decision made on the efficacy of the SEC's actions at that time. So, Mr. Dahl is much more versed in the overall scheme of the Jarbidge issue than we are, but we have just a fairly small piece of the pie here relating only to the actions relating to Elko County attempting to rebuild a road and the incidence where they got into the river. Any questions on that one?

Mojave Power is a generation facility owned by Southern California Edison and others located in Laughlin, Nevada. The issue revolves around a suit filed by a number of environmental groups concerning visibility impacts to the Grand Canyon. A settlement to that case had been reached and part of the settlement includes the placement of emission controls onto the power plant. This power plant was built approximately 28 years ago and was not built with many of the controls that are available now. The settlement states that if Southern California Edison sells the plant, or its portion of the plant under the deregulation requirements in the State of Nevada that those controls may

have to be, will have to be put on as early as the year 2003. If it is not purchased and it continues to maintain responsible control of the facility, those controls must be put into place by the year 2006. In any event, the cost of those controls is currently estimated to be about \$300 million and this will be a significant impact to the State air program as we have discussed from a reduction in the approximately \$400,000 in yearly annual fees that they paid to our agency. So this is one that, again, we're going to be, I've already had dialogue with the Budget office and how we're going to try and make up for those fees in the event that they put on the controls in 2003 and certainly we're going to have to address this issue by 2006.

The next item is the Las Vegas Wash and perchlorate. For a quick background, perchlorate is a rocket fuel ingredient that is located in groundwater here in the Las Vegas valley from the Kerr McGee Chemical Corporation and the PEPCON facility. That groundwater then flows into the Las Vegas Wash. There has been a treatment system in place for groundwater control since late 1998 and a capture system has become operational in the Wash just in the last 30 days. You'll recall as I reported last meeting, a surface discharge has been found that contained about one-half of the perchlorate loading to the Las Vegas Wash. Through the good work of Brenda Pohlmann over here who's the project officer on this, that seep has been captured and to date about 300,000 pounds of perchlorate has been removed from the groundwater and surface water system. That's just a drop in the bucket from what's there, but at least it's a start. There's a lot of ongoing studies at the national level to determine what are the impacts of perchlorate on human health and there's some other studies going on locally to further define if there's been any community health impacts from perchlorate in the groundwater system.

Commissioner Johnson asked 300,000 pounds recovered?

Mr. Biaggi stated more or less. So, that's the system that's been operational for less than two years and it's removed 300,000 pounds, but, again, we're seeing pretty high concentrations and loadings of perchlorate into the Las Vegas Wash. It is detectable all the way down the Colorado River system to the Mexican border.

The next item is the Las Vegas Wash itself and Mr. Close you had asked about some of the erosion control activities last meeting. I've provided to you something that came out of our last meeting of the Lake Mead Water Quality Forum which is something that the Division put together a number of years ago to bring all of the parties concerning Lake Mead water quality together into one room. Last Thursday we had that meeting and this was provided by Jeff Harris of Clark County Parks and Recreation and it gives a little overview of some of the milestones that have been reached in the development of the Wetlands Park and the construction of some of the erosion control structures in the Las Vegas Wash. So, I think that the good thing is that this is not a static issue. There already is an erosion control structure in place just above Lakes of Las Vegas that has been put into place. The bids for the Pabco Road and other erosion control structures are out this month and construction on those facilities are expected to begin in January 2000.

Finally, personnel issues, and I wish I had something a little bit better to report on this. Wendell McCurry, who many of you know was the Bureau Chief of the Bureau of Water Quality Planning, Tom Porta is in that position right now, has been quite ill with cancer for a number of years and he will be retiring on January 4, 2000. Wendell is very ill right now, is essentially confined to his residence and to his bedroom. Wendell had over 33 years in with the Division of Environmental Protection and within the Bureau of Water Quality Planning and the Bureau of Water Pollution Control. He's a tremendous asset and is really the father of water quality in the State of Nevada and through his retirement he will be greatly missed. We have asked the Governor to develop a petition for him mentioning that his date of retirement is Wendell McCurry Day in the State of Nevada and we're hoping that that will come forth and boost up his spirits.

Chairman Close called for questions or comments regarding the status report. There were none. He then moved to **Agenda Item No. IX. General Commission or Public Comment.**

Comm. Turnipseed stated this is nothing to take away from Commissioner Dahl, I think the Governor made an excellent appointment to represent ranching and as Alan Jackson would call it “the little guy.” But, we should, I think, recognize the contribution to the citizens of Nevada and the ranching community of Nevada of Marla Boise Griswold who served on this Commission longer than I have, which is 10 years and I don’t know how long total, but are we drafting some kind of proclamation or letter of appreciation?

Chairman Close stated he already has it drafted. He just didn’t bring it down with him today. We’ll get it circulated and I think I’d like to have one also for Wendell that we’d all sign and I think that would be good because he gave us good service and good information for many, many years. And, so, we already have one for her and we’ll get one for Wendell.

Mr. Biaggi stated we have sent Marla a note of recommendation and recognition of her many years of service. I think she came on the Commission in 1985. So, we have that, but I’m sure she would appreciate a proclamation or some recognition from the Commission as well.

Chairman Close adjourned the meeting at 4:00 p.m.

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**Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log**

Hearing Date: December 16, 1999

Location: Clark County Commission Chambers

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	3 Page Letter	Letter from Republic Silver State regarding recycling regulations dated December 13, 1999	2000-02	YES
2	1 Page Table	Table titled "Cost Estimate for Permit Processing" for water quality fees	2000-03	YES
3	2 pages	Proposed Amendments by BWM for petition 2000-02 the recycling regulations	2000-02	YES
4	2 pages	Letter from Integrated Waste Management Consulting regarding recycling regulations dated December 14, 1999	2000-02	YES
5	5 page of Sign-In Sheets	Sign-in Sheets for NDEP Compost Workshops	2002-02	YES
6	Multiple Photos	Silver State Republic Photos of Western Elite and Nevada Construction Cleanup		NO
7	15 Page Report	Discussion of Findings and Recommendations Regarding Small Business Air Quality Operating Permit Fees; Nevada Division of Environmental Protection dated December 16, 1999		YES
8	4 Page Report	Las Vegas Wash Round Table Discussion of November 22, 1999		YES
9	4 Page Report	Role and Purpose of Nevada Division of Environmental Protection		YES
10	22 Page Report	Visibility (Urban Haze) in the Las Vegas Valley, Mike Naylor Clark Co. Air Pollution Control Division		YES